

**BEFORE  
JAMES R. COX  
NEUTRAL CHAIRMAN**

**CITY OF JACKSONVILLE, ILLINOIS**

**and**

**2003 LABOR AGREEMENT  
S MA 03 098  
FMCS 030311 07582 A**

**JACKSONVILLE FIREFIGHTERS ASSOCIATION  
637**

**DECISION AND AWARD**

The Hearing in this matter was conducted by the Arbitrator in Jacksonville, Illinois August 20, 2003. Attorney Robert Long and Co-Counsel Tracy Pyles represented the City of Jacksonville. The Firefighter's case was presented by International Representative Ronald McDonald. Following the conclusion of the Hearing and their receipt of Transcript, each Representative filed a Post-Hearing Brief.

The Arbitration Panel consists of Neutral Member and Chairman, Arbitrator James Cox, Employer Delegate Dan Beard Esq. and Union Delegate Rick Welle. The Parties have stipulated that procedural requisites for convening this Arbitration Hearing had been met and that the Panel has both jurisdiction and authority to rule on the mandatory subject of bargaining submitted to it in accordance with Illinois Public Labor Relations Act.

The Delegates have reviewed a draft Award submitted by Arbitrator Cox and discussed their respective positions with him December 5, 2003. This Final Award issued after consideration of those comments.

**THE ISSUE**

Residency is the sole issue placed before the Arbitration Panel for final and binding determination. Each Party has submitted documentation and testimony in support of their respective Final Offers on that issue. A

substantial number of Tentative Agreements reached during Collective Bargaining Negotiations have been made a part of the Record.

Four important issues had been resolved on the date of the Interest Arbitration Hearing – Wages, Work Schedules and Compensatory Time, Hours of Work and Drug and Alcohol language. . There is agreement that the Contract Term is to be three years through December 2005.

### **NEGOTIATIONS**

The Parties three-year Agreement which was to expire December 31, 2002 has been extended. Negotiations commenced October 31, 2002 and continued into 2003. During the second meeting, December 3, 2002, various proposals were submitted by the Union including residency language - - *“Residency restrictions shall be lifted from the current city limits restriction and be extended to the County limits.”* Thereafter this issue was not addressed until June 10, 2003. At that time, there were several open issues. There was no discussion of the residency issue in any detail neither then nor at any time thereafter prior to Arbitration.

Jacksonville proposes to retain *status quo* on residency. The Final Position of the Union is that *“Residency restrictions shall be relaxed from the current ‘inside the City limits’ to any area within 9 miles of the City limits of Jacksonville”* It was not clear when this modification in the Union position had been presented to the City but there is no evidence in the Record that it had been discussed prior to Arbitration.

### **Comparables**

There is no dispute in this Interest Arbitration as to comparable communities. The City specifically notes however that their assent to use of these communities as comparables is limited to this proceeding.

The nine cities upon which the Parties rely for reference here had been utilized in at least one prior Interest Arbitration (1994) . Their comparability group consists of Charleston, Collinsville, Lincoln, Macomb, Marion, Mattoon, Mt. Vernon, Ottawa, and Sterling. Within this group of similarly sized communities, Jacksonville ranks 6th in per capita sales tax and 4th in Equalized Assessed Valuation per capita. There has recently been a slight decline in both population and EAV.

There are 25 full-time employees in the relatively well paid Jacksonville Fire Department which ranks sixth in size ahead of smaller Sterling, Lincoln and

Marion and similarly sized Macomb. . Twenty-one in the Department are Bargaining Unit Employees and, at the time of the Hearing, there were three *Lieutenants*, nine *Drivers* and nine *Firefighters*. There is no evidence of any recruitment or turnover problem. 13 Department members have more that 8 years of service.

