INTEREST ARBITRATION
OPINION AND AWARD

In the matter of Interest Arbitration

Between

City of Carbondale, Illinois

And

Illinois Fraternal Order of Police Labor Council

Case No. S-MA-04-152

Hearing Held

October 4, 2005

Carbondale City Hall
200 S. Illinois Avenue
Carbondale, IL 62901

Appearances

For the Union:

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Arbitrator

Steven Briggs

For the City:

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BACKGROUND

The City of Carbondale, Illinois (the City) and the Illinois Fraternal Order of Police Labor Council (the Union; the FOP) have been in a formal collective bargaining relationship since approximately 1987. They are currently signatory to a May 1, 2002 to April 30, 2004 Agreement covering the 44 sworn Police Officers below the rank of sergeant in the City's employ.

There are three other union-represented groups of employees in the City: (1) A Firefighter unit, represented by the International Association of Fire Fighters (IAFF) and consisting of all Fire Department employees except the Fire Chief, Assistant Fire Chief, Captains, Fire Inspector and clerical personnel; (2) a Water and Sewage unit, represented by Local No. 160 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (the Plumbers), and consisting of most of the Water and Sewage Division employees; and (3) a Public Works unit, represented by Teamsters General Local No. 347, and covering all employees of the Cemetery, Street Maintenance, and Refuse and Recycling Services Divisions of the Department of Public Works, excluding office and clerical personnel, working foremen, other supervisors, probationary and temporary employees.

In negotiations for a successor to their 2002-2004 collective bargaining agreement the City and the FOP exchanged initial proposals

on April 12, 2004. They ultimately resolved most issues voluntarily, but wages and residency were not among them. The Union appealed those two issues to compulsory interest arbitration, and the parties selected Steven Briggs to decide them.

An interest arbitration hearing was held on October 4, 2005.[1] The parties entered into several stipulations on that date, including one confirming their mutual waiver of the tri-partite arbitration panel provision of the Illinois Public Labor Relations Act. The parties also stipulated that their tentative agreements on a variety of additional issues shall be incorporated into the successor Agreement resulting from these interest arbitration proceedings. The October 4, 2005 interest arbitration hearing was transcribed. The parties' timely post-hearing briefs were ultimately received by the Arbitrator on January 2, 2006, whereupon the record was declared closed.

RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Illinois Public Labor Relations Act (the Act) provides in pertinent part:

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

[1] The parties had earlier participated in two mediation sessions, one before a Federal Mediator and a second one before the undersigned.

Section 14(h) of the Act sets forth the following interest arbitration criteria:

> Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:
>
> (1) The lawful authority of the employer.
>
> (2) Stipulations of the parties.
>
> (3) The interest 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.

THE ISSUES

As noted, the parties have advanced the following two issues to interest arbitration:

(1) Wages (economic)

(2) Residency (non-economic)

THE EXTERNAL COMPARABLES

Consistent with a comparability pool established through a September 29, 1997 interest arbitration award,[2] the parties have embraced the following group of external jurisdictions for comparability purposes:

Primary Comparables

Centralia

Marion

Mt. Vernon

SIU – Carbondale

[2] *City of Carbondale and Illinois FOP Labor Council,* S-MA-96-83 (Briggs), September 29, 1997.

Secondary Comparables

Charleston

Galesburg

Jacksonville

Macomb

Mattoon

Ottawa

WAGES

City Position

The City advanced the following final offer on the wage issue for fiscal years 2004, 2005 and 2006:

> The City's final offer is for a 2% across the board increase to the wage schedule effective and retroactive to May 1, 2004; for a 3% across the board increase to the wage schedule effective and retroactive to May 1, 2005; and for a 3% across the board increase to the wage schedule effective May 1, 2006.

The City argues that the internal comparability factor strongly supports acceptance of its final offer on wages, noting that negotiated annual percentage wage increases across its four bargaining units have been nearly identical since 1995. It asserts as well that any comparison of Carbondale police wages with those in other jurisdictions must include the amount the City contributes to the Public Employees Health Plan (PEHP), as required by §31.11 of the parties' collective bargaining

agreement. And the City notes that its wage offer for the first year of the new three-year Agreement either improves or maintains the ranking its police officers achieved in 2002, when their wage rates were negotiated with the Union.[3] And when considering only the primary comparables, the City emphasizes, its offer places Carbondale police officers in 1st place at the 5-year, 15-year, 20-year and 25-year levels. The City also points out that 50% of the externally comparable jurisdictions received a 2% or smaller wage increase for 2004 and 80% of them received a 3% or smaller increase for 2005.

