ILRB
#214

IN THE MATTER OF THE INTEREST ARBITRATION

BETWEEN

EMPLOYER
THE CITY OF COUNTRY CLUB HILLS
COUNTRY CLUB HILLS, ILLINOIS

AND

UNION
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
& HELPERS OF AMERICA, AFL-CIO;
LOCAL 726

ISLRB CASE NO. S-MA-98-225

FINDINGS AND AWARD

PURSUANT TO
THE ILLINOIS PUBLIC LABOR RELATIONS ACT
as Amended Effective July, 2000
(Ill.Rev.Stat. 1991, Ch. 48, pars. 1601 et. seq.)
[5 ILCS 315]

Rendered By:

GEORGE EDWARD LARNEY
Sole Interest Arbitrator

August 10, 2000
Chicago, Illinois

IN THE MATTER OF THE INTEREST ARBITRATION

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EMPLOYER
THE CITY OF COUNTRY CLUB HILLS
COUNTRY CLUB HILLS, ILLINOIS

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UNION
INTERNATIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN
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LOCAL 726

ISLRB CASE NO. S-MA-98-225

IMPASSE ISSUE

- RESIDENCY

FINDINGS AND AWARD

PRELIMINARY INFORMATION

CASE PRESENTATION - APPEARANCES

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CHRONOLOGY OF RELEVANT EVENTS

Pursuant to Article XXII of the 1995-98 Collective Bargaining Agreement, the Union Timely Notified the Employer of Its Desire to Engage in Negotiations For A Successor Collective Bargaining Agreement; Date of Notification */	January, 1998
Parties (Employer and Union) Commenced Their First Bargaining Session For A Successor Collective Bargaining Agreement to the 1995-98 Contract; Date of Session ±/	March, 1998
At the Initial Bargaining Session, Union Asserted It Advanced an Oral Proposal to Eliminate the Existing Residency Requirement For Police Officers As Set Forth in Chapter 4 of the City's Employee and Personnel Regulations; Date Proposal Advanced **/	March, 1 998

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*/ Article XXII, the Termination Clause, provided for at least a ninety (90) days notification prior to the anniversary date, April 30, 1998, of an intention to modify the Agreement (Jt. Ex. 1).

±/ Article XXII provided that once notification was made to modify the Agreement (Jt. Ex. 1), negotiations were to begin no later than sixty (60) days prior to the anniversary date, April 30, 1998. Since negotiations commenced in early March of 1998, it appears the Parties did not fully comply with the sixty (60) days provision.

**/ Section 4.3.09 of the Employee and Personnel Regulations provided in pertinent part the following as mandated by City Ordinance:

> **A.** All full time employees of the City (as defined by Section 4.401) shall reside within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills.

(**/ continued on next page)

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

On or About April 22, 1998, the Employer Tendered a Written Proposal to the Union Pertaining to Residency Requirements Applicable to Bargaining Unit Peace Officers and Proposing to Incorporate Said Proposed Residency Requirements As a New Section in the Successor Collective Bargaining Agreement; Proposal Dated ++/	April 22, 1998

(**/ continued from previous page)

> **B.** Each employee hired by the City after June 1, 1987, shall make his residence within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills, Illinois within nine (9) months after completing his probationary period.

* * * *

[Jt. Ex. 3B(1)]

The Arbitrator notes that as this regulation is applicable to all City employees, the thrust of the Union's oral proposal was to exempt bargaining unit peace officers in the ranks of Patrol Officer and Sergeant from the Residency requirement. The Arbitrator further notes that the City asserts the Union made no such proposal regarding the pre-1998 Residency requirement and that discussions regarding Residency all pertained to new hires affected by an amendment to the City Code enacted by the City Council effective April 27, 1998.

++/ Although this proposal was dated April 22, 1998, Union Counsel Green testified it was his recollection the bargaining session on April 22nd was postponed and this proposal was tendered to the Union sometime shortly thereafter, but subsequent to the passage of the City Ordinance on Residency amending the City Code. This proposal read in whole as follows:

> All employees hired after the effective date of this Agreement shall become residents of the City within twelve (12) months from their return from the academy. Any patrol officer promoted to the position of sergeant shall become a resident of the City within eighteen months from the date of promotion.