### **The Ordinance**

For more than 30 years there has been a Jacksonville City Ordinance containing a residency requirement. That Ordinance originally required a Firefighter to, "... *maintain his residency within the corporate limits of the City. ... Any person who does not comply with the provisions of this Section shall be subject to dismissal from his position as Fireman or Policeman because of his failure to comply.*

The present Jacksonville Ordinance, as amended, requires all Officers and Personnel employed and appointed by the City after April 28, 1969 to be bonafide residents. This requirement may be waived by the City for good and sufficient reason when not in conflict with any other Ordinance of the City or State Statute. Among all Jacksonville City Employees, presently only the Plumbing Inspector is known to live outside the City. A specific exception to the Ordinance had been made in his case due to difficulties recruiting a qualified Plumbing Inspector who would live in the City.

An Ordinance adopting Revised Rules and Regulations for the Jacksonville Fire Department was passed in July 1998. These Rules of Conduct, among other things, require residency within the City limits of Jacksonville and that the Department be advised of any address change. It is mandatory under this provision that members have a telephone in their home so they may be notified of alarms or emergencies. In addition, members are to be provided a pager by the Department so that alarm notification can be made in the event they are away from their residence or there is difficulty reaching them. Pager distribution was a new provision that had not been in previous Rules. A restriction in earlier Rules that – "*no more than six members will be permitted to leave the City Limits at any one time and then they must report to the Department upon leaving and returning to the City*" – was not made part of the 1998 Rules.

The 1998 Rule and Regulations require" "*All off-duty Members of the Department will be subject to call-in for all emergencies at the direction of any Superior Officer. Members will be expected to stand-by for emergency response at any time so directed by the Chief of the Department or commanding Officer*"

It was not until 1998 that residence became a mandatory subject of bargaining and the first opportunity to bargain the issue came during contract negotiations for the previous Agreement – in 2000. However, there was no evidence that the parties had actually bargained that subject until these 2003- 2003 negotiations. As mentioned, there was no discussion of alternative positions on the residency issue during these negotiations, no changes in position and no counterproposals on that issue.

According to the evidence, all Firefighters are currently residents of the City. There is no evidence that any Firefighter has terminated his City position because of dissatisfaction with the residency requirement or that the City has had any difficulty recruiting and hiring Firefighters. Finally, as the City points out, Firefighters had notice of the residence restriction when they came on the job. The residency requirement has been regularly stated in Job Availability Notices.

### **Residency Restrictions among External Comparables**

Among comparables, only in Macomb must Firefighters live within the City. <sup>1</sup> In Mt. Vernon and Charleston, employees may reside outside the City so long as they live inside the County. According to the Union, the longest distance from the edge of Mt. Vernon to the County line is 17 miles. The furthest distance from the edge of Charleston to the Colles County line is about 16 miles. Lincoln and Marion have 10 miles beyond the City limits as their residency requirement and Mattoon allows residency up to 20 miles beyond corporation limits. There is no limitation at all in Sterling<sup>2</sup> and, according to anecdotal evidence, the Union President there lives in Wisconsin – it is about 100 miles by road to his home.

According to Union calculations, if what they see as skewing effects of including Sterling and Macomb were removed, City Firefighters working for the remaining Comparables are permitted to live an average maximum distance from their respective cities of 11.14 miles. There is no evidence of any operational problems resulting from living those distances outside those cities.

It is these geographically proximate similar sized cities within the labor market with whom the city competes for its firefighters. There was no

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<sup>1</sup> The Bargaining Agent for the Police Department and the City of Macomb recently went to Arbitration on the residency issue. The Arbitrator upheld the City position.

<sup>2</sup> As shown below, that community has mutual aid available and uses paid on call personnel.

showing that firefighting in these comparables is any different than in Jacksonville or that the Departments there have been disadvantaged by their residency requirements.

The Comparables show that a residency limit restricting Firefighters from living within the City is not the norm in this region. However, there was no showing of how the present residency requirements in those comparables communities developed, what the trend if any may be or what circumstances brought about their status.

The Union contends that, considering the back up available from outside Departments, there is no need to maintain what they see as an unnecessarily stringent limitation on residency. However, the City shows that the nearest paid Department to Jacksonville is 33 miles away in Springfield.