Turning to its recruitment data, the City notes that since 2000 it has had 343 applicants apply for a total of three police officer vacancies. It also underscores the fact that there are currently 70 persons on the eligibility list to fill the next declared vacancy in the Department. And with regard to retention, the City proudly cites a turnover rate of less than ten percent per year. It believes that the Union's wage offer would result in pay rates higher than those necessary to attract and retain qualified people to serve as Carbondale police officers --- a result clearly not in the public interest.

The City also opines that its final wage offer is the more favorable when considering the cost-of-living factor. It asserts as well that there are insufficient data in the record to allow for a meaningful juxtaposition

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[3] The only exception is the 1-year salary schedule cell, when under the City's final offer they would move from 3rd to 4th among the combined primary/secondary pool of comparable jurisdictions.

of total compensation (i.e., wages and benefits) across the external comparables.

Union Position

The Union's final offer on the wage issue is quoted here:

As its final offer on the issue of wages, the Union proposes a:

> 3.0% increase retroactively to May 1, 2004
>
> 3.0% increase retroactively to May 1, 2005
>
> 3.0 % increase effective May 1, 2006
>
> Retroactively effective increases shall apply to all hours paid. Employees who have left the bargaining unit during the period May 1, 2004 through the date such increases are paid shall be given a pro rata share of retroactive pay. Retroactive paychecks shall be issued not later than forty-five days after the issuance of the Arbitrator's award.

The Union acknowledges that the parties' final offers on the wage issue are not very far apart. It suggests that instead of going into these proceedings with just one issue, the City strategically advanced a wage offer with an inadequate first-year increase (i.e., 2%) so an interest arbitrator prone to "splitting the baby" might decide the wage issue in favor of the Union and the more significant residency issue for the City.

Indeed, the Union argues, it is obvious that the comparability factor did not drive the wage impasse. It asserts that no matter which final wage offer the Arbitrator selects, Carbondale police officers will lead the pack. The Union points out that during negotiations its bargaining

team unsuccessfully offered to take a first-year wage freeze in exchange for the City's agreement to relax the residency requirements. It calculates that even with the 2% offer (as opposed to 3%) for one year of the contract, the City will save at least $190,000 over a twenty-year period if it hires but one new police officer per year.

The Union also argues that when salary rates are converted to "constant dollars," one can see from Bureau of Labor Statistics figures that Carbondale police officers lost 5.56% in buying power between May, 2003 and May, 2005. Thus, the Union asserts, the City's offer of 5% for that same two-year period will not keep the officers up with the rate of inflation. The Union further notes that the City is in sound financial condition, as reflected by the following data:

* The ending General Fund balance from 2000 through 2004 hovered between $6.2 and $7.3 million.

* During the first year of the successor contract General Fund revenues increased by over $300,000.

* The City budgeted to spend $17.45 million from the General Fund in 2004, but in fact spent only $16.1 million.

* In 2003 the City spent $5.55 million on public safety; in 2004 that figure increased by only $100,000 to $5.6 million.

* As of 2002, the City's current liabilities totaled about $2.16 million. By 2004 that figure had dropped to $1.59 million, and the City had cash and current investments of $3.1 million --- enough to pay off its current liabilities nearly two times.

With regard to internal comparability, the Union does not believe it should have to take a "low-ball" increase of 2% just because other

employee groups agreed to it. That is especially true, the Union avers, when one considers the fact that the Carbondale Police Department is the busiest in the entire region of Illinois where it is located.

