

BEFORE ELLIOTT H. GOLDSTEIN
ARBITRATOR

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

VILLAGE OF SOUTH HOLLAND, ILLINOIS
("Village" or "Employer")

Issue: Residency

AND

**ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL**
("Union" or "FOP")

ISLRB Case No.
S-MA-97-150

Arb. Case No. 98/120

OPINION AND AWARD

Appearances:

For the City: James Baird

For the Union: Thomas F. Sonneborn

Place of Hearing: South Holland Village Hall
1626 Wausaw Avenue
South Holland, Illinois

Date of Hearing: April 23, 1999

Briefs Received: July 15, 1999 (Village)
July 19, 1999 (Union)

Date of Award: October 27, 1999

I. INTRODUCTION

This proceeding arises under Section 14 of the Illinois Public Labor Relation Act ("IPLRA" or the "Act")¹ to resolve by the use of "conventional interest arbitration" a single non-economic issue between these parties. The undersigned Arbitrator was duly appointed to serve as the interest arbitrator to hear and decide the issue presented to him. A hearing was held on April 23, 1999 at the Village Hall in the Village of South Holland, Illinois, commencing at 10:00 a.m. At the hearing, the parties were afforded full opportunity to present evidence and argument as desired, including an examination and cross-examination of witnesses. A 205-page stenographic transcript of the hearing was made. Both parties filed post-hearing brief, the second of which (the Union's) was received on July 19, 1999. The parties stipulated that the Arbitrator must base his findings and decision upon the criteria set forth in the parties' stipulations or on Section 14(h) of the IPLRA and rules and regulations promulgated thereunder.

Due to a period of illness by the Arbitrator, the due date for this Opinion and Award was extended by him until October 4, 1999. However, the Arbitrator was unable to issue the Award until three weeks later because of continued illness and circumstances beyond his control. For these delays, I sincerely apologize.

¹ 5 ILCS 315/14.

II. THE ISSUE

The parties to this dispute are the Village of South Holland, Illinois (the "Village" or "Employer") and the Illinois Fraternal Order of Police Labor Council (the "Union" or "FOP"). The parties' prior Collective Bargaining Agreement had an expiration date of April 30, 1997. The parties were able to reach agreement on the current contract executed on June 18, 1998 and effective through April 30, 2001, with the single exception of the language to be incorporated as the residency requirement. Whereupon, the parties agreed to proceed to interest arbitration for the residency issue, the sole remaining question under the current labor contact.

I also note that, for an interest arbitration, this case is relatively straight-forward. What is at issue is whether one of the parties' final offers should be adopted by me or whether, considering all statutory criteria and the particular factual circumstances of this case, I should fashion an award not tracking entirely either the Union or Employer's final proposals.

III. STIPULATIONS OF THE PARTIES

- 1) The arbitrator in ISLRB Case No. S-MA-98-120 shall be Arbitrator Elliott H. Goldstein. The parties stipulate that the statutory procedural prerequisites for convening the arbitration hearing have been met, and that the Arbitrator has jurisdiction and authority to rule on the issue submitted to him by the parties as authorized by the Illinois Public Labor Relations Act. Each party expressly waives and agrees not to assert any defense, right or claim that the Arbitrator lacks jurisdiction and authority over the subject matter or the parties to this proceeding.

- 2) The hearing in said case will be convened on April 23, 1999 at 10:00 a.m. The requirement set forth in section 14(d) of the Illinois Public Labor Relations Act, requiring the commencement of the arbitration hearing within fifteen (15) days following the Arbitrator's appointment has been waived by the parties. The hearing will be held at the Village Hall, South Holland, Illinois.
- 3) The parties have agreed to waive Section 14(b) of the Illinois Public Labor Relations Act requiring the appointment of panel delegates by the employer and exclusive representative, and agree that the neutral arbitrator shall have the authority to issue an award.
- 4) The hearing will be transcribed by a court reporter or reporters whose attendance will be secured for the duration of the hearing by the Employer. The cost of the reporter and the Arbitrator's copy of the transcript shall be shared equally by the parties.
- 5) The parties agree that the following issue to be submitted to the Arbitrator is non-economic in nature, within the meaning of Section 14(g) of the Illinois Public Labor Relations Act: i.e. the language of the agreement governing residency. As a non-economic issue, the Arbitrator may adopt the Union's final offer, the Employer's final offer, or fashion an award deemed appropriate by the Arbitrator.
- 6) The parties agree that the following exhibits and information shall be submitted by stipulation to the Arbitrator at the start of the hearing on January 29, 1999:
 - (A) The current and predecessor collective bargaining agreements between the Illinois Fraternal Order of Police Labor Council and the village of South Holland (Joint Exhibit 1).
 - (B) The Ground Rules and Pre-hearing stipulations of the parties (Joint Exhibit 3).
- 7) (Stricken)
- 8) Each party shall be free to present its evidence in either the narrative or witness format. The Labor Council shall proceed first with the presentation of its case-in-chief. The City shall then proceed with its case-in-chief. Each party shall have the right to

present rebuttal evidence.

- 9) Post-hearing briefs shall be submitted to the Arbitrator, with a copy sent to opposing party's representative by the Arbitrator, no later than forty-five (45) days from the receipt of the full transcript of the hearing by the arbitrator, or such further extensions as may be mutually agreed to by the parties. The post-marked date of mailing shall be considered to be the date of submission of a brief.
- 10) The Arbitrator shall base his findings and decision upon the applicable factors set forth in Section 14(h) of the Illinois State Labor Relations Act. The Arbitrator shall issue his award within sixty (60) days after submission for the post-hearing briefs or any agreed upon extension requested by the Arbitrator.
- 11) Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract at any time, including prior, during or subsequent to the arbitration hearing.
- 12) Except as modified herein, the provisions for the Illinois Public Labor Relations Act and the rules and regulations of the Illinois State Labor Relations Board shall govern these arbitration proceedings. The parties represent and warrant to each other that the undersigned representatives are authorized to execute on behalf of and bind the party they represent.

IV. EVIDENCE PRESENTED BY THE PARTIES

A. INTRODUCTION

As noted above, the sole issue in this interest arbitration is residency. The parties have agreed that, as a non-economic issue, the Arbitrator may adopt either party's final offer, or may fashion an appropriate award, so that this is "conventional interest arbitration." The parties are in dispute as to who bears the burden of proof in this proceeding. The Union contends that the status quo that exists in South Holland is not entitled to the

special protected status that is the norm in interest arbitration, because there is a change in applicable statute providing for mandatory bargaining, as opposed to the former legal status of bargaining as merely "permissive" in nature. Consequently, the Union urges that the residency issue in South Holland is, it argues, entitled to de novo consideration by the Arbitrator.

The Employer contends that the burden to support change in this proceeding is clearly on the Union. It argues that the status quo resulted not just from ordinances passed by South Holland's Village council, but by the terms of a consent decree entered into by the Employer and the United States Justice Department, now expired, which established the status quo, except for certain negotiated details agreed to by the parties in 1994. In the current case, according to the Employer, no attempts to negotiate the issue, in the sense of mutual offers of concessions, tardies, or a specific Union offer of any quid pro quo for the desired residency rule liberalization, exists, the Village maintains. Additionally, in its view, the Union had to demonstrate a substantial and compelling justification before the Arbitrator can award its expanded residency proposal. It certainly did not so demonstrate such justifications, based on any of the statutory criteria, the Village concludes.

B. BACKGROUND ON THE VILLAGE

The Village of South Holland is a home rule municipality of approximately 9.26 square miles located in the south suburbs of

Chicago. The Village has evolved from a small, homogeneous farming community with a population of 2,000 to a culturally diverse community with a population of over 24,000, the record reveals. According to Assistant to the Mayor Richard Zimmerman, the Village in the 1960's experienced tremendous growth as people moved out of Chicago in search of a family-oriented community such as the Village. In addition to the population growth, the Village in this decade has seen a change in its racial composition, several Employer witnesses testified. Prior to the 1990's the Village was virtually an all-white community ; today, it has a thirty percent minority population, the record discloses.

Both Zimmerman and Mayor Don Degraff stated that South Holland has enacted numerous initiatives to make it the "best" community in the south suburbs in its handling of rapid population and business growth, as well as the intermixing of different cultures, ethnicities and races. One such initiative is the "Balanced Approach To Housing Program" which focused on opening communication channels between churches, schools, businesses, realtors and residential neighborhood groups. This program focused on involving residents in the community, as well as bringing racially and ethnically diverse resident groups together.

