

**IN THE MATTER OF ARBITRATION**

**BETWEEN**

**CITY OF NASHVILLE, ILLINOIS**

**AND**

**ILLINOIS FRATERNAL ORDER OF  
POLICE LABOR COUNCIL**

**ARBITRATION AWARD:**

**ILLINOIS STATE LABOR  
RELATIONS BOARD CASE NO.  
S-MA-97-141  
NASHVILLE POLICE DEPARTMENT**

**Before Raymond E. McAlpin,  
Neutral Arbitrator**

**APPEARANCES**

**For the Union:**

**Becky Dragoo, Legal Assistant  
Bill Mehrteus, Field Representative**

**For the Employer:**

**James De Franco, Counsel  
William De Moss, Co-Counsel**

**PROCEEDINGS**

**The Parties were unable to reach a mutually satisfactory settlement of their negotiations covering the period May 1, 1998 through April 30, 2001 and, therefore, submitted the matter**

to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The hearings were held in Nashville, Illinois on January 29, 1998. At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Briefs were received on March 30, 1999.

### ISSUE

The following represents the issue upon which the Parties have been unable to reach an agreement:

1. Residency

STIPULATIONS





## STATUTORY CONSIDERATIONS

The following represent the statutory considerations that an arbitrator must consider in an interest arbitration under the Illinois Public Employee Labor Relations Act:

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:
  1. In public employment in comparable communities.
  2. 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.

### UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

When the Police and Fire Amendments to the Illinois Public Labor Relations Act became effective in 1986, arbitrators were prohibited from making decisions concerning residency. In May, 1997 both the Illinois House and Senate passed a further amendment to the Act. That amendment allowed arbitrators to issue awards regarding residency requirements in municipalities with a population under \$1,000,000 provided those residency requirements not allow residency outside of Illinois. From the Union's view this amendment constituted a recognition by the General Assembly that the playing field needed to be leveled on the subject of residency. The inequities that existed could be addressed by making this issue the subject of bilateral negotiations. Employees under the yoke of residency have tried many novel tactics in order to free themselves. The Parties attempted to resolve this issue and were unsuccessful, thus culminating in this interest arbitration case.

The Union has proposed that employees covered by the Agreement..."shall maintain their

residence within six (6) miles of the intersection of State Route(s) 15 and 127.” That intersection is in the center of the City of Nashville, and this point will be fixed for many years to come and not subject to further interpretation. The Union attempted to craft its offer so that it met both the needs of the employees and the concerns of the Employer. This proposal allows employees to explore alternative housing opportunities in the area immediately surrounding the City of Nashville. This proposal also addresses the Employer’s concern that the police officers’ children would be in the same school district--that they would not live in other towns or cities in the area and that the emergency response time would be appropriate. This six (6) mile limit proposed by the Union eliminates each and every opposition raised by the Employer. The employees would remain in the school district of the City of Nashville and the high school district. There are no other major towns and cities encompassed in the six mile radius, and the maximum response would be approximately ten (10) minutes. Evidence submitted by the Union indicated there were only eleven (11) hours of overtime during the year that were the direct result of some sort of emergency call-back. The Employer’s proposal states that the bargaining unit employees’ residency be governed by the ordinance it passed in September, 1998, i.e. the employees must reside within the corporate limits of the City of Nashville.

The City’s proposal is to impose a residency requirement. Largely abandoning arguments raised at the bargaining table, the Union seeks in arbitration nothing more than a political expediency at the expense of the police officers. The City did not even have a residency ordinance in place until the Union brought the subject to the bargaining table. Fortunately for the bargaining unit, there are a few hurdles the Employer must get through if it wants to continue to hold residency hostage, those

being the statutory factors (reproduced above).

Among the eight (8) factors in the Act, arbitrators consistently find three (3) to be most critical in interest arbitration, those being comparability in economic cases and in non-economic cases, the interest and welfare of the public and other factors. Neither Party submitted evidence as to the remaining statutory factors.

Interest arbitration in Illinois was legislatively designed to be an extension of the collective bargaining process. What type of residency requirement would or should the Parties have agreed to if good faith bargaining resulted in an agreement? The Union submits that it is its offer that is the most equitable and effective resolution of this dispute.