Discussion

In addition to being in harmony with the statutory criteria set forth in §14(h) of the Act, this analysis of the parties' final offers on the wage issue must be draw guidance from §31.11 of the parties' current Agreement. That provision is quoted in its entirety here:

> Section 31.11. Post Employment Health Plan. During the period of May 1, 2002 through April 30, 2004, the CITY agrees to contribute to a Voluntary Employees Beneficiary Association (VEBA) through Nationwide Retirement Solutions (NRS) Post Employment Health Plan (PEHP) for each employee covered by this agreement an amount equal to 2% of the employee's base monthly rate of pay at the end of the fiscal year ending April 30, 2002. Upon an employee's mid-month departure from a position covered by this bargaining agreement, the amount contributed by the CITY for that month shall be prorated according to the date of departure from the covered position. **The CITY and the LODGE expressly and unqualifiedly stipulate and agree that, in consideration for the CITY's agreement to establish and make VEBA contributions, in any interest arbitration proceedings in the future in which wages are an issue, the contributions made to the VEBA program shall be credited to the CITY for purpose of any external and/or internal comparability analysis. The failure of the Arbitrator to credit such contribution in his or her analysis of the comparability issues will be sufficient grounds for the award to be rejected and/or vacated on request of the CITY pursuant to Section 14 of the IPLRA.** (bold emphasis added)

The foregoing provision speaks loudly and clearly. It requires the Arbitrator not simply to "consider" the City's 2% PEHP contributions, but to "credit" the City with those contributions when evaluating the parties' final wage offers in light of prevailing wages in comparable communities. In other words, I am contractually bound to add the aforementioned 2% PEHP contributions to the salaries that Carbondale police officers' received from May 1, 2002 through April 30, 2004. Where appropriate, the following tables reflect those contributions.

Table 1 contains the negotiated 2002 wage levels of Carbondale police officers *vis-a-vis* those of their counterparts across the primary external comparables. It is designed to reflect the salary rankings the parties themselves established through free collective bargaining.

TABLE 1

2002 WAGES ACROSS PRIMARY COMPARABLE JURISDICTIONS

Jurisdiction	At Hire	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
Centralia	31,739	34,178	35,887	37,254	37,767	38,792	41,014
Carbondale	32,017	38,382	41,308	42,305	44,838	45,422	46,461
Marion	31,965	35,516	35,996	36,416	36,836	37,136	37,496
Mt. Vernon	28,840	33,670	34,925	36,563	38,289	40,160	42,209
SIUC	37,107	41,246	42,453	43,763	44,574	46,592	46,592
Carbondale Rank	2nd	2nd	2nd	2nd	1st	2nd	2nd

Sources: City Exhibits 16 – 20.

As Table 1 clearly indicates, the parties themselves established a very favorable relationship between Carbondale police officers' 2002 salaries and those received by officers in comparable external jurisdictions. Table 2 has been constructed to reveal the extent to which

the parties' final offers in these proceedings would maintain that status for the first year of the contract.

TABLE 2

5/1/04 – 4/30/05 WAGES ACROSS PRIMARY COMPARABLE JURISDICTIONS

Jurisdiction	At Hire	1 Year	5 Years	10 Years	15 Years	20 Years	25 Years
Centralia	33,997	36,612	38,443	39,907	41,456	41,555	43,934
Carbondale							
(C.F.O.)*	34,696	40,316	43,392	44,452	46,636	47,739	48,821
(U.F.O.)**	35,031*	40,709	43,812	44,881	47,087	48,201	49,293
Marion	34,076	37,862	38,342	38,942	39,542	40,142	40,742
Mt. Vernon	30,299	35,374	36,691	38,413	40,226	42,192	44,345
SIUC	37,856	42,078	43,306	44,637	45,469	47,528	47,528
Carbondale Rank							
(C.F.O.)	2nd	2nd	1st	2nd	1st	1st	1st
(U.F.O.)	2nd	2nd	1st	1st	1st	1st	1st

* - April 30, 2004 annualized salary with 2% increase and PEHP (2% of 4/30/04 pay) added.
** - April 30, 2004 annualized salary with 3% increase and PEHP (2% of 4/30/04 pay) added.
Sources: City Exhibits 16 – 20.

From Table 2 it is clear that under either party's wage offer, when crediting the City with the PEHP contributions, Carbondale police officers' economic lot improves as compared to the salaries received by their counterparts in the primary comparability grouping. In other words, adopting either one in these proceedings would improve the rankings that had been established as of 2002 on the basis of free collective bargaining between the parties themselves.

Turning to the internal comparability criterion, Table 3 illustrates the pattern of percentage salary increases established across Carbondale employee groups during the period between 1995 and 2002. With but

two exceptions,[4] it shows constant salary percentage increase parity between the FOP and IAFF bargaining units.