As a result of the success of this program, the Village in 1997 started the Model Community Initiative program. Employer witness Zimmerman stated that this program serves as a business plan which sets forth various goals enabling the Village to pursue

its goal of becoming the "best" community in the south suburbs. Many initial goals have already been accomplished, Zimmerman also stated, including creating neighborhood associations, police bike patrols, satellite offices, new festivals, and brings schools and churches together to discuss, celebrate and improve education. These MCI goals and action plans are published in South Holland Today, the Village newspaper, to keep residents informed and involved, he stressed.

C. HISTORY OF THE RESIDENCY PROVISIONS

The residency requirement in South Holland goes back many years. In 1975, the Village enacted an ordinance requiring all Village employees to live within South Holland city limits. This "straight" residency rule was in existence for over a decade until 1986 when it came under criticism by the United States Justice Department. The Justice Department took the position that the existing residency ordinance was perpetuating the Village's then all-white police department. It contended that the residency ordinance was impacting the demographics of the Village and should be changed. In June of 1986, the Village and the Justice Department entered into a negotiated consent decree, as mentioned earlier. This consent decree, executed on September 2, 1986, expanded the Village's residency policy to allow all Village employees to live within a three-mile radius of the village's Municipal Building. The consent decree also required all employees to comply with the residency requirements within one year

from their date of hire. Previously, a Village employee had to be a resident of South Holland at the time of hire to be considered for employment. The consent decree remained in effect until July 17, 1994.

In January of 1992, the International Fraternal Order of Police Labor Council (Union) and the Village entered into negotiations for their first collective bargaining agreement. Residency was "very much in play," according to James Baird, attorney for the Village. The Union submitted an expanded residency proposal which was opposed by the Village. Ultimately, the parties agreed that the three-mile mark established by the Justice Department would continue to be applied to the Union's bargaining unit, and that this policy would be incorporated in the collective bargaining agreement. The contractual provision provided:

ARTICLE XIV RESIDENCY

The employees shall abide by the requirements of the village's residency policy to the extent that it pertains to all Village employees, and as such policy may be changed from time to time by the Village.

On February 3, 1993, the Union exercised its newly obtained right to grieve by filing a grievance alleging that the Village had violated Section 25.1 of the collective bargaining agreement by not strictly enforcing its residency policy. The record shows that certain Village supervisory employees, acting with apparent authority, told approximately seven to ten Village employees that they could move outside the residency limits, and they did so. Faced with the threat of impending litigation if the Village forced these employees to move back within the residency limits, the

Village granted these employees administrative exemptions.² These administrative exemptions were necessary, according to the advice of legal counsel retained by the Village, because of the representations made by Village employees cloaked with "apparent authority" to act on the Village's behalf. As a result of this incident, the Village contends that it has consistently and uniformly enforced its residency policy as to all other Village employees.

In March of 1993, while the February 3, 1993 grievance was pending, the Union and the Village began negotiations for their 1994-1997 collective bargaining agreement. Once again, the Union sought to expand residency requirements, and the Village's proposals sought to restrict these requirements. On August 3, 1993, the parties temporarily tabled their residency proposals in an attempt to reach agreement on other aspects of the 1994-1997 agreement.

On November 22, 1993, the Union and the Village resumed negotiations on the issue of residency. The Village proposed that the current three-mile residency mark remain the same, except for employees with twenty years or more of service. These employees could move within a twenty-mile radius from the Village's Municipal Building, as long as they retired or resigned within a five-year period. This is also referred to by the parties as the 20/20/5

² Currently, only three of these employees are still employed by the Village.

residency option. In a December 10, 1993 memo to police officers, Assistant to the Mayor Zimmerman explained the 20/20/5 proposal to the officers:

The Village of South Holland and the F.O.P have been in contract negotiations since March. Much has been accomplished and the contract is close to being signed. There is only one issue left to resolve, and that issue is residency. However, if this issue is not resolved, the contract negotiations will be at a standstill.

The issues of wages and residency are tied together. The Village has said all along that the residency issue must be resolved in our favor. We are asking the F.O. P. to drop their grievance and put our wording on residency in the contract. In return, the Village is offering a very attractive wage package that will benefit all officers today and on into the future. This package increases the wages by 3% for 1993, 1994 and 1995. It also increases the amount paid for longevity in 1994, and ties it to the base in 1995. The paramedic incentive will be tied to the base in 1996. This package is on top of a change in the Compensatory Time Policy that also benefits the officers. South Holland officers are already among the top paid in the area. This package will enhance their position even more.

The Village Board is also willing to make a change in the residency requirement policy that would allow employees who have worked for the Village for twenty (20) years or more to move within a twenty (20) mile radius of the Village Hall. They must then either retire, resign or move back into the three-mile limit within a five-year period. This change is being presented to show that the board is listening to the employees and dealing in good faith. It is a sign that the policy is not set in stone, but it is evry (sic) important to the Village.

We know that this is not what the officers

want, but in other communities where residency has been changed, the employees have given up large sums of money in exchange for residency

changes. Here, we are offering a change in the policy and an increase in wages.

The other option is to accept the present residency wording in the contract, continue the grievance and give a straight pay increase of 3% in 1993, 1994, and 1995 without tying longevity and paramedic incentives to the base.

This letter is being written to make sure that everyone understands the issues, has the same information and understands all the implications.

On September 8, 1994, Ray Bialek, the Union field representative, agreed to drop the February 3, 1993 grievance upon the positive ratification of the 1994-1997 agreement, which was done. The residency clause in the 1994-1997 agreement, executed on September 19, 1994, maintained the three-mile mark, but granted to all employees with twenty years or more of service the option to live anywhere within a twenty-mile radius of the Village's Municipal Building. The Village dropped the five-year period that a twenty-year employee had to either retire, resign, or move back within the three-mile mark. Twenty-year village employees thus had no future obligation to either retire, resign or move back within the residency limits. At the Union's request, the Village also added "me-too" language to the residency clause, providing "if the Village makes its residency policy less restrictive for any other department as a whole, then such less restrictive policy shall apply to all members of the bargaining unit as well."

During the term of the 1994-1997 agreement, the Union filed a grievance alleging that the Village had violated the contract by

exempting library employees from the residency policy. Rather than litigating the issue, the parties reached an agreement whereby the Union withdrew with prejudice its right to refile the grievance. In return the Village agreed that the Union could raise residency in the 1997 collective bargaining negotiations without the threat of an unfair labor practice resulting from a last-minute change in position.

With that as background, the parties began negotiations for the 1997-2001 collective bargaining agreement, the evidence of record discloses. On February 3, 1998, the Union submitted a residency proposal expanding the 1994-1997 residency language to allow all employees, not just those with twenty years of service, to live anywhere within twenty miles of the Village's Municipal Building. The Village responded with a proposal which provided that "employees hired after March 1, 1998 shall, as a condition of their employment, reside within the corporate limits of the village of South Holland. Employees hired prior to March 1, 1998 shall as a condition of their employment reside within the corporate limit of the Village of South Holland if they move from their current residence during the life of this Agreement," as touched upon by me earlier.

Also, as mentioned above, the parties reached agreement on all other issues. There were agreed upon changes on matters including wages, paramedic premiums, overtime, paramedic training, holidays, uniform, allowances, compensation time, EMTP paramedics and EMTB

paramedics. On June 18, 1998, the parties executed a new

Collective Bargaining Agreement for 1997-2001 with residency being titled an "open issue." (Jt. Ex. 1, tab 4).

D. TEAMSTERS' LOCAL 726 COLLECTIVE BARGAINING AGREEMENT

The Village's full-time Telecommunicators, represented by Local 726 of the International Brotherhood of Teamster, are the only other Village employees represented by a union. The telecommunicators are responsible for dispatching police cars, tracking radio communications and processing 911 emergency calls. Like the police officers, the telecommunicators work in the police department and hold safety-sensitive positions. Unlike the police officers, however, the telecommunicators have the right to strike.

Village Attorney Baird testified that residency was an issue between the Village and Teamsters in their first collective bargaining agreement for the period covering 1998-2001. On July 1, 1997, the Teamsters proposed to completely eliminate residency. In response, the Village proposed that the residency language applicable to the Labor Council be applicable to the Teamsters. The Village did not want a residency policy for the Teamsters that was either more or less restrictive than its residency policy with the FOP Labor Council. According to Attorney Baird, the Village sought uniformity in its residency policy among all represented and unrepresented groups. On December 18, 1998, the parties reached agreement on a residency provision identical to that found in the Village-Union 1994-1997 Collective Bargaining Agreement.

E. THE VILLAGE'S ENFORCEMENT OF THE RESIDENCY POLICY

Zimmerman testified that since 1992 the village has actively enforced its residency requirements. In this regard, Zimmerman stated that if the Village Board learns that an employee is not complying with the Village's residency policy, a thorough investigation is conducted and the employee is sent a letter stating that he or she will be terminated if they are not in compliance within three months.