(Un. Ex. 10)

(++/ continued on next page)

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

On a Roll Call Vote of Nine (9) In Favor and One (1) Against, the City Council on April 27, 1998 Amended Section 4.3.09 of the City Code by City Ordinance 0A-4-98, Adding Subsection D Which Provided that, "All full-time employees of the City hired after May 1, 1998 shall become bona fide residents of the City within twelve (12) months after that employee's date of hire" [Jt. Ex. 3B(2)], Date Amendment Passed, Approved and Became Effective *+/	April 27, 1998
By Transmittal Letter Dated May 11, 1998, Attorney, John B. Murphey, Representing the City in Matters of Collective Bargaining, Forwarded a Copy of the April 27, 1998 Residency Ordinance to James W. Green, Jr., Staff Counsel for the Union; Date Green Received the Ordinance +*/	May 15, 1998

(++/ continued from previous page)

In a postscript note at the bottom of this proposal, the City stated it was its position it did not have to bargain this issue, and reserved all rights in this regard and, that it was submitting the proposal without waiving any rights.

*+/ As the record is incomplete as to the history of bargaining for the successor 1998-2001 Collective Bargaining Agreement, it is not clear whether the Union responded to the City's written Residency proposal of April 22, 1998 either prior to or subsequent to the City Council enacting the subject amendment to Section 4.3.09 of the City Code.

+*/ Green testified he became aware of the Ordinance's existence and passage by way of a happenstance conversation with Officer Gary Kmetty, a Local 726 Steward. Green related that at a subsequent bargaining session he inquired of Murphey about passage of the Ordinance, expressed to Murphey the Union was not very happy about the fact the City passed a Residency Ordinance as it held the position the City was obligated to bargain the issue of residency and asked Murphey to forward a copy of the Ordinance to him. According to the record evidence, Green did not receive a copy of the Ordinance until May 15, 1998.

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

In Response to the City Council's Action of Passing and Approving the Amendment to the City Code Imposing More Restrictive Residency Requirements on Employees Hired After May 1, 1998, the Union Filed an Unfair Labor Practice Charge Against the Employer With the Illinois State and Local Labor Relations Board (ISLLRB) on Grounds the Passage of the Amendment Constituted a Unilateral Change of a Term or Condition of Employment; As a Remedy, the Union Requested the Board to Order "revocation of all changes in terms and conditions of employment which have been implemented pertaining to residency" and, to Issue "an order to bargain with the Union regarding all matters pertaining to residency and its effects on members of the bargaining unit"; Date Charge Filed	November 10, 1998
Letter From John B. Murphey to James W. Green, Jr., Setting Forth the City's Final Position In the Matter of Negotiating the Successor Collective Bargaining Agreement; Murphey Addressed Nine (9) Specific Items, One of Which Was the Issue of Residency Wherein He Stated the Following: "The City adheres to the position as to the validity of the previously adopted Ordinance. In the interest of fairness and recognition of the realities of potential arbitration, I will recommend that the City stay the enforcement of the Residency Ordinance pending resolution of this issue;" Proposal Dated ***/	February 12, 1999

***/ In closing, Murphey stated in pertinent part that he understood the Union's position regarding the Residency Ordinance but, in an effort to settle other Contract issues, was prepared to recommend acceptance and implementation of the other aspects of the subject package proposal.

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Letter From John B. Murphy to James W. Green, Jr., Addressing Six (6) Specific Items Still Open in Negotiations, One of Which Was the Issue of Residency Wherein He Stated, "The City adheres to the position as to the validity of the previously adopted Ordinance;" Letter Dated **+/	April 02, 1999
Letter to This Arbitrator From the Illinois State & Local Labor Relations Boards (ISLRB) Dated April 22, 1999 Confirming His Appointment As Interest Arbitrator and As Chairman of an Interest Interest Arbitration Panel Selected by the Parties; Date Letter Received by the Arbitrator	April 24, 1999