TABLE 3

CITY OF CARBONDALE
5/1 PERCENTAGE SALARY INCREASES

Group	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
F.O.P.	3	3	3	3	1.5	4	4	3	3	2/3	3	3
I.A.F.F.	3	3	3	3	1.5	4	4	1	2.5	2	3	3
Plumbers	3	4	3	3	3	4	4	3	3	2	3	3
Teamsters	3	3	3	3	3	4	4	3	3	2	3	3
No Union	3	3	2.5	3	3	3	4	3	3	2	3	n/a

Sources: Collective Bargaining Agreements; Parties' final offers; City Exhibit 9.

It is abundantly evident from Table 3 that Carbondale firefighters and police officers have kept a watchful eye on their respective bargaining table gains and have chosen to accept identical salary increases for about a decade.[5] Moreover, the gains they have negotiated over the years have been nearly identical to those secured by the Plumbers and Teamsters bargaining units. And the City has apparently chosen to provide its non-represented employees with salary increases identical to those negotiated by its unionized groups for every year but one since 1995. Granting Carbondale police officers the 3% increase contained in the Union's final offer for the first year of the contract would break the pattern developed between the City and its four unions. And since the FOP and the City have not chosen thus far to break that

[4] For 2002 and 2003, the IAFF took a smaller salary increase than that received by the police officers, in exchange for elimination of the 40-hour per week Fire Inspector job, which, reportedly, none of the fire fighters wanted.

[5] Even in the police interest arbitration proceedings over the 1996-1997 fiscal year salary, both parties proposed a 3% increase --- duplicating the firefighters' increase. Their dispute was over the Union's bid to alter the salary schedule.

pattern voluntarily, except for the extraordinary circumstances surrounding the PEHP contributions in 1999, the Arbitrator is very reluctant to do so in these proceedings.

The City noted during the interest arbitration hearing that it was not claiming an inability to pay for the wage gains sought by the Union. Rather, it argued, there is simply no economic justification for the 2004 increase (i.e., 3%) contained in the Union's final offer. The Arbitrator agrees. As discussed, adoption of the City's final wage offer would improve the relative standing of Carbondale police officers across the primary external comparables. It would maintain their parity position among the internal comparables as well. And given the relatively low turnover and robust applicant rate in the Police Department, it is reasonable to conclude that the current economic package the City provides is sufficient to attract and retain qualified, competent police officers.[6]

Both parties advanced cost-of-living arguments in support of their final salary offers. However, recalling that the two offers are identical except for a one percent difference in the first year of a three-year contract, and given the conclusions already reached when considering the external and internal comparability criteria, the cost-of-living criterion is not the deciding factor on this issue. Indeed, either party's final offer sufficiently maintains Carbondale police officers' buying power

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[6] Th

--- especially when one acknowledges the relative economic gains they will make as part of the external comparability pool.

Overall, the City's final salary offer appears to be the more appropriate. It slightly improves Carbondale police officers' position in the external labor market, it maintains their longstanding position in the internal labor market, and there is no evidence that it will impair the City's established track record of attracting and retaining qualified persons to perform this important public safety function.

RESIDENCY

City Position

The City's final offer on the residency issue is quoted in its entirety below:

> The City's final offer is the status quo --- the existing residency requirement of approximately 9 miles from the intersection of Main Street and Illinois Avenue, as more specifically set forth in the residency ordinance that has been in effect since April 22, 1986.

The City notes that the current residency provision does not require Carbondale police officers to live within City limits. While still inside the approved 9-mile radius, they can also live in Murphysboro, Carterville, and various unincorporated areas. And in the City itself, many of the existing schools have been rated among the top performers in the region. The City also points to the variety of affordable housing opportunities within the existing residency radius. Police officers can live

in urban, suburban, or rural areas, and in older, well-maintained homes, fixer-uppers, or new houses. There are also several buildable, affordable lots for sale in Carbondale (39), Carterville (53) and Murphysboro (27). And as local Realtor Julian Pei attested, Carbondale police officers would not have different or better homes and land available to them by expanding the residence boundary to 20 miles. The City asserts in addition that there are several financial incentives for its police officers to live within the current residency restrictions. For example, first-time homebuyers within Carbondale city limits are eligible for a low-interest program through the Illinois Housing Development Authority. They can also qualify for a 100% guaranteed loan through the U.S. Department of Agriculture. And the City itself has established a program which pays $3,500 and provides water and sewer hook ups at no cost to persons who build new homes within its boundaries.