The Employer asserted during its opening statements that the Union is seeking a breakthrough, and that is a change in the status quo. The record, however, shows that there was no agreement concerning residency. Until the change in the law, there was no method of engaging in arm's length bargaining over residency. In the past, once an impasse had been reached, the City could merely impose any form of residency it saw fit. However, the fact is that the City had never had an ordinance in place until after the Parties started bargaining and raised the issue of residency. The Union believes that the passage of the ordinance was a reaction to the Union's proposal. The terms of the ordinance do not reflect a mutual agreement or the status quo in this matter. Even the Chief testified that it was possible he told a recently hired officer that the City preferred he live in town. Another City witness stated that the City never had a written policy but an understood verbal policy.

The Union would ask rhetorically, “understood by whom?” The Union was able to show that other City employees had moved outside of the city with the approval of City management. Prior to the ordinance being passed in 1998, there simply was no formal residency requirement. While the City may have expressed a verbal preference, it tended to depart from that position when it saw fit. How can it be said that the Union is seeking a breakthrough when the issue has been outside the scope of mandated bargaining and arbitral authority until January, 1998. Two cases involving residence have been decided by arbitrators in Illinois. Both arbitrators rejected a change in the residency provision since it had been in the contract for over twenty (20) years. These cases are distinguishable from the instant case in that the Union and Employer had reached a mutual agreement. Since these factors are not present in this case, the Arbitrator should examine the reasonableness of the Parties’ proposal in the light of the statutory factors.

With respect to comparables, arbitrators have rejected strict mathematical comparability, particularly where they lead to curious results. Arbitrators have found that comparables are extremely important in deciding interest arbitrations. Arbitrator Traynor adopted comparables for this jurisdiction in a 1997 award, and the Union believes these same comparables should be adopted based on the two (2) reasons. There have been no significant or substantial changes in the data upon which Arbitrator Traynor relied, and setting aside Arbitrator Traynor’s ruling would undermine the stability brought to the Parties’ relationship. Based on the usual criteria, it is the Union’s comparables that are most appropriate. The Union believes that the sole reason the Employer is trying to overturn the comparables in the subsequent arbitration is that it wants to compare itself to jurisdiction where the police officers have no representation. Arbitrators have found that this is an inappropriate

comparison and that represented officers should be compared to like represented officers. Four out of the six jurisdictions proposed by the City are non-Union.

The comparables cited by the Union support a finding for the Union. Three (3) of the comparables have residency requirements very similar to that which is sought by the police officers in the City of Nashville. The primary concern seems to have been response time. The record in this case, particularly with the minimal amount of unanticipated overtime, shows there simply is no reason for adopting a residency requirement as strict as the City is proposing. In this day of modern law enforcement, response time would certainly be acceptable under the Union's proposal. What the City wants is to impose an extraordinary condition of employment on the police officers. It is not reasonable to expect the officers of Nashville to be at the beck and call of the City, the citizens or their neighbors twenty-four (24) hours a day, seven (7) days a week. There is not one shred of evidence that this proposal would negatively impact the job performance of the officers.

The City also argued that officers must live within the City limits as they are being paid by taxpayer dollars, and there is no reason why they shouldn't live within the taxing district which generates the taxes. This notion is more than outdated. The Employer is asking that the employees live in a Nashville bubble.

The law and society accept the fact that police departments have restrictions and limitations on their employees. After all, this is a para-military system, but the City is attempting to place limits on the officers' private lives. This limitation is extraordinary and, therefore, must be supported by

extraordinary reasons. All of the arguments brought forward by the City have been addressed by the Union's proposal. The Union would note that there are many restrictions on the ability of officers to transfer to other police departments. This is not a case where a longstanding policy is being attacked, and the ability of the Employer to pass ordinances of its own design should not be rewarded. Of the very limited number of interest arbitrations in Illinois, two of them have occurred in Nashville. The time has come for meaningful bilateral negotiations which will not occur if the City's position is upheld. Therefore, the Union asked that the Arbitrator find in favor of the Union's position.

#### CITY POSITION

The following represents the arguments and contentions made on behalf of the City:

The status quo favors the City's position. The City of Nashville has required its full-time employees to live within the City limits. The Chief explains this requirement to each officer as they are interviewed. The City explained that all employees of the City are required to live within the City boundaries as long as they are full-time employees. This practice is documented in newspapers advertisements including one as late as August 7, 1996. While the Union asserted that five employees, approximately 10% of the workforce, do not live within the City, two of them were still

within the one year grace period and none of those are police officers. The City does relax the policy given extenuating circumstances. While the residence requirement admittedly was oral, it was memorialized in newspaper advertisements and was discussed with officers. All members of the department now live within city limits. Not one bargaining unit member testified that he/she was unaware of this requirement. Therefore, it is the Union that wishes to change the past practice of the Party to a requirement based on a six (6) mile radius.