Currently, 196 of the 212 Village employees live within the Villages residency boundaries and the remaining 16 live in neighboring communities. More specifically, 173 employees live within the Village city limits; 23 employees live within the three-mile mark; and 16 employees are exempt.

Sixteen employees are exempt from the residency requirement for various reasons. Five employees were "grandfathered," i.e., they were working for the Village prior to 1975 when the Village passed its initial residency ordinance. Three employees have twenty or more years of service with the Village and have taken advantage of the 20/20 exemption. Three employees were granted administrative exemptions because they were incorrectly told by their department heads they that could move outside the Village residency limits, a matter discussed above. Five employees are new hires and have one year from their date of hire to comply with the Village's residency policy.

There is also testimony regarding twenty-five library

employees who are not subject to the Village's residency requirement. According to Zimmerman and the exhibits presented by the Village, library employees are employed by the Library Board which acts as an independent governing body, has its own bylaws, and prepares its own budget. The Village has no control over these employees. The Village's only connection with library employees is that they pay them as an administrative convenience.

F. EXTERNAL COMPARABLE JURISDICTIONS

The Village did not submit any comparable jurisdictions for purposes of comparing the final offers submitted by each party and instead agreed to use those submitted by the Union at the hearing.

The agreed upon comparable jurisdictions' residency provisions provide as follows:

Alsip Ordinance requires officers to live within jurisdiction.
Contract silent.

Burbank Policy does not require residency. Contract provides that if employees desires to implement residency requirement, it must be bargained with union.

Chicago Ridge Contract establishes short boundaries outside of jurisdiction in each direction. Additional exceptions permitted under special circumstances.

Dolton Officers hired prior to May 1, 1997 may reside 22 miles outside of jurisdiction. Officers hired after May 1, 1997 must reside within jurisdiction within one year of employment. Future bargaining subject to impasse procedures.

Homewood No ordinance or policy requiring residency. Contract is silent on the subject.

Lansing Officers required to live within jurisdiction by ordinance. Contract silent.

Matteson Officers hired prior to April 18, 1994 have no residency requirement. Officers hired after April 18, 1994 must reside within the jurisdiction.

Oak Forest Officers required by ordinance to reside within the jurisdiction.

Acknowledging that the external comparables are a "hodgepodge" and favor neither party, the Union also presented evidence in the labor market area 20 miles out from South Holland. The result is much the same. Of the 68 jurisdictions identified by the Union for purposes of comparison, 51% have no residency requirement; 25% have a residency requirement; and 24% are a "mixed bag" in the sense that they have an extended residency requirement similar to the Village's three-mile mark, I point out.

G. POLICE OFFICER RETENTION AND RECRUITMENT

Thirty one police officers have left the police force since 1986. Five of those officers took jobs in Chicago-area police departments. The other twenty-six officers left the force for unrelated reasons: thirteen retired; four were terminated; one died; one left due to pension disability; two moved to different states; two became firefighters; and one left for undisclosed personal reasons.

Testimony by Attorney Baird established that the Village's residency requirement is communicated to all applicants interested in employment with the Village. It is a condition of the job. However, there is no indication that it has adversely affected applicant flow. Since 1992, there consistently have been large

numbers of applicants for police officer positions within the Village. The only drop in applicant numbers occurred between 1997 and 1998 when the police department changed its application requirements so that all applicants needed a minimum of thirty-semester hours at an accredited college or university. Formerly, police officers were only required to have a high school diploma.

H. DISADVANTAGES OF THE CURRENT RESIDENCY REQUIREMENTS

Attorney Sonneborn testified on behalf of the Union at the hearing, as did Becky Dragoo, who provided evidence on the issue of comparability. In addition, Officer Reese offered evidence in support of the Union's proposed changes to the Village's residency rule.

Attorney Sonneborn testified that the Village's residency policy restricts police officers' personal freedom. He stated that the policy affects police officers' private lives by restricting where they and their families can live, the churches they can conveniently attend, the schools their children can attend, and their opportunity to engage in social activities. These restrictions affect employees most fundamentally, Sonneborn stated, and thus the residency policy should be supported by compelling evidence absent on this record.

The Union also expressed concern with off-duty incidents involving police officers and their clientele. John Reese, an African-American Village police officer with three years experience, testified that he and his three year old son were

shopping in a Village supermarket when they were harassed by a woman he formerly had arrested. He stated that he has concerns about his son attending school in the same community where he serves as a police officer:

Throughout my duties, I often deal with juveniles ranging from. . . ten years old to seventeen years old. I'm sure I'm going to continue to do that throughout my remaining years in South Holland. As my son grows older and gets into grade school, junior high and high school, he's going to come into contact with some of these juveniles that I'm dealing with. There is nothing to stop these juveniles from turning any ill will towards me or my son. If a female subject who is not even in school. . . can turn her hostility towards me or to my 3-year old son, then definitely a 16, 17 18 year-old in high school could do the exact same thing having the mind. . . that a lot of juveniles have at that age.³

³ Chief Zajeski testified that regardless of the city in

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Reese testified that he was aware of similar incidents that have occurred with other officers on the job, though very few have filed official reports with the chief of police. According to his testimony, this is not a racial issue nor a matter of "white flight." The African-American police officers support the expansion of residency requirements as do the white officers because they believe their personal life has been unduly restricted.

I. ADVANTAGES OF THE CURRENT RESIDENCY POLICY

Chief Daniel M. Zajeski, Jr., Chief of Police for the Village,

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testified to the operational advantages of the Village's current residency policy. First, he stated, response time is improved. The current residency policy decreases response time for the following on-call police officers, who also act as paramedics: on-call detective; on-call youth officer; on-call evidence technician; on-call breathalyser options; on-call emergency medical technicians; emergency call-ins or mobilization. Chief Zajeski testified that a Dolton, on-call police officer living twenty miles outside city limits was never called by that village because his response time proved too inefficient. Additionally, Chief Zajeski testified that he personally admonished an on-call detective, who took one hour to respond to the crime scene, because he was so far away from the Village, although this apparently was related to his activities on that day and not his residency.⁴

Second, the Chief testified that the current residency policy enhances the Community Policing Program by fostering an environment where police officers form working partnerships on and off-duty with residents and businessmen. This reduces crime, increases Village public safety, and improves the quality of life in the community, he stated. Bike patrols and satellite facilities are

⁴ The Chief acknowledged on cross-examination that the last time the Department had an emergency mobilization of the police force occurred in the 1960's for the riots in Harvey, Illinois. When asked whether there were other specific instances where an additional seventeen miles interfered with operational efficiency in the department, the Chief cited an occasion when a telecommunicator was unable to get to work because of heavy snows. If she had lived closer, the Chief stated, the Department would have gone to pick her up.

important components of community policing and help to reduce crime. Further, almost every Village police officer living in the Village has neighbors who provide information about crimes and acts

of disorderly conduct, and they summon the police officers they know for assistance when there are crimes in progress.

Third, there is increased neighborhood stability. Crime is reduced when police live in the community, Chief Zajeski stated. Residents feel safer when police officers live in their community.

He testified that "there is an opinion that has been raised by many professionals in the area of law enforcement in many jurisdictions that when police officers come from outside the community, they are sometimes viewed, especially by minorities, as an army of occupation controlling that particular neighborhood." Moreover, police officers serve as role models to community youths and adults when they live in the community. Given their greater familiarity with neighborhood streets and locations, resident police officers are also in a better position to be familiar with the community in which they work.

Fourth, the Chief testified that the efficiency of the police department is increased as a result of the current residency policy. There is an increased opportunity for off-duty officers to make arrests because they are on duty 24 hours a day. In addition, off-duty police officers provide the community with more services for taxpayer money under the current residency policy. There are more likely to report to work on time when there is inclement weather or car trouble because police officers are picked up at home upon request, the Chief stated.

The Village also produced outside sources in support of the

operational advantages of the Village's residency policy. Village Exhibit B is a news article quoting Vice-President Gore as stating "when police officers move into an area, criminals want to move out and families want to move in." Similarly, a press release from the Federal Department of Housing provided that "police officers can help stabilize troubled neighborhoods by living in them because the officers serve as role models for children and add security." The Federal Department of Housing press release also provided "city residency helps officers understand the communities they work in."

Additionally, a New York Times article provides that residency requirements for police officers allow them to respond faster to emergency calls; insures that they will spend their pay in the community; and increases their commitment to the city. (Village Exhibit F).