The residency concept first emerged formally in 1979, when the City Council passed an Ordinance requiring all City employees except those hired prior to October 31, 1979 to live within Carbondale City limits. In 1986, on account of marginal applicant rates for its lower-paid (mostly clerical) jobs, the City reviewed the cost and availability of rental housing. It also examined surrounding communities to determine which might offer affordable housing for first-time buyers and yet be close enough that employees who lived in them would still spend time (and disposable income) in Carbondale. As a result, the City Council by a

narrow 3-2 margin passed the current 9-mile residency requirement. Executive employees must still live within Carbondale City limits.

The City also asserts that the Ordinance has been strictly enforced, and points out that the only amendments to it have been to allow flexibility for certain management personnel (Deputy Police Chiefs, Police Lieutenants, Assistant Fire Chiefs) to live within the 9-mile radius. Never, the City emphasizes, have any of its employees been allowed to reside outside of that boundary, except when the City Manager granted a 3-month hardship waiver for someone whose mother was ill.

The City further reports that new hires have six months to comply with the residency requirement, and that they are notified of its existence upon their application for employment. No recruitment or retention problems have arisen as a result.

Police officer residency is also very meaningful to the citizens of Carbondale, the City avers. In support of that claim, Police Chief Odum testified that during the lengthy interview process he went through for his current position, several citizen panels and groups asked him why more police officers don't live in Carbondale, and how he might rectify that situation (Tr. 199-200, 224-225). And City Manager Doherty testified that minority community leaders have often criticized the City for allowing its police officers to live outside of Carbondale --- particularly in Carterville. Doherty further testified that expanding the current residency requirement will only intensify that conflict (Tr. 200).

Significantly, the City argues, during the last three rounds of negotiations the Union has proposed various departures from the status quo on residency, and each time it has ultimately abandoned its proposal. During bargaining for the May 1, 1998 – April 30, 2000 contract, for example, the Union demanded that the residency requirement be totally removed. In talks leading to the next contract (May 1, 2000 – April 30, 2002) it proposed that police officers be allowed to live anywhere within a 30-mile radius of the Police Department. And in negotiations for the May 1, 2002 – April 30, 2004 Agreement, the Union renewed that proposal. Despite the fact that the parties negotiated in good faith over the issue, none of those attempts to change the status quo were successful. The City also argues that during the negotiations for the contract at issue here, the Union offered nothing in exchange for adoption of its residency proposal.

The City argues as well that there is no compelling need to change the status quo as proposed by the Union. It also notes that no matter where Carbondale police officers live, they must still drive their personal automobiles to and from work. In fact, the City points out, the current residency policy helps shorten the response time for off-duty police officers called in for emergencies. And the City argues that its residency requirement is less restrictive than those in nearly half of the external comparable communities.

Finally, the City notes that its residency requirement tends to strengthen Carbondale business and community revenues because its employees tend to shop and invest in the area wherein they reside. And if the Union were to obtain relaxed residency requirements through the interest arbitration process, then other Carbondale employee groups would attempt to follow suit. The ultimate effect would be a reduction in the City's sales tax revenues --- its main source of funding.

Union Position

As its final offer on the issue of residency, the Union proposes the following contract language:

> Bargaining unit employees shall be permitted to reside anywhere within a twenty mile radius of the City of Carbondale, Illinois, measured from the intersection of Walnut and Illinois streets, except that employees shall not be permitted to reside within the jurisdictional limits of the cities of Marion and Herrin.

The Union believes that the residency requirement in Carbondale places an extraordinary burden on employees' personal lives, and that as a result, the City should bear the burden of proof. In support of that assertion the Union points to other occupations where employees are often on-call (doctors and nurses, for example), and notes that they may live wherever they choose.

Furthermore, the Union explains, there is absolutely no evidence to show that Carbondale Police Officers have been called back to duty very

often. Only once or twice in anyone's memory has that happened, and even then, the call-back was "catch as catch can" --- designed to bring back just a few officers for a feared public demonstration that fizzled. Thus, the Union argues, there is no operational reason for the current residency requirement.