Jacksonville does not find that fact that most of the comparables do permit residency outside the City to be of consequence since, according to City Evidence, Charleston, Lincoln, Macomb, Marion, Ottawa, and Sterling, rely on mutual aid in emergencies and have pacts with full time Fire Departments. Macomb, Marion, Mt. Vernon, Ottawa, and Sterling also use paid on-call personnel or volunteers. They state that it is only Collinsville and Mattoon that do not rely on mutual aid from paid units. Based on their arguments, Jacksonville apparently believes that this level of back up may make the response problem less critical.

The parties are in agreement that there are nine Volunteer Fire Departments with four being six miles or less from Jacksonville – all communities of less than 5,000. One, Meredosia, is 22 miles distant. The closest of these communities is South Jacksonville, a village contiguous with Jacksonville. During the past 15 years there has been occasions when the Jacksonville Fire Department has assisted these Departments but, at no time, according to the evidence, were any of those Departments asked to assist Jacksonville.

The most recent Agreement with South Jacksonville provides, among other things, for BLS first responder services, light and heavy extraction services to the Morgan County Rescue Squad when and if personnel and services are available. The Morgan County Rescue Squad has a reciprocal agreement with Jacksonville. South Jacksonville also agrees to provide mutual aid to the Jacksonville Fire Department during a mass casualty incident or when existing resources have been exhausted, although the mutual aid is provided on an as-available basis.

### **Operational Considerations**

## **Availability**

There has been considerable dispute about the Chief interpretation of Section 17.5 relating to Firefighter's obligation to make them available for call back. The Chief believes there is a procedure. The Union contends there is none.

The Department maintains that a minimum number of Employees should make themselves available during a post shift period. The evidence indicates that such a requirement has not been regularly enforced. In a single case and only following a substantial number of failures to be available has one Firefighter received any discipline.

## **Response Time**

There is no evidence that any Firefighter has been disciplined for not meeting a response time standard.<sup>3</sup> The City asserts that their authority to impose a requirement that employees be available for a call in is derived not only from the Management's Right clause but also from the Distribution of Overtime language. They draw my attention to the fact that Contract language provides, among other things, *"In the event no Employee is available or volunteers to work overtime, the Employer may assign required overtime from the rotating list beginning with the least senior Employee on the list who shall move to the end of the list after working the assigned overtime"*.

Firefighters agree they must respond when contacted but maintain they are not required to be on-call during any part of the period after the end of their shift. That issue has been in dispute for sometime.

It is significant that there has been a drop off in the number of off duty Firefighters actually called in each year. That number declined from 43 in 2000 to 30 in 2002 and, at the time of this Hearing in August, there had been only 16 occasions where Firefighters had been called in during 2003 .

Prompt response is a critical element to the mission of a Fire Department. According to the Chief, the City states that they expect Officers to live in a location where, if they were on call, they would be able to respond within 20 minutes. There are two Fire stations in the City. Jacksonville argues that, if a Firefighter lived outside the City within the 9-

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<sup>3</sup> The Department has not consistently enforced what they see as a post shift stand by requirement. I reiterate, there is a long-standing dispute whether the requirement exists. That question is not before this Arbitrator.<sup>3</sup>

mile limit, it would be more difficult to respond within that time frame and the distance would be conducive to tardiness and absence. As noted below, currently Officers – even though they live in Jacksonville - are not responding within 20 minutes. Living further away from the Firehouse would aggravate the situation if the reason for these late reports were distance from the Firehouse. That was not shown.

The average number of Firefighters responding to call-ins has varied between 3.53 and 3.83 with the average response time ranging from 21:58 to 28:13 minutes during recent years. Response time in 2003 has averaged 26.43 minutes. This measurement of response is calculated based upon the fourth person on the crew to report. However, as the average of Firefight response suggests, in some cases, the fourth person may not have reported at all. There is no evidence of discipline.