Mayor Don DeGraff also presented testimony concerning the social, economic and political advantages of the current residency policy to the residents of the Village of South Holland. The Mayor was appointed Village President in 1994, elected Village President in 1995, and re-elected in 1997 for a period through 2001. He has lived in the Village for forty-eight years. Mayor DeGraff emphasized in his testimony that he has talked to many residents in the Village and there is a strong feeling among them that police officers should live in the community. He stated:

It is clear, beyond a shadow of a doubt, that the mind set of the residents in this Village to a very high degree, and I would estimate that to be 90 to 95% of the people who have

talked to me about this where I have not initiated the conversation, have said to me that it is very important that the residents

the Village employees as a whole, remain residents of this Village.

Mayor DeGraff emphasized that when Village employees live in the community, it helps to fight the appearance of "white flight" and furthers the goals of Village programs. He noted that when police officers live in the community, there is an increased likelihood that they will participate in the community through service and family organizations. Through this participation, the residents become familiar with the officers representing them, and in turn the officers can better understand and serve the community.

Mayor DeGraff further stated that there is a strong feeling among residents that police officers, as public employees, have a responsibility to contribute back to the community by paying real estate and sales taxes. Equally important, maintaining the current residency requirements for the police officers provides consistent application of residency requirements among all Village employees.

This shows residents that the Village is committed to making itself a community where people want to live, buy homes, raise children and retire. When officers leave the community, residents become skeptical about the future of the Village. "For-sale" signs cause residents to question why they live in a community that is not good enough for the employees of the Village, the Mayor stressed.

Likewise, Assistant to the Mayor Zimmerman testified that, for better or worse, the emotional impact of residency cannot be discounted. He testified that because residents "look upon anybody

that works for the village as the Village," they believe a negative signal is sent when Village employees move. In this regard Zimmerman stated, "One of the things that we are constantly fighting is white flight. Right on the head, white flight. That's a problem in all communities in the south suburbs. And you're playing with emotions rather than necessarily common sense. . . ." Stressing the importance of village residents' perception and the sensitivity of this issue, Zimmerman testified:

Just recently we had an employee, not a police officer but another employee who sold his house and is looking to move. We've had a residency issue with that. And we have had residents from that neighborhood calling the trustees. They even put out flyer letting their fellow residents know that a Village employee is leaving the Village.

V. THE STATUTORY CRITERIA

Section 14 of the IPLRA directs the Arbitrator to base his decision and award on the following criteria:

- 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 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.

VI. FINAL OFFERS OF THE PARTIES

A. THE UNION'S FINAL OFFER

The Union's final offer on the issue of residency sought to make uniform the residency requirement for officers of the South Holland police department. The Union's final proposal was to amend Article XIV of the parties' collective bargaining agreement to read:

Employees shall abide by the requirements of the Village's residency policy in effect on the date of this Agreement. If the Village makes its residency policy less restrictive for any other department as a whole, then such less restrictive policy shall apply to all members of the bargaining unit, as well. Employees who have completed twenty (20) years or more of full-time service with the Village

may at their discretion reside anywhere within twenty miles of the Village's Municipal Building. Employees with less than twenty (20) years of service may at their discretion reside anywhere in the State of Illinois within twenty miles of the Village's Municipal Building.⁵

The Union points out that the current contract language permits officers with twenty years or more of full time service to reside anywhere within twenty miles of the Village's Municipal Building. However, in light of South Holland's geographic location, twenty miles to the east-southeast would lie in Indiana.

The 1998 amendment to the IPLRA does not permit arbitral consideration of a proposed residency requirement that permits residency outside the State of Illinois. Section 14(I) as amended provides that ". . . the arbitration decision shall be limited to wages, hours, and conditions of employment (which may include residency requirements in municipalities with a population under 1,000,000, but those residency requirements shall not allow residency outside of Illinois. . . ." Thus, the Union's final offer as to employees with less than 20 years of service is to permit residency "anywhere in the State of Illinois" within 20 miles of the Village's Municipal Building.

B. THE VILLAGE'S FINAL OFFER

The Village's first final offer called for all police officers hired after March 1, 1998 to reside within South Holland - a

⁵ Proposed new language appears in underlined text. The remaining language is contained in the current contract.

departure from the current policy that permits employees to live up to three miles outside the Village and the contract language that permits those with 20 years of service to live up to 20 miles outside the Village. This offer also required that officers who currently live outside the Village, but who move for any reason, would be required to move back into the Village. Attorney Baird explained:

As you know, we are in an extension of the bargaining process. . . Now, if there is any integrity to this arbitration process, in our view, we will readily acknowledge that we should not win [a more restrictive residency proposal] because we should not receive from you for free, that which we weren't prepared to negotiate with the Union across the bargaining table. And we are prepared to tell you that while we think our proposal has considerable merit, we will acknowledge that we probably will not win, we shouldn't get this concession for free. Similarly, we would tell you that the Union ought not to get its concession for free, and we will similarly tell you that they have proposed to us for their proposal about as much as we proposed to them, which is nothing.

At the close of its case-in-chief, the Village dropped its prior residency proposal and proposed to maintain the same residency policy that the police department has followed since 1994 and which is incorporated in the predecessor collective bargaining agreement. The Village's final proposal provides:

Employees shall abide by the requirements of the village's residency policy in effect on the date this agreement is signed. If the Village makes its residency policy less restrictive for any other department as a whole, then such less restrictive policy shall apply to all members of the bargaining unit,

as well. Employees who have completed twenty (20) years or more of full-time service with the Village may at their discretion reside anywhere within twenty miles of the Village's Municipal Building.

VII. CONTENTIONS OF THE PARTIES

A. THE UNION

As a threshold matter, the Union acknowledges that the general rule in interest arbitration is that the moving party - the party seeking to alter the status quo - bears the burden of proof. However, the rule is founded on the premise that the status quo is the result of bilateral good faith bargaining. The rule assumes that the parties have bargained without legal impediments that undermine the bilateral nature of the negotiations. Such is not the case in South Holland, the Union argues.

Prior to this round of negotiations, the Village was not legally required to bargain about residency with its police officers. Even when it chose to engage in permissive bargaining with the Union, there was no impasse resolution mechanism available to the parties. The police were powerless to compel good faith bargaining and any "bargaining" that did occur was one-sided. Once the parties reached impasse, they mediated. Absent a mediated resolution, the bargaining ended with the Village in control of the issue, since Section 14(I) of the IPLRA specifically prohibited arbitration awards on the subject of residency for police prior to the 1997 amendment.

In addition, the Union asserts that pre-amendment bargaining

on the subject of residency was unbalanced because the status quo in South Holland was not the result of bilateral negotiations with the Union but rather was based on standards imposed by the Justice Department as a result of a consent decree. Even Assistant to the Mayor Zimmerman acknowledged in his testimony that the status quo in South Holland was not the result of bilateral negotiations with the Union:

So when we say the status quo, this was not a voluntarily entered-into status quo. This was a negotiated status quo of the United States Justice Department. And except for the 20-year exception that we now have as a result of bargaining with this Union, this is the status quo.

Further, the Union maintains that post-amendment bargaining on residency in South Holland has differed little from that which predated the amendment to the IPLRA. The Village would not move off its position, regardless of what the Union proposed. It now stands before the Arbitrator and argues that the Union should not achieve a relaxation of the residency requirements without an exchange of quid pro quo, yet there was nothing that would have prompted the Village to agree to relax residency. The Union thus proceeded to interest arbitration, for the employees may not withhold services.

Yet, when the Union arrived at the arbitration, the Employer argued that an absence of quid pro quo compelled preservation of the status quo, the Union notes. But, according to the Union, the Employer has refused to accept anything at the bargaining table in

trade, and appeared at the arbitration with no countervailing demand, other than the first "final" offer, later to be withdrawn.

In the Union's view, if the Employer is permitted in this instance to use the absence of quid pro quo as a shield, the current status quo on residency will never change. If interest arbitration procedures are truly designed to supplant strikes for police, as declared in Section 2 of the IPLRA, then the police must not be left powerless to remedy an obstinate employer's refusal to consider that which is otherwise justified by the statutory considerations set forth in Section 14(h).

Turning to the Section 14(h) factors, the Union argues that there are significant considerations for changing the residency restrictions in South Holland. Among the eight factors set forth in Section 14(h) of the IPLRA, comparability is often deemed the most important. See, Feuille, "Compulsory Interest Arbitration Comes to Illinois," Illinois Public Employee Relations Report, Spring, 1986, Vol. 3, No. 2, p. 2; Village of Westchester and IL Firefighters Alliance, Council 1, S-MA-89-93 (Berman, 9-22-89), p. 6. In the instant case, the Village failed to submit any comparable jurisdictions for purposes of comparing the final offers submitted by each party as mandated by Section 14(h) of the IPLRA and agreed to use those submitted by the Union for this hearing.