The Union notes as well that most police residency decisions in Illinois interest arbitration proceedings have involved evidence of police officers and their families being harassed by those against whom they have enforced the law. Indeed, municipal employees in no other occupational category experience such intrusions into their personal lives. For true criminals (felons, drug dealers, pimps, muggers, rapists, and the otherwise criminally vicious), the face of the police officer who subdued them --- who burst through the door and wrestled them to the floor --- is one that will be remembered. Thus, the Union asserts, police officers have good reason for wanting the option to live outside of the community in which they enforce the law.

The Union also argues that were it not for the prohibition against striking, Carbondale Police would very likely have used that weapon to obtain freedom of choice with regard to housing. After all, during negotiations for the current contract they unsuccessfully offered to accept a pay freeze in exchange for a relaxation of the current residency requirement. Their last chance for equity is now, in these very interest arbitration proceedings, since an award in the City's favor would not

likely be reversed by an arbitrator in a subsequent interest arbitration case.

The Union notes in addition that softening the current residency requirement would not have a negative impact on the City's financial resources. Carbondale police officers already live as far as nine miles out, so the argument about lost taxes, revenues and the like falls flat.

Also significant, the Union points out, are the restrictions it placed in its final offer to accommodate some of the concerns expressed by the City. For example, it excluded Marion and Herrin (two towns the Carbondale City fathers had opposed) from its 20-mile radius.

The Union also emphasizes the fact that the Carbondale residency requirement was not born out of the collective bargaining process. Rather, it was created unilaterally by the City. And since that time the City has moved the boundary, grandfathered certain employees, and released others from their in-town restrictions when the mood struck. The Union believes that the City has not proven the current residency requirement should be etched in stone forever.

Moreover, the Union argues, examination of residency requirements across the primary comparable external jurisdictions reveals a variety of approaches. At SIU, for example, there is no residency requirement. Mount Vernon police officers may live anywhere within Jefferson County, and cops in both Marion (within 10 miles of city limits) and Centralia (within 12 miles of the intersection of Calumet and

Poplar Streets) enjoy wider radii of restriction than do their Carbondale counterparts. Similar results are found when comparing Carbondale to the secondary comparability grouping, the Union asserts.

The Union also believes the external comparables show that (1) good faith bargaining has led to a variety of locally-crafted residency guidelines; (2) no one size fits all; and (3) there is nothing magical about certain distances or response times. With regard to the last point, the Union emphasizes that on-duty officers provide police protection, and with the overlapping jurisdictions of municipalities, counties and the state, the notion of having to summon all off-duty officers at a moment's notice is fiction.

The Union further avers that Carbondale police officers and their families are themselves members of the public, and that their safety falls under the "public interest" criterion of the interest arbitration statute. It points to the testimony of several Union witnesses to advance the argument that they are more likely to be harassed and threatened in their private lives if forced to live in Carbondale or within a 9-mile radius of its center.

Discussion

One of the most well-established principles in interest arbitration requires the party proposing change in the status quo to bear the burden of proof. Legions of interest arbitrators, including the undersigned, have

said unabashedly and on the record that such a party must show "compelling need" for the change. Here, the Union argues that the current residency requirement places "an extraordinary burden on the employees' personal lives," and that it is the Employer --- not the Union --- who is "asking for something special or out of the norm."[7] The Union further asserts that "the normal standards of evaluating proposals and final offers should be cast aside" and the City should be required to bear the burden of proof on the residency issue.[8] The Arbitrator respectfully disagrees.

First, nothing in the record has convinced me it would be appropriate to depart from well-recognized arbitral principles to decide the residency issue. Following the now well-marked path cleared earlier by interest arbitrators in other states, Illinois interest arbitrators for the last two decades have placed the burden of proof squarely on the shoulders of those wishing to change the status quo. There is ample justification for doing so. The status quo represents stability, and changes to it are more appropriately made by the parties themselves through the give-and-take of free collective bargaining than they are by third-party neutrals in impasse resolution procedures. After all, the parties return to the bargaining table on a regular basis, giving them repeated opportunity to adjust various elements of the employment package as dictated by changing needs and circumstances. Interest

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[7] Both phrases quoted from the Union's Post Hearing Brief, p. 26.
[8] *Ibid.*

arbitrators are reluctant to make drastic changes to the status quo, on the basis of evidence usually presented in just a few short hours, when the parties themselves can always revisit a troublesome issue during the next round of contract negotiations. The exception, of course, is when a party shows "compelling need" for a change right away.