The Union claims it chose the six-mile radius because this includes reasonable housing opportunities and because it permitted a ten-minute response time. The Union presented no evidence concerning housing opportunities and that every location within the six-mile radius would permit a ten-minute response time.

The Union has the burden of proof. The Party that wishes to deviate from the status quo should bear the burden of proof at the arbitration hearing. The Union did not dispute that its proposal was a new section in the Collective Bargaining Agreement and one which was proposed by the Union. In addition, most arbitrators have found that in non-disciplinary arbitrations it is the Union that bears the burden of proof, and not only must it explain its position, but it must also support these claims with more proof than is presented by the Employer. The City would argue that the Union offered no proof of its assertions with respect to interviews with perspective employees and response times.

Due to the above, the Union has failed to meet its burden of proof. A notebook containing residency requirements in other cities with no explanation is no proof at all. The Union's only proof

was that less than one-half of the cities, which it claims are comparable, do not have residency requirements. The Union's evidence also establishes that more than one-half of the cities have the requirement that employees live within city limits. Since all officers live in Nashville, the evidence suggests that officers were able to find suitable housing within city limits. The Union made a claim that the employees need a safe harbor and gave an example of arresting a next door neighbor in a domestic violence dispute; yet, this passing reference cannot be considered as competent evidence of anything.

On the other hand, the City adduced evidence of a legitimate need for a residency requirement. The City has shown that emergency call-out and response time is reduced if the police force lives in the city. The residency requirement increases the presence of the police force. The City established it has a legitimate interest in prohibiting squad cars from leaving the city limits, and the officers are paid by taxpayer dollars, therefore, they should live within the city. The evidence establishes that officers are under no hardship under the residency requirement. The officers took the job knowing of the residency requirement, and they all currently live in the city. Nashville is growing and housing opportunities will increase within the city limits. Since four of the seven so-called comparables have the same requirement, it is difficult to believe that any such hardship exists.

The Union argued that the late passage of the ordinance somehow precluded the arbitration or precluded the Union from bargaining over the issue. This is simply not true.

Should the Union claim that the requirement cannot be enforced because it was not reduced

to writing is belied by the maintenance of standards clause in the current agreement. A past practice cannot be unilaterally terminated by either Party during the term of the contract. Rather, the Party wishing to change must wait until negotiations and discuss the matter at that time. The City is entitled to memorialize its past practices. The City has never made a claim that the ordinance precluded the Union from bargaining over the issue or submitting the case to arbitration.

There is no evidence that the City of Nashville is using the residency requirement to obtain an unfair advantage over employees. The record shows that the City is attempting to handle the residency requirement on a group basis for all employees and that all bargaining unit/non-bargaining unit supervisors and elected officials are required to live in the city. The City, as any compassionate employer would, has made exceptions for exceptional circumstances. The fact that some employers in the state have been holding bargaining units hostage does not apply to the City of Nashville. Bargaining unit members, contrary to the Union's argument, may shop wherever they please.

Finally, the City notes that the Union relied heavily on hearsay and unsupported allocations to support its position. The Arbitrator should give no consideration at all to such hearsay.

The evidence submitted at the hearing establishes that each bargaining unit member was told when they were interviewed that the City has a residency requirement. Each police officer, both bargaining unit members and supervisors, in fact live in the city. The Union has failed to adduce evidence to meet its burden to show that the status quo should be changed.

## DISCUSSION AND OPINION

The Arbitrator is fully cognizant of the fact that, while this case involves a small city with an extremely small police department (4 employees in the bargaining unit), this case will perhaps help to set precedent for other police departments within the State of Illinois.

The Arbitrator must first determine what is the status quo in this case. This is not as simple as most interest arbitration matters since the contract is essentially silent. The ordinance passed by the City was passed during the bargaining for the new contract and, therefore, is not determinative. Looking at the record as a whole and given the past practice and despite the dispute by the Parties over what was told to employees who were hired, the fact of the matter is that almost all City of Nashville employees at whatever level and all members of the bargaining unit are residents of the city. The record further shows that it has been the intent of the City for all employees to live within the city boundaries with very few exceptions, and those exceptions being granted for what the City considers good cause. Therefore, the presumptive status quo is that of the residency requirement being in place and active. However, the Arbitrator is keenly aware that the residency rule was not the result of a voluntary agreement but a tacit agreement between the Parties.