### **The Union Position**

The principal reason for the Union proposal is, as they phrase it, "*one of choice and liberty rights*" – a matter of serious and understandable concern. They assert that the current residency requirement is unreasonable and burdensome and should be modified. The Union also presented evidence that that Firefighters should have an option to live outside the City for several specific reasons – crime, expanded property ownership, affordable housing and education opportunity. However, the evidence reviewed below did not establish that an expansion of the residency zone would mean any significant positive changes in these four quality of life factors.<sup>4</sup>

At least 5 Members of this 21 person Bargaining Unit either own land or have an expectancy of inheriting property in Morgan County outside Jacksonville City limits. Each of these parcels is within the 9-mile limit sought here. The Union stresses that failure to relax the residency requirement could, for these individuals, result in serious personal and economic hardship. The City reminds the Arbitrator that these individuals knew that Jacksonville residence was a condition of employment when they took the job.

Local 637 draws the Arbitrator's attention to the lifestyle that living in the country affords those who want it. There are valid considerations on both sides of the classical argument of whether it is better to live in a City or in the Country. The Union basically seeks to provide their members a choice

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<sup>4</sup> While there is no contention that affordable housing is unavailable in Jacksonville land prices outside the City limits are substantially less expensive. There are some offsetting building costs since often well and septic systems must necessarily be constructed.

and an opportunity to elect to live where they want - in the City or outside within 9 miles of the City limits.

The Union lists 15 Subdivisions within the sought 9-mile residency radius. Seven are 3 miles or less from the City limits. None are more than 5 miles outside the City. A move to a closer in Subdivision would not be expected to result in any significant changes in travel time to a duty Station.

The Union also supports their position for a relaxed residency restriction on the level of reported crime in Jacksonville. There is no showing of comparability or what the crime level might be in the expanded residency zone. The Union did show that in South Jacksonville overall crime dropped by over 10% . -We do not know the significance of such a figure.

In Jacksonville, Domestic Battery, probably the most rapidly growing crime in Illinois, increased almost 21% in 2002. I would expect that statistics would show comparable increases within the sought expansion zone and throughout the County. Such a crime is usually limited to the household and is not of wide spread public concern. Criminal offenses, excluding traffic, went up 9.2% and Burglaries rose 37.1%. There were 13.1% more incidents of Criminal Damage to Property than in the previous year, 2.4% more Thefts under \$300.0 and 3.7% additional Thefts over \$300.00. Motor Vehicle Thefts declined and there was a significant and substantial decrease in Drug Arrests -59.5%.

On the basis of the evidence presented and especially the lack of any crime data from the area in which the Union wishes to expand residency, I do not find any compelling reason to support the Union's residency position because of the crime factor.

The Union also asserts that their membership should have the opportunity to choose educational opportunities either inside or outside Jacksonville. In addition, it would appear that by extending the residency area 9 miles out, as the Union proposes, Firefighters would have an option of living in one of five different School Districts. Presently there is one High School available and no alternate except a relatively costly private High School.

The Union acknowledges that Jacksonville schools are improving as the evidence establishes. Jacksonville schools are making substantial academic improvement and that, when the breadth of the comparative academic programs is considered, there are demonstrated advantages to attending schools within Jacksonville. There was insufficient evidence that any Firefighter would be educationally disadvantaged if his children were to attend Jacksonville schools.

The Union introduced comparative academic factors between these five Districts they cite and Jacksonville. There are certain anomalies. For example, while Virginia School District 64 had a graduation rate of 100%, the percentage of students that passed all state tests was only 50%. Union figures showed a 2001-2002 overall performance at 66.2 on all state tests within the Jacksonville District compared with the statewide level of 60.1. In Triopia Junior and Senior High School Districts, state test levels were 72.6%. Scores trailed the state level and ratings were only 50.3 in Virginia School District 64. In Franklin scores were similar to those in Jacksonville. That District was at 67.7 in overall performance on all state tests. Winchester was about the same - 66.8.