In the present case, the Union seeks a significant change to the status quo. It wants to expand a 20-year-old residency requirement (the 9-mile radius) by about 220% on the basis of testimony and exhibits presented during the October 4, 2005 interest arbitration hearing. Accordingly, the Union must demonstrate a compelling need to make that change.

It is clear from the record that the Union followed the proper course prior to bringing the residency issue before an interest arbitrator. It made residency-related proposals during the last three rounds of negotiations with the City, starting with its 1998 demand to eliminate residency requirements altogether. The Union softened that proposal during bargaining for the 2000-2002 Agreement, by demanding a 30-mile radius for residency purposes. It renewed that proposal during the talks which culminated in the current contract. None of those attempts were successful, perhaps because the City recognized that the status quo was reasonable.

Consider, for example, the residency requirements in effect for police all around Carbondale. Table 4 on the following page has been

constructed for that purpose. It reveals a variety of approaches to residency, some of which are more restrictive and some of which are more liberal than the current 9-mile radius in Carbondale. But no matter what the exact detail of the various residency requirements, the fact that each of the comparable municipal jurisdictions has one is significant indeed.

TABLE 4

POLICE RESIDENCE REQUIREMENTS ACROSS
THE PRIMARY AND SECONDARY COMPARABLES

Primary Comparables	Residency Requirements
Centralia	Twelve miles from intersection of Calumet and Poplar Streets
Marion	Within 10 miles of City limits
Mt. Vernon	Within Jefferson County
SIU - Carbondale	No residency requirement
Secondary Comparables	
Charleston	Within Cole County
Galesburg	Twenty-mile radius from City Hall
Jacksonville	Within City limits
Macomb	
Less than 5 yrs. service	Within City limits
More than 5 yrs. service	Within City Limits, plus Georgetown, Meadowbrook and Scholand Glen Subdivisions
More than 8 yrs. service	Within 8 miles of Courthouse
Mattoon	Within 20 miles of City corporate boundaries
Ottawa	Within 5 miles of City limits

Sources: collective bargaining agreements; City Exhibit 23.

All of the comparable municipal jurisdiction have seen fit to require their police officers to live either in town or nearby. In that respect, then, when the Carbondale City Council members unilaterally instituted a residency requirement back in 1979 they were no different from their counterparts in the surrounding communities. Elected and appointed officials seem almost universally convinced it is in the public interest for off-duty police officers to live somewhat close to town. Returning to the

burden of proof issue for a moment, the Arbitrator is therefore not persuaded by the Union's argument that the status quo in Carbondale places an "extraordinary" burden on its police officers. On the contrary, residency requirements are customary and ordinary in the police and fire employment arenas.

Response time to emergency situations is certainly one element of the residency debate. As the Union correctly noted in its robust and comprehensive case presentation, though, there has never been a widespread emergency police call back in Carbondale. Nevertheless, it is undeniable that one might be necessary in the future --- particularly in Carbondale, with its population of nearly 45,000.[9] Were a major emergency to develop there, adoption of the Union's proposal to more than double the current 9-mile radius would have an obvious effect on the Department's response time capability. It therefore appears that maintaining the status quo would be in the best interest of Carbondale citizens generally.

But more specifically, what about the safety and well-being of off-duty Carbondale police officers and their families? I have wrestled with that general issue before, and when presented with documented, detailed evidence of harassment and threats to off-duty police officers and their families at or near their homes, have significantly relaxed existing

[9] Includes a university student population of roughly 19,000.