Among the agreed upon comparables, in Alsip, Lansing and Oak Forest, officers are required to live in the jurisdictional limits by means of an ordinance, the Union maintains. Burbank does not

require residency, and the contract provides that if the employer desires to implement one, it must first bargain with the union. Homewood does not require residency. Chicago Ridge permits living outside within defined boundaries. Matteson is split, with those hired before April 18, 1994 being allowed to live wherever they choose, while those hired after that date being required to live in the village. Dolton permits those hired prior to May 1, 1997 to reside 22 miles out. Officers hired after May 1, 1997 must live within the village.

In the labor market area 20 miles outside of South Holland Village hall, the information is much the same. Some jurisdictions require residency, others do not, and still others allow some relaxation. The mixed bag of residency can be broken down into the following percentages: 51% of the jurisdictions in the labor market have no residency requirement; 25% require residency in the jurisdiction; and 24% permit residency in an extended area outside the jurisdiction. This larger view of the trends in the labor market is relevant should the Arbitrator craft a resolution to the non-economic dispute that differs from both parties final offers, the Union submits.

In addition to the fact that a significant number of comparable jurisdictions provide for relaxed residency requirements, the Union further argues that the current residency restriction in South Holland already results in Village employees living outside of South Holland. Anyone can live 3 miles out, and

if an employee has 20 years on the job, that employee can live 20 miles out. Those employees who were grandfathered in prior to the residency provision in the collective bargaining agreement can live anywhere, as can those who are exempt and those that have less than one year on the job. In short, employees are not required to live in South Holland. They can and do live in various surrounding areas.

The Union stresses that "the truth is" that the Village is simply fighting to save the last vestige of a residency requirement that was designed to prevent minorities from moving into town and most certainly to preclude them from joining the police force. This reason is completely inapplicable now, the FOP submits.

The Village has not advanced any persuasive reasons for maintaining the current residency requirement, the Union also asserts. Although the Village relied upon internal comparability, citing its contract with the Teamsters and its efforts to maintain a consistent residency requirement for all Village employees, the Union points out that internal comparability is not a factor listed in Section 14(h) of the IPLRA.

Similarly, the absence of employee turnover should not be deemed significant. The Union reminds the Arbitrator that, prior to 1998, officers in this state had little hope of changing the locale's residency rule, so the fact that few moved away from South Holland to some other jurisdiction is not surprising. By the same token, the fact that the Village has been able to attract

applicants has led to more minority officers who already reside within the 3-mile zone joining the force.

The various social reasons advanced by the Village are similarly unpersuasive. The Village's contention that "you earn your money here, you live here" is, like the residency requirement, more applicable to times gone by. The claim that the citizens feel more secure having their police live in the community may well be true but this type of an argument is an imponderable as described by Arbitrator Finkin in Village of University Park and IAFF Local 3661:

The remainder of the Village's arguments are imponderables; i.e., the desire to have firefighters manifest good citizenship to counter the perception that the residents aren't good enough to live next to, to increase public confidence and marginally contribute (given the number involved) to the local economy. These the Village terms 'needs.' But the firefighters' desire to have freedom of choice as to residence, to stay close to family and schools, it terms 'wants.' What distinguishes a valid social 'need' from a selfish individual 'want' seems to be in the eye of the beholder. Suffice it to say, the Arbitrator is given no scale on which to weigh these altogether defensible respective desiderata, at least none on which the balance shifts away from the longstanding status quo.

Furthermore, the Union argues that the Village's desire to fight "white flight" must be approached by a system of inducements and incentives, not fences and chains. Jurisdictions throughout the metropolitan Chicago area celebrate their diverse communities without holding their employees hostage.

The operational advantages cited by the Police Chief for

maintaining the current residency requirement were not supported by probative evidence. The Chief admitted that the last time the Department needed an emergency mobilization was in the 1960's. The one occasion when a telecommunicator was unable to get to work because of heavy snow hardly constitutes a compelling reason to restrict the residency rights of all police officers. And the idea that officers living outside the Village would be viewed as an "army of occupation" is hardly the issue. The Village's efforts are focused on avoiding white flight. This is about the fears of the white citizenry and a desire to keep the Village's own standing army - not minority fears of a potential army of occupation.

The Village's proposal stands as a centurion of the past, the Union argues. The presence of a police officer in the neighborhood, of a squad car parked in the driveway, cannot justify the extraordinary restriction the Village seeks. Although the Village President claims damage will be done to the very fabric of South Holland if officers are allowed to move an additional 17 miles from the Village hall, the Union submits that the claim must pass some stringent test before being accepted, particularly when one considers the extraordinary restrictions being placed on the employees' private lives. The schools their children attend, the social activities in which they engage, the little league and the soccer leagues they join, the neighborhood kids with whom they play, are all limited by the Village's rule. Surely there must be good cause shown, the Union argues.

The Union's proposal is an appropriate blend of the parties' desires and needs, reflective of metropolitan Chicago in the late '90's. If no relief is granted in these proceedings, there will be little or no hope of future relief in bargaining or impasse resolution. The Village will be cauterized in its position; the officers will be without hope. For all these reasons, the Union requests that the Arbitrator adopt its final proposal as a term of the current collective bargaining agreement.

B. THE VILLAGE

At the outset, the Village argues that in order to protect the bargaining process, the Arbitrator should not award any "breakthroughs" that would substantially change the longstanding status quo in the absence of a substantial and compelling justification. Citing an earlier award issued by Arbitrator Harvey Nathan, this Arbitrator specifically explained what the proponent of the change must demonstrate in City of Burbank and Union (October, 1998):

In order to obtain a change in interest arbitration, the party seeking the change must, at a minimum, prove:

- 1) that the old system or procedure has not worked as anticipated when originally agreed to;
- 2) that the existing system or procedure has created operational hardships for the employer (or equitable or due process problems for the union); and
- 3) that the party seeking to maintain the status quo has resisted attempts at the bargaining table to address these problems.

It is the party seeking the change that must persuade the neutral that there is a need for its proposal which transcends the inherent need to protect the bargaining process.

In the present case, the Village argues, the Union cannot satisfy even one of the three requirements set forth in City of Burbank. First, awarding the Union's expanded residency proposal would constitute a breakthrough in the parties' collective negotiation process. The parties' history shows that they have

bargained consistently, vigorously and at great length over residency for the past seven years with no resolution even remotely close to what the Union proposed in these arbitration proceedings.

Second, the Union has not presented any substantial evidence that the current residency requirement does not work. Rather, the Union has made unsubstantiated and conclusory statements that the Village's current residency requirements infringe on the police officers' personal freedom and are unfair. Third, the current residency requirements do not create operational hardships for the Union. To the contrary, the evidence shows numerous operational advantages to the Village and its citizens, as well as social, emotional, and economic and political advantages resulting from the current residency policy. Fourth, the Village, as the party seeking to maintain the status quo, has not resisted attempts to address the Union's concerns with the current residency policy at the bargaining table. Rather, the Village has made good faith attempts to compromise the issue as evidenced by: 1) the three-mile mark provision; 2) the inclusion of the residency provision in the collective bargaining agreement when it was still a permissive subject of bargaining; and 3) the 20/20 exemption.

The Village submits that the Union's expanded residency proposal if awarded would constitute a clear "breakthrough." Consequently, in order to win this breakthrough, the Union must meet the burden of providing: 1) compelling reasons for its proposed change, along with 2) evidence of a solid and substantial

series of meaningful and equally valuable quid pro quos; and 3) proof that such offers have been continually and unreasonably resisted by the Village. The Union has not met that heavy burden here.

It is clear to the Village that the Union has not provided a substantial and compelling justification for its expanded residency proposal. The Union's argument that it is unfair to restrict where an officer can live is nonsensical. These police officers voluntarily chose to work for the Village and thus, to adhere to its well-established and well-published residency policy. Moreover, any claim of unfairness was not proven. Only 16 Village employees out of 21 live outside the residency limits. (Library employees are not included in the tally since they are not employees of the Village). All sixteen of these employees have been exempted for legitimate reasons: five are grandfathered by the policy; three take advantage of the 20/20 exemption; three were improperly granted an administrative exemption; and five are new hires who have one year to comply with the Villages' residency policy. The Union cannot in good conscience argue that these exemptions are unfair and create inequities since thirteen of them were a product of concessions given to the Union at the bargaining table.⁶

⁶ Moreover, the Village's residency policy has not affected police officer recruitment or retention. There has neither been a mass exodus of employees nor a drop in applicant numbers in the years following the 1975 "straight residency" ordinance. The Union's unfairness argument is further undermined by the fact that

Restriction of personal freedom is not a substantial or compelling justification either, the Village argues. The Union makes this so-called "personal freedom" argument despite the multitude of Supreme Court, federal and state cases upholding residency policies in the face of constitutional challenges based on the right to travel, equal protection and due process claims. On the contrary, courts have consistently upheld the same operational, social, economic, emotional and political reasons advanced by the Village for maintaining residency policies as legitimate, if not compelling, state interests. See, e.g., Wright v. City of Jackson, Mississippi, 506 F.2d 900 (5th Cir. 1975); Police Ass'n of New Orleans v. New Orleans, 649 So.2d 951 (1995).