Given the Union's position, it is the Union that wishes to deviate from the status quo. When one side or another wishes to deviate from the status quo of the Collective Bargaining Agreement or past practice, the proponent of that change must fully justify its position, provide strong reasons and a proven need. It is an extra burden of proof that is placed on those who wish to significantly change

the collective bargaining relationship. In the absence of such showing, the Party desiring the change must show that there was a quid pro quo or that other groups were able to achieve this provision without the quid pro quo. As noted above, it is the Union that wishes to change the status quo and, therefore, it bears the burden to show, given the criteria noted above, that the change is justified.

What we have here is an issue that involves the needs of the City and the needs of the employees. Members of police departments have traditionally given up individual rights for the good of the department. These were well noted in the Union's brief and, therefore, need not be repeated here. This case could, perhaps, even be said to involve some personal rights issues, and while the Union bears the overall burden, each side must show why the residence requirement should or should not continue as it has in the past.

As with most interest arbitrations, external comparables are, if not the most important, certainly a very important criterion for the Arbitrator to consider. The Employer wishes to deviate from the comparables cited in the Arbitrator Traynor award of 1997. In this Arbitrator's opinion, interest arbitrators have a singularly important obligation to encourage in every way possible the voluntary settlement of collective bargaining disputes. Part of this would be to add to the consistency and certainty of the process. The Arbitrator has read the reasoning in the Traynor award regarding the external comparables for this bargaining unit and can find nothing within this record that would allow the Arbitrator to change the comparables at this time. This Arbitrator finds Arbitrator Traynor's reasoning to be excellent, and his findings as to the comparables wholly appropriate to this case. Therefore, the Arbitrator will find in favor of the Union regarding the external comparables.

The Union has argued that the freedom and economic well being of the bargaining unit members would be well served by a change in the residency language. The officers of the City of Nashville, like most police officers, accept restrictions and limitations on their lives. However, the Union argues that the current residency requirement is beyond what is appropriate. The Arbitrator would also note that it may be possible that in the future the City of Nashville might not be able to attract the best of candidates because of the current residence requirement.

The City for its part has argued that response times and emergency call-outs would suffer, that the police presence would be reduced, and that those who draw their compensation from the City should live and shop within the city. The City also argues that it would not want its squad cars to leave the City limits when the police officers presumably living outside the City limits would go home.

After reviewing all the evidence of this case, the Arbitrator finds that is indeed a difficult decision. Were the Union asking to simply do away with the residency requirement, the decision would be fairly easy. Yet the Union, in its proposal, has addressed almost every one of the City's concerns regarding the residency requirement. A limit of six miles from the center of town certainly provides for the City reasonable response times and response to emergency situations comparable to what would occur in most cities. This Arbitrator has had interest arbitrations among county sheriff's departments and it is not uncommon that there would be a 20 or 25 minute response time, even among those who are currently on duty. Regarding the police presence with the City, the Arbitrator cannot believe that a squad car parked on a single block in a single driveway of the City Nashville

would do much, if anything, to deter crime. In fact, when such a vehicle is parked day after day after day, it tends to blend in with the overall scenery and provide little or no deterrent. The City claimed that if the Union was to prevail, it would not want the squad cars to be taken outside of the city limits. That is the City's decision. However, the Arbitrator would encourage the City to continue to allow the officers to take their squad cars home, no matter where they live within the boundaries. The fact that officers are being paid by taxpayer dollars is not persuasive in this matter. There are many, many governmental employees in the State of Illinois who live other than where the tax dollars are collected.

In reviewing the evidence as a whole, the Arbitrator has determined that the Union has provided strong reasons and a proven need and has fully justified its position to change the status quo in this matter. The Arbitrator makes such findings despite the excellent arguments brought forth by the City and the outstanding testimony of the Chief of Police. In summary, 1. the fact of the matter is that given the 6-mile radius restrictions proposed by the Union most, if not all, of the objections raised by the City have been met.

2. The external comparables favors the Union's position.
3. The Union is not asking to eliminate the residency rule.
4. The residency rule was not as a result of a voluntary written agreement.

Therefore, there is no persuasive reasons for this arbitrator to continue the previous residency rule.

The Union has met its burden.

AWARD

Under the authority vested in the Arbitration Panel by Section XIV of the Illinois Public Employees Labor Relations Act the Arbitrator finds that the wage proposal which most nearly complies with Sub-Section XIV(h) is the Union's offer.

Dated at Chicago, Illinois this 25<sup>th</sup> day of April, 1998

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Raymond E. McAlpin, Arbitrator