residency requirements.[10] Here, however, there is no such evidence. That is, none of the six Carbondale police officers who testified in these arbitration proceedings persuaded me that relaxation of the residency requirement would prevent from recurring such unfortunate events as have happened to them and their families in the past. For example, Officer Christine Roy described a situation at the Carbondale Wal-Mart wherein she was recognized by a person against whom she had testified in court. But there is no nexus between that incident and the locus of her residence. She could just as easily have come into Carbondale on her day off to shop.[11] Officer Eric Ruehe's anecdotal testimony concerning criminal incidents in the Goreville School District was not persuasive either, as no comparable data were presented about surrounding districts not currently within the existing 9-mile residency radius. Officer David Kemp testified that a woman he had once arrested obtained a daycare job next to his house in Carterville. But under cross-examination he acknowledged that since taking that job the woman has been pleasant and non-threatening to him and his wife. Officer Jessie Ital acknowledged that the off-duty harassment he encountered at the Carbondale Wal-Mart could just as easily have happened at the Marion Wal-Mart, and that the threat he received on his way to work could have happened no matter where he lived. Similarly, the harassment Officer

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[10] See *City of Calumet City and Illinois FOP Labor Council,* S-MA-99-128 (Briggs, 2000).
[11] With its greater population and more developed infrastructure than any of the surrounding towns, it is reasonable to conclude that Carbondale would be an attractive shopping destination for persons living up to 20 miles away.

Stan Reno and his police officer wife have received while driving their personal vehicles could have taken place no matter where they lived, because they drive those vehicles to the Carbondale Police station on a regular basis. Finally, retired Carbondale police officer James Temple acknowledged that the off-duty problems he associated with his Carbondale residency ceased when the 1986 residency requirement expansion (i.e., adoption of the 9-mile radius) allowed him to move out of town. I reviewed each of the foregoing incidents in detail, and studied the entire testimony of each officer called by the Union as a witness. Overall, I have concluded that they do not individually or collectively constitute compelling evidence to change the residency requirement in Carbondale.

Consideration of the internal comparability factor also lends support to the City's position on this issue. As it now stands, all non-executive employees in Carbondale are subject to the same 9-mile residency rule, and have been for nearly 20 years. Absent compelling circumstances, the Arbitrator is unwilling to break that longstanding parity relationship.

It is also clear from the record that Carbondale residency has many advantages. Evidence of its superior schools, for example, was unchallenged by the Union. Reasonably priced shopping for a variety of goods and services is readily available. And there are many affordable housing opportunities available within the current 9-mile limit. Of

course there would be more such opportunities if that limit were expanded to 20 miles. But again, the Union has the burden of showing compelling need to do so. That burden has not been met.

Also weighed in the balance here was the City's argument that its citizens prefer their police officers to live in town. Generally speaking, people probably do feel safer if a cop lives on their block. But there is no documented evidence in the record before me to suggest that neighborhoods blessed with police officer residents are, in fact, safer than those which are not. Indeed, it stands to reason that calling "911" would produce a faster and more able police response than calling "Officer Ryan" down the street, getting her out of bed, and asking her to come right away --- out of uniform, with inadequate telecommunications equipment, and no police back up. The Award to follow should not be misunderstood, then. It is not based even in part on the notion that off-duty police officers somehow better protect their neighbors from bad guys than do alert and fully-equipped on-duty police officers.

Moreover, the City of Carbondale has shown in the past that it is willing to meet the legitimate residency needs of its employees. It expanded the original "City limits" residency rule voluntarily, by moving to the current 9-mile radius in 1986. As noted, it has resisted the Union's recent attempts to expand it even further, but there is no evidence that the City has refused to bargain in good faith over the matter. It follows logically that if and when the Union can point to

compelling need for a change, the City will fully consider making one at the bargaining table. Absent an agreement at that time on an expansion of the 9-mile radius, the Union can always appeal to interest arbitration again --- pointing out to the arbitrator that circumstances have changed, and that prior interest arbitration awards have no hard and fast precedent value. In other words, I am not convinced by the Union's argument that these proceedings represent Carbondale police officers' last opportunity for expanded residency rights. For all of the foregoing reasons, the Arbitrator finds insufficient justification to change the status quo on the residency issue.

AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed or not, the Arbitrator has decided as follows with regard to what will become the parties' May 1, 2004 through April 30, 2007 collective bargaining agreement:

1. Wages – the final offer of the City is adopted.

2. Residency – the final offer of the City is adopted.

3. Matters already agreed to by the parties themselves shall also be included in their May 1, 2004 through April 30, 2007 collective bargaining agreement, along with provisions from the predecessor Agreement which remain unchanged.

Signed by me at Hanover, Illinois this 24th day of April, 2006.

Steven Briggs