I have reviewed the percentile rankings using National School Norms in Jacksonville. Considering reported data for 2002-2003 shows substantial improvement. District scores have increased at the 1<sup>st</sup> Grade level in Language Arts from 61 to 92 and in Math from 50 to 86. For 3<sup>rd</sup> Grade the increases have been, in Reading from 61 to 73, in Language Arts, from 67 to 88, and in Math from 65 to 82. At the 6<sup>th</sup> Grade level scores have gone from 56 in Reading to 74, 70 in Language Arts to 92, and 63 in Math to 81. These are all clear positives for education in Jacksonville<sup>5</sup>. Levels of such educational achievement in any of the other Districts were not shown.

In Jacksonville grammar schools, grade-by-grade, there were only two classes that had reading scores below the 50% national benchmark. There were but four classes in language arts across all six-grade levels which fell below the national percentage 50% benchmark and, in math, only 7 of 54 classes did not score above the national 50%. Trend data shows significant progress. Eighth Grade math and writing is at a three year high with math scores improving from 43% to 60% M+E in 2003 and writing scores from 44% M+E in 2000 to 66% M+E in 2003.

Jacksonville residents do have a relatively expensive alternative to public education with Catholic High School student tuitions range from \$3000.00 to almost \$3500.00. There was no showing of any additional private education opportunities that might be available based upon residence in the sought zone.

### **The City Position**

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<sup>5</sup> . A review of the Iowa Test of Basic Skills, an examination based upon national percentile ranks, also shows a pattern of improvement and relatively high national rankings currently. For example, among the ten City Grade Schools, first grade reading scores range from a low of 50 at one school to scores in the 90's at seven schools. Looking at Grade 6, although we find one class with very poor scores, other schools show reading scores above the 50% benchmark.

The City emphasized two principal reasons why they believe it is important that Firefighters should continue to reside within City limits. - (1) the community, political and economic benefits that their City residence brings and (2) the response time requirements for off duty personnel discussed above.

Firefighters, while their numbers are a relatively small percentage of the overall population, have wages that compare favorably with earnings of other citizens. There is no question that spending by an employee who lives in the City does have a positive effect on property values and retail sales from which the City derives tax support. As the City correctly put it, residency does result in a positive economic multiplier effect on community business and revenue. It is speculative, however, whether there would be any significant change in this financial support were the Union proposal adopted. Considering the quality of life circumstances reviewed above, it cannot be expected that many from this small group of 21 at issue here would move from Jacksonville. In fact, the evidence does not show any reason why most employees would want to move from Jacksonville - other than lifestyle. The situation is entirely different than in a Village of Cicero residency case that I heard or in the Kankakee case identified by the City.

### **ANALYSIS**

The issue of residency is understandably an issue of prime importance for each Party. I recognize that the current policy has been in effect for more than 30 years but that it has been a mandatory subject of bargaining only since 1998. The parties have had only one previous opportunity to bargain this issue prior to these negotiations. The issue comes to this Arbitration as a stand-alone question, not as part of any trade off or alternative proposal and, most critically, without having been discussed at the bargaining table to any extent.

In making his determination, the Chairperson has applied all 14 (h) factors but especially the interests and welfare of the public and the conditions of employment of those employees in the unit before the Arbitrator compared with conditions of employment of those performing similar work in the comparables.

Critics of residency laws contend they restrict citizens' rights to live where they please and shrink the pool of qualified workers. Proponents argue that the requirement keeps tax money in town, preserves opportunities for local workers and ensures that off-duty emergency personnel are available.

I have reviewed most of the Illinois Awards since 1998 and find that generally Arbitrators have upheld long-standing residency requirements absent evidence warranting a change and/or a quid pro quo. The Awards differ on the degree of evidence required for a modification of what have been, in many cases, lengthy periods during which residency had been a condition of employment. Here, as the Union stresses, the relatively short period during which residency has been subject to modification through collective bargaining should be considered. It is the Union burden to show valid reasons for a change from status quo. There had been no mention of the residency issue during 2000 negotiations.