Moreover, according to the Village, an alleged off-duty incident involving police officer clientele is not a substantial or compelling justification to support the Union's expanded residency proposal. The Union, I am told, only presented testimony from one police officer, who is concerned for the future safety of his three-year old son when attending school with juveniles that the officer has arrested. His concern is based on one occasion where a woman, whom he had previously arrested, harassed both he and his son. However, one incident of alleged harassment is hardly compelling evidence, the Village maintains.

The officers' concerns are based on the safety of his son

the Village's residency is early communicated to all police officer applicants - and yet applicant numbers remain high.

seven to ten years from now, the Village emphasizes. However, such speculative evidence was undermined by Chief Zajeski's testimony that there have been only two or three occasions in his 28 years on the Village police force where there was an official report of residents harassing a police officer or member of his family. The Union's safety argument is further undermined by the fact that the Village has one of the lowest crime rates in the south suburbs. There is no reasonable basis to the fears of the police officers as regards retaliation, even though the Village concedes such worries are natural to those employees who make serving as a police officer their life's work.

In addition to the lack of substantial or compelling justification supporting an expanded residency policy, the Village asserts that external comparability favors neither the Union's nor the Village's proposal. Some have residency requirements by ordinance or contract, and some do not. While the Union novelly argued that industry practice supported its proposal, that is not one of the factors to be considered under section 14(h) of the IPLRA. And, even assuming that general industry practice is an appropriate evaluative criteria, the 68 jurisdictions that the Union chose for analysis are completely arbitrary. Perhaps more importantly, the data presented indicates that residency in other jurisdictions is also, in Attorney Sonneborn's words, "a hodge podge."

By contrast, internal comparability strongly favors the status

quo, the Village submits. The Village's final offer is fully consistent with the residency requirements long observed by both the police officers unit and the telecommunicators unit - the Village's only other group of represented employees - as well as other employees of the Village. The Village argues that morale and political problems among telecommunicators and police officers, who both work within the same department, would be created if the Village's final offer were not accepted.

In view of the language parity between the Village's two bargaining units, as well as the policies applicable to all of its non-represented employees, internal comparability must be given considerable weight in determining the reasonableness of the parties' final offers. That is perhaps the major thrust of the Village's contention and, as will be developed below, is a line of argument which I agree with, based on my determinations regarding the narrow facts in this case of first impression.

Assuming that the Arbitrator should somehow find that the Union carried its burden of proving that a breakthrough for its expanded residency proposal is justified by compelling evidence, the Union must still offer something of value to the Village in exchange for that proposal, according to the Village. Instead, the Union has submitted a final offer that is based upon no quid pro quo at all. It is the position of Management that the Union's final offer is solely based on the proposition that "we want something because we want something" and "we should get it for

free." The Village points out that, in bargaining, however, key demands unaccompanied by a quid pro quo are almost always summarily rejected. Consequently, it urges, the Union should not be permitted to obtain here, through arbitration and "for free", that which it could not have obtained at the bargaining table without a monumental concession in return. The Union's proposal should be rejected in favor of the status quo.

In sum, if this Arbitrator issued an award in the Union's favor, it would in the Village's view destroy future collective bargaining between the parties. It would also send a loud and clear message to all Illinois protective service units that you do not need to bargain about residency, because you can go to an arbitrator and get a concession for free. Accordingly, this Arbitrator should rule in the Village's favor and accept the Village's final offer on the issue in dispute.

VIII. FINDINGS AND DISCUSSION

The traditional way of conceptualizing interest arbitration is that parties should not be able to attain in interest arbitration that which they could not get in a traditional collective bargaining situation. Otherwise, the point of bargaining would be destroyed and parties would rely on interest arbitration rather than pursue it as a last resort. On this concept, one arbitrator stated:

If the process [interest arbitration] is to work, it must yield substantially different

results than could be obtained by the parties through bargaining. Accordingly, interest arbitration is essentially a conservative process. While, obviously value judgments are inherent, the neutral cannot impose upon the parties contractual procedures he or she knows the parties themselves would never agree to. Nor it is his function to embark upon new ground and create some innovative procedural or benefit scheme which is unrelated to parties particular bargaining history. The arbitration award must be a natural extension of where the parties were at impasse. The award must flow from the peculiar circumstances these particular parties have developed for themselves. To do anything less would inhibit collective bargaining. Will County Board and Sheriff of Will County (Nathan, 1988) quoting Arizona Public Service, 63 LA 1189, 1196 (Platt 1974); accord, City of Aurora, S-MA-95-44 at pp.18-19 (Kohn, 1995).

There should not be any substantial "free breakthroughs" that would not be possibly negotiable by the parties across-the-table; this indeed is the general rule for economic demands, I note. If the Arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through collective bargaining, or gives the other party a non-economic term of the contract that it never could bargain to get, too, the Village argues in this case, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route Village of Bartlett, FMCS Case No. 90-0389 (Kossoff, 1990).

The record shows the Union in this case never moved from its initial proposal to expand residency, as set forth above, or offer

to trade other items for the inclusion of its proposal in the parties' labor contract. However, as will be developed in more detail below, it is also clear from the record that Management did not move from its counter offer to restrict the residency article in direct bargaining to require that all police officers with less than 20 years' seniority to the physical boundaries of this Village, if any changes in Article XIV were to be made. At the last possible moment before the record was closed in this matter, the Village then made its final and last proposal which was, that I order incorporated into the current labor contract the precise of language Article XIV of its immediate predecessor contract. In other words, the Village did not bargain until hearing, when it drew back from a "give-back" posture on residency to the status quo.

Second, as noted in my discussion of the facts, the Employer, on the record at the hearing, agreed that, for purposes of this hearing only, the external data presented by the Union was adequate for analysis. Both parties agree that a fair analysis of this external data reveals a complete "hodge podge" as regards other municipalities' residency rules. There was no comparability proofs favoring either side when the "externals" are evaluated, I therefore find. That is consistent with the facts of record, as both parties acknowledged.

I obviously recognize that the usual interest arbitration case is such that the Neutral views and analyzes external comparability

is a major factor, playing a crucial role in the neutral's analysis. In this case, I repeat, the record discloses no clear trend among this Village's external comparables, and I so find. Consequently, other factors must be carefully scrutinized, which I have done here, in some detail, as should be reflected in the factual section of this Opinion and Award, as well as my recitation of the parties' contentions.

Moreover, since this is a non-economic dispute, the parties have not placed at issue many of the decisional criteria specified in Section 14(h) of IPLRA. For instance, there is no relevancy, for the resolution of this issue, for the Village's ability to pay.

Similarly, this dispute has not been driven by the overall rate of inflation, so there is no need to present or analyze cost-of-living data. The parties did not place such evidence into the record, the documentary evidence reveals. On the other hand, Criterion 3 to Section 14(h), which permits an interest arbitrator to analyze evidence to the effect of each party's proposal on the health and welfare of the general public, is applicable to the current analysis, if Management's proof of the social and political effect of each proposal now before me is credited.

Third, as Village President Don DeGraff and Village Administrator Zimmerman testified at the hearing, the Village anticipates significant social, philosophical and political consequences if its current residency requirements are liberalized to permit any police officer the ability to live within 20 miles of

Municipal Hall, as long as the officer stays a resident of Illinois. DeGraff and Zimmerman emphasized that, in their view, the majority of this now racially diverse community would be extremely unsettled or upset if the Union's demands for an extension of the scope of the residency rule were accepted by the Neutral. DeGraff and Zimmerman both emphasized that such a determination by the Arbitrator would be viewed as permitting "white flight". They also stressed the intense efforts to sell South Holland as an outstanding place to live. The symbolism of its police officers being permitted to move as far as 20 miles away from their jobs would be interpreted, the Village insists, as a complete contradiction to that sales pitch, the Village suggests. Therefore, to the Village, criterion or factor 3 of Section 14(h), and perhaps factor 8, too, compel a maintenance of the status quo for political, social and psychological reasons, i.e., the health and welfare of the Village will be best served by maintaining the status quo in this specific case.

I agree with the Employer's basic stance as regards the permissibility of my considering such evidence proffered by this Employer. It seems these contentions are not to the same degree, "imponderables" as described by Arbitrator Finkin (see Village of University Park and IAFF Local 3661, supra). I realize that in other circumstances arbitrators have found contentions like political or social effects of a proposal to be "an imponderable", incapable of exact quantification. In this case, the proofs are

not the generalized claim that citizens prefer to have their police employees live within the political entity that employs them, I find. Here, instead, the genesis of the current Article XIV on residency was a Justice Department consent decree with this Village made in 1984 to open up the police force for African-American recruits, I note.

To say, as does the Union, that the change in the racial composition of the Village of South Holland since 1984 has made a liberalization of the current residency requirements any less a political and psychological "hot potato," discounts the credible testimony of both DeGraff and Zimmerman. There is of course the Union's strong argument that the Village's desire to avoid "white flight" must be approached by a system of inducements and incentives, "not fences and chains," I recognize. However, I believe that the Union's contention that I discount the attitudes of the community on this particular issue as not having any relevance to my assessment of what residency clause fits every interested party's needs misses a basic point: the interest and welfare of the public is a standard provided for by Section 14(h)(3) of the Act, and I am firmly convinced here it is properly one that can be considered and weighed by me, along with internal comparability, etc. I so rule.

I also note that the evidence of record is not crystal clear as to whether there was "bargaining history" prior to this current contract as regards any changes in the residency rule or the

contents of what is now Article XIV. Management stressed that in both 1990 and 1994, there were changes made by across-the-table discussions as regards 20 year veteran police officers and their ability to move 20 miles away from their work, either for the 5 years preceding retirement (1990) or simply after 20 years' service, without any promise from the officer to retire within a defined time after the move away from the vicinity of this Village.

As I have noted, it is simply unclear whether these changes were made at arm's length and as tradeoffs between the parties or whether they occurred at the largesse of Management. In any event, I am convinced that given the amendments about residency made to IPLRA in 1998, this proposal should be treated as if the parties were making a new contract. Thus, although Management argued bargaining history should be relevant to the current case, I hold instead that the genesis and evolution of the Village's uniform residency rules are much more probative, when connected with the claimed political realities and when considered under the rubric of criterion 3. This is not a case where the "breakthrough" analysis controls the result, or where the failure of give and take at the table can be found to require maintenance of the "status quo", I hold.

The case before me is indeed a close one. The external comparability data on the record, as I have already discussed, supports neither party. The internal comparability proofs, as will be developed below, to a large extent support the Employer's claims

for a maintenance of the status quo. On the other hand, the argument by the Employer that no give and take bargaining occurred, as I just mentioned, is misplaced here. I accept to a substantial extent the Union's contention that the current proposals should be considered as if they were made "in a first contract" because of the residency amendments to IPLRA enacted in 1998 and the corollary fact that this is the first negotiations where residency is a mandatory topic for these parties' bargaining.

Additionally, I stress, this is certainly a case of first impression under these amendments to the Act, so the reasoning of other interest arbitrators is not available for comparison with my own on this particular issue. I further note that the Village's unequivocal posture during the 1998 negotiations that it desired to, and could bargain to impasse to go back before 1984 as regards residency, namely, to when the rule about residency was all employees "must have lived" within the political boundaries of the Village reinforces the FOP's claim that this bargaining is indeed akin to a "first bargaining" on the residency issue between the parties. I find therefore no reasonable way to say precedent controls.

I further find that both parties failed to present convincing evidence that either needed its version of the residency rule to maintain harmony among all employees, or among the bargaining unit employees. Recruiting and maintaining police officers under the prior residency provision was shown through the evidence submitted

by the Employer to not have been a problem. Thus, the Union's claims of intense police officer dissatisfaction with the current rule has not been proven to be so significant that it actually causes potential hires not to come, or current officers to go, I stress.

However, it is quite clear from the evidence of record that a substantial majority -- if not all -- of the current police officers desire an expansion of the current residency requirements.

It is the cumulative effect of the testimony of the FOP witnesses that "privacy" is a great priority for police officers. There was direct testimony from at least one officer who felt she did not wish to have a "surprise" contact with an individual or individuals she encountered in her professional capacity as police officer. There is convincing proof that several officers working for this Village have had unpleasant and unplanned contacts with civilians who were arrested by these particular officers. Sometimes, these incidents have occurred while the officer was off duty and while he or she was shopping or running similar errands, with a spouse and/or children along, the evidence proffered by the FOP reflects.

The evidence also shows, however, that in each of these alleged incidents, the officer involved did not think these surprise contacts serious enough to make an official incident report to the Department. There is also no direct evidence, too, as to precisely what extent the liberalized residency rule would result in a reduction of such chance encounters. After all, as

Management stressed, what exists now is a "3 mile residency rule," giving the officer "some space", and still there are reports of these change, negative encounters. How much would the expansion of possibilities for the rare negative contacts off duty be reduced is speculative and, to a degree, imponderable, I conclude.

Another concern illustrated by the testimony of the Union witnesses is a perceived potential "for retribution" by peers of the children of the police officer for the acts of the parent. The argument goes that if the children of these officers are forced to go to schools located in the Village, there is a potential for some other child or children to harass, bother, intimidate or physically hurt the children of those officers. There was no concrete proof that such retribution has ever happened in this Village, though, the record evidence reveals. Thus, I am not persuaded by that argument either that an expansion to a "20 mile rule" is required

by the proofs or more fair than the Village's offer of the status quo.

On the other hand, as a counter argument, the Village urges that having a police officer in the neighborhood is both psychologically reassuring to the Village's citizens and consistent with the best and most efficient police practices. It is the position of the Village that when call-backs are required, or where there are emergencies which require all officers to return to their on-duty assignments, having some substantial portion of the work force living 20 miles away, stands as a real impediment to that aspect of the Police Department's mission. According to Management, the actual scope of a police officer's employment, and the inherent duties involved in such work, strongly militate against the Union's last and best proposal in this current case.

Thus, the parties' arguments for or against the two proposals on-the-table are reasonably counterbalanced as to the elements available for review under IPLRA in specific reference to the motivating reasons for the need for arbitration: the assessment of the Village that there is psychological and political benefits to its citizens in maintaining the scope of the residency rule "as is", and the Union's desire to obtain for unit employees the basic right to live where they want, within reason, and to have some portion of an officer's life insulated from the job. As to the advantages of each proposed rule, as noted above, there is no clear-cut winner.

Similarly, I reject the Union's proofs as to alleged disparate enforcement of the current residency rule, as will be discussed below. The history of the current rule favors the Village, I find, however. The evidence on recruitment and retention of officers also reflects that the status quo is workable, I stress. And, I particularly note, the fact that the parties are willing to have a "one issue" interest arbitration underscores how important each side believes residency is to its constituents, I find.

One area where there is a substantial amount of proof relevant to the standards of Section 14(h) of IPLRA is that of internal comparabilities, which can be a major recognized standard for determining a contract term or a series of contract terms under that Act. It is to be noted that I have held that where such items as the rate or percentage of increase in pay are at issue, the treatment by the Employer of this non-unionized personnel should not be given great weight by an interest arbitrator. The failure to have an arm's length negotiations with regard to wages or similar economic benefits when there is no Union representation substantially detracts from the argument that non-Unionized employees can be a fair comparison group when rates or percentage of increase are involved. It is not enough to say in that situation that the Village desires uniformity, since an acceptance by a neutral of that logic would essentially gut the Act, I stress. See my decision in Village of DeKalb and Local 1236, IAFF (1988). However, numerous interest arbitrators find the provisions of

IPLRA to evidence of internal comparability have held that where there is a logical need for uniformity in particular conditions of employment, even economic ones, a comparison with other Village employees, whether Union or not, may be completely appropriate. In the area of the administration of health insurance benefits, for example, Arbitrator Fleischli, in Village of Schaumburg and FOP (September 15, 1994), perhaps stated it best when he explained:

"In the case of benefits like health insurance, internal comparisons can be particularly important because of the practical need to establish uniformity in the largest pool for reasons of fairness and to hold down overall costs." Id. at p. 36.

See also, Arbitrator Feuille's analysis in City of Peoria and IAFF, issued September 11, 1992, and my own discussion of the importance of internal comparability in health care in Village of Elk Grove Village and MAPP, ISLRP No. S-MA-95-11 (1996, at p. 96). In Kendall County and Sheriff's Department of Kendall County and the FOP (November 28, 1994), at p. 24, I concluded that:

"Internal comparables have much greater importance on benefits like health insurance than on percentage of wage increases to be granted, I specifically hold."