As shown above, there is insufficient evidence in this case that crime conditions, educational opportunities, available housing or limitations on property ownership make continuation of the existing restriction on residency within Jacksonville city limits unreasonable.

The Comparable communities do have less stringent residency restrictions. There is no evidence that the more liberal limitations that do exist in six of the nine comparable cities have resulted in delayed response to fires and/or emergencies or have otherwise made it more difficult for their Departments to fulfill their missions. There is also no evidence that there have been any adverse economic effects in the eight comparable communities that do not have city residency requirements. While, as mentioned, the Union has not shown any compelling need for a change based upon living conditions in Jacksonville, they do have strong support for their position from the comparables. The outcome here primarily results from another consideration.

In this case, the issue comes to the Arbitrator without having been fully discussed by the parties. Furthermore, the limited discussion did not include any effort by the Union to explore any type of quid pro quo that might be available for a change in such a relatively long practice. In such circumstances – whatever the issue is - if a condition of employment has been in effect for a long period, a modification proposal is usually part of package.

Although the Union did modify their initial residency proposal limit from a county limit by the time of the Final Offer at Arbitration, there is no evidence that during bargaining there had been any discussion of such an alternative. There is no evidence that there had been any bargaining on either the sought 9 mile change or the effects which would result from that residency proposal. There was no effort to indicate anything which could have been a trade off – even a minor exchange. The Union does assert an informal suggestion had been brought back to the Aldermen that they might defer a wage increase if the City would grant them the right to live outside

the City. That approach was never made as part of the negotiations. The only real discussions of the other party's positions on residency took place during the Interest Arbitration Hearing and in the very well-written Briefs.

Prior to any determination that there should be a *breakthrough*, whatever standard may be used by the Arbitrator, there should be serious collective bargaining on the disputed issue including, constructive and alternate proposals. Here, considering the limited bargaining on this issue, there is even a question as to whether an *impasse* had been reached.

It is often expressed that an Interest Arbitrator should be guided by what the parties would rationally have agreed upon if they had bargained the issue to resolution. It subverts the process for the parties to present the Arbitrator an issue they have not considered in any detail or made any real attempt to mutually resolve. In this case, collective bargaining would have narrowed the factual dispute and fleshed out the realities of the effect of the proposal upon operations. The Arbitrator would have had better insight into the differences between the parties. It would have facilitated any compromise Award that may have been appropriate on this non economic issue.

The evidence is that the parties did spend considerable negotiating time on other important issues and that all were resolved. Lacking meaningful negotiations on residency including failure to explain the basis for proposals and responses, as Arbitrator Briggs commented in *City of North Chicago and Illinois FOP*, S-MA-99 – 101 (Briggs, 2000), the parties did not give the process a chance to work. <sup>6</sup>.

To sum up, there is a lack of evidence that living conditions in Jacksonville would themselves justify a liberalization of the residency requirement. While external comparables clearly support some modification, (1) without evidence of the effect on Department operations that may have come from a meaningful exchange of views and alternatives on the issue<sup>7</sup>, (2) considering the lack of any *quid pro quo* offer in such circumstances and (3) recognizing that the Issue had been presented at Arbitration with little preliminary discussion having taken place, there is no basis to conclude that the sought change to "any area within 9 miles of the City limits of Jacksonville" would be reasonable.

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<sup>6</sup> Arbitrator Briggs had noted in the North Chicago case that there was no evidence that the Union had offered anything of substance to warrant the change in practice that they sought.

<sup>7</sup> Especially distance and travel time alternatives.

The City's last offer is the most reasonable. The status quo on residency will remain.

James R. Cox  
Arbitrator

I concur

I dissent

\_\_\_\_\_  
Dan Beard, Esq.  
Employer Delegate

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Rick Welle  
Union Delegate

Issued this 5<sup>th</sup> day of December 2003