There is a legitimate and logical concern on the part of the Management of the Village that a residency rule should be uniform among all its employees, unless a compelling reason for a difference in that particular condition of employment for this bargaining unit has been proved, I find. As I noted earlier, and I reiterate here, I find that the Union's attempt to establish such a

compelling need for the liberalization of the Village's residency rules because of the unique nature of the terms of work for police officers does not convince me in this case to disregard the internal comparables, which undisputedly show all other Village employees work under the same rules for residency as does this bargaining unit. My conclusion on that point is a central one for my final choice between the parties' last and best offers, and I so rule.

I also realize that it is clear that if I grant the Union's proposed more liberal residency rule, it is predictable that the Village's other employees will instantly be jockeying back and forth for a similar more liberalized residency requirement. Certainly, the other unionized employee group, the Telecommunicators, through its bargaining agent, Local 726 of the Teamsters, will demand "me too" or, later, will try to outdo the FOP at the bargaining table to obtain an even wider area in which those employees could live and still be Village employees. Under these factual circumstances, it is not irresponsible or unreasonable for Management to resist being put in a position where it can be whipsawed on the residency question, I rule.

I also note that although the Union contends otherwise, there are substantial and probative evidence that this Village has enforced its residency policy since at least 1988 in a manner consistent with its clear and unambiguous terms. There was a period of time earlier when there was a laxity in the rule's

enforcement, Management acknowledges. Also, managers and supervisors acting under apparent authority prior to 1988 may have misled potential employees on the meaning and application of the then-current residency rules. Although those facts caused employees to be granted administrative exceptions in 1988, the unrebutted testimony of Employer witness Zimmerman was that the residency rules have been fully enforced since that time. Despite the Union's argument that the administrative exceptions just discussed created an estoppel for the enforcement of the Village's residency rule, or showed disparate application of it, I conclude Management has proved that the rule has been vigorously enforced and uniformly applied at least since 1988. I so hold.

I agree with the contention of the Village that, as regards internal comparability, what happened in the negotiations for the first labor contract between Teamsters Local 726, representing the Telecommunicators, and this Village, requires close scrutiny. As Management argued, and I mentioned earlier, the residency issue is the type of issue where comparisons with other Village employees are constantly made, on an individual basis. Moreover, the testimony of the Village's chief spokesman in the Local 726, IBT negotiations in 1998, was that the residency issue was of significance to both parties.

Also, there is no dispute that the 1998 negotiations between the Teamsters and this Village took place after the residency amendments to the Act. Additionally, I am reminded by the Employer

that the Telecommunicators have a right to strike under IPLRA, but the Teamsters as their representative accepted the status quo, namely, contract language identical to Article XIV of the parties' predecessor labor contract. There is thus logic to the Village's argument that if the FOP and it had engaged in good faith and arm's length bargaining, the result would be no different than Management's final and best offer.

At any rate, in this instance, the bargaining unit of Telecommunicators negotiating for an initial labor contract constitutes a highly appropriate "comparison group" with the police officer bargaining unit within the meaning of Section 14(h) of the Act, I find. The results of the 1998 bargaining between Local 726 of the Teamsters and the Village leads me to conclude that this aspect of internal comparability provides strong support for the Village's final and best offer as a reasonable approximation for a negotiated settlement and therefore more reflective of the parties' expectations than what the Union has proposed. I so rule.

In my view, to reiterate, there are at least two basic factors which distinguish this particular case from the general line of arbitration decisions, including mine, demanding strong proof of give and take in negotiations before an interest arbitrator will grant a breakthrough item. The role of an interest arbitrator is to give the parties what they should have gotten in negotiations, as I mentioned above, and to otherwise not disturb the status quo, but the presence of both factors about to be discussed causes me to

decide the breakthrough demands of the Union here cannot be granted in this "first contract." I accept the Village's argument to that degree.

I believe and hold, after careful review, that there is a substantial inconsistency between the Employer's current reliance on the general principle that the Union failed to prove it offered a quid pro quo during negotiations to induce the Village to agree to its proposal and the equally detailed and clear evidence given by Employer witness and chief negotiator James Baird, that he told the Union consistently throughout bargaining, if not in words then by his actions, that the matter of Village resistance to liberalization of that rule for this contract was politically, socially and philosophically based and not capable of alteration through the give and take of negotiations. The "firm but fair" posture of the Employer prevented genuine bargaining with a Union also intent on not moving one inch, I conclude. In other words, neither side proved to me they were willing to accommodate the other or to move at all on this "hang-up" issue, despite its non-economic basis. This is the essence of the impasse, I hold.

However, as I already mentioned, the fact that both sides were willing to go to interest arbitration over a single issue, especially a non-economic one, convinces me that the parties have demonstrated both that bargaining will not solve the issue now, and that the parties desire an answer from the Arbitrator, rather than a statement that I do not grant breakthroughs as a matter of

general principle. Those other factors set out above, in great detail, which suggest to me that the Employer's offer to change nothing on residency is more reasonable than the Union's demand to liberalize the disputed rule, cause me to rule for the Village here, and I so hold.

In short, under these specific facts, I also conclude that the general rule regarding interest arbitrators' reluctance to grant breakthroughs in arbitration, solely because such a grant directly undercuts the bargaining process, is simply inapplicable to these facts. Like Arbitrator Doering in City of Urbana, ISLRB No. M-90-214, FMCS File No. 90-00955 (issued May 2, 1991), I find that the philosophical basis of the Employer's resistance to a non-economic proposal, when viewed in light of the entire bargaining history presented to me, obviated the need for the Union to bear any burden of proving it presented specific offers to compromise or some quid pro quo to induce the Village to agree to its proposal. Under these facts, I emphasize, the process of give and take could not work, but the issue would not go away, either. A "breakthrough" here is not the same as in most other areas, where the parties' assessment of their respective interests do not preclude exchange of benefits or compromise, I note.

Perhaps the most significant fact of record, I conclude, is that the parties brought this single issue dispute to interest arbitration and underwent the expense and inconvenience of litigating a non-economic issue that in many bargaining relations is not considered of central importance. The proofs as to every applicable factor must be analyzed and weighed, I point out. In my view, this arbitration itself underscores the depth and difference in philosophy and the fact that, in this particular Village, "residency rule liberalization" could only be won by the Union in

arbitration, and not by bargaining across-the-table, unless a quid pro quo of some substantial value were to be offered to trade. The Employer's position that, at present, its social and political concerns, as well as its need for uniformity among all the Village's employees in matters of its residency requirements is found by the Neutral Arbitrator to be fully logical and reasonable.

Internal comparability dictates that I give substantial weight to the results of the 1998 negotiations for the only other Unionized group of employees, the Telecommunicators who, in their first contract, agreed to the status quo in the Village's current last and best proposal in the instant dispute, too, I stress. That "internal comparable" is pivotal in my reasoning process. Arm's length bargaining by a unit of employees who could strike brought that group of employees no more than the FOP had, under the pre amendment rules, as I said above. Whatever else is involved, that is so clearly the case that I find that aspect of the "internal comparables" argument to tip the scales for the status quo, absent evidence of a need for a liberalization of the residency rule more persuasive than what has been placed on the record; I rule that there is also no basis for me to frame a different result than the status quo, under these unique facts, and I so rule.

Consequently, based on the totality of the evidence, I find the Employer has proved its final offer more reasonable and more consistent with the specific criteria under Section 14(h) of the Act that have been found by me to actually be applicable to the

instant dispute. The Union's general proofs on the desirability to the Village's police officers of a liberalized residency requirement is recognized. These proofs, however, were counter-balanced and evenly matched, I conclude, that the Village's probative evidence of operational concerns by Management, at least with regard to call-backs or emergencies, if officers are permitted to live up to 20 miles from their jobs.

The specific proofs of the background and the genesis of the residency rule as presented by this Village also show its claim for uniformity and maintaining the status quo has support from the internal comparability data and also as a matter of significant social symbolism. These unique concerns cause me to rule in Management's favor. The scope of this decision is narrow and limited to its facts, as I have said several times. I certainly am not enunciating a broad principle to rescind the reach of the IPLRA amendments to make residency bargainable by this Opinion and Award.

I also find that under these circumstances it would not be proper for me to attempt to formulate an award different from the proffered last and best offers of the FOP and this Village. Accordingly, the Village's final offer is adopted by me. My Award follows.

IX. AWARD

I award with respect to this non-economic issue that the Village's final offer is granted. I therefore order the incorporation of Article XIV of the predecessor labor contract into the current labor agreement between these parties. This offer is, on balance, more reasonable and consistent with the applicable standards of Section 14(h) of IPLRA. For all the reasons stated above, and incorporated herein as if fully rewritten, the Village's proposal is adopted as the Award of the Neutral.

ELLIOTT H. GOLDSTEIN
Arbitrator

October 27, 1999