+/ The Arbitrator notes that missing from this City's position on the issue of Residency was the offer made in its offer dated February 12, 1999 (Un. Ex. 8) that there would be a recommendation to stay the enforcement of the Residency Ordinance pending resolution of the Residency issue. However, Murphey did close this letter with the same language he closed his February 12th letter regarding acceptance of all aspects of the proposed package other than the Issue of Residency (see fn. */, supra). Green testified that sometime in mid-April of 1999, Municipal Elections took place in the City and, as a result, some new trustees were elected and there was also a change in the makeup of the City Council as well. Green related that following the election, Murphey informed him the City had advised him (Murphey) to enforce the Residency Ordinance against three (3) newly hired bargaining unit officers subject to the amendment to City Code 4.3.09 adding Subsection D to the Residency Ordinance passed on April 27, 1998. The three (3) officers affected were: Donald Kyle, Edward McKinney, and Montel Williams. Green testified he pretty much "went ballistic" in response and immediately filed a request for injunctive relief with the ISLLRB seeking to prevent the City from terminating the probationary employment of Officers Kyle, McKinney, and Williams.

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Arbitrator Convened an Executive Session at Which the Parties Identified Impasse Issues and Indicated Their Willingness to Engage a Second Time in Mediation to Resolve Their Differences As a Means of Not Having to Proceed to a Full-Blown Interest Arbitration; Date of Executive Session *++/	May 21, 1999
Brian E. Reynolds, Executive Director, ISLLRB, Ruled to Dismiss the Union's November 10, 1998 ULP Against the City on Grounds that the Charge Was Not Timely Filed; Date Decision Rendered +++/	June 08, 1999

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*++/ According to the Union, it filed for mediation assistance on or about February 3, 1999. The Arbitrator notes that in his letter of February 12, 1999 to the Union (Un. Ex. 8) setting forth the City's final position, Murphey referenced it was his understanding that there would be a meeting on February 16, 1999 with both the officers and the mediator. Thus, prior to the entry of this Arbitrator into the Parties' negotiations for a successor Collective Bargaining Agreement, the Parties had already engaged in bargaining under the auspices of mediation.

The Arbitrator further notes that at the conclusion of this Executive Session, the Arbitrator proposed, in writing, a recommended settlement on the issues of wages for a three (3) year agreement, sick leave buy back, personal days/hours worked, and uniform allowance. Notwithstanding possible tentative agreements on these issues by the Parties' respective constituents, a total of five (5) issues were identified as still open, the first on the list of which was Residency. The Parties pledged to give further study and consideration to the list of identified open issues during the interim period of May 21, 1999 and July 8, 1999, the date an interest arbitration hearing was scheduled to convene.

+++/ The Board stated in pertinent part that the question posed in the ULP filed by the Union is whether the Board should find to

(+++/ continued on next page)

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Letter from Murphey to the Arbitrator Apprising Him of the Board's June 8, 1999 Ruling to Dismiss the Union's November 10, 1998 ULP on Grounds of Untimeliness, Forwarding a Copy of the Dismissal Order, Reiterating the Position of the City Regarding the Residency Ordinance Issue Which, In Sum, Was a Continuing Refusal to Bargain the Issue of the Residency Ordinance and the City's Intention to Invoke Its Right by Statute and the Collective Bargaining Agreement to Discharge Probationary Officers Unwilling to Comply with the Residency Ordinance; With Respect to Officer McKinney, the City Stated that Since He Made Clear He Was Not Going to Comply With the Residency Ordinance Under Which He Was Hired, It Would Proceed to Terminate His Employment on June 17, 1999; In the	June 09, 1999

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commence the limitations period, a period no greater than six (6) months prior to the filing of a charge with the Board (as provided by Section 11(a) of the Act), from the public (City Council) meeting (of April 27, 1998) or from the date the City gave direct notice to the Union (May 15, 1998). The Board noted the charge appears to be timely filed if it calculates the limitations period from May 15, 1998 but untimely if it calculates the limitations period from April 27, 1998. The Board determined that the proper date for commencing the limitations period was April 27, 1998 finding, in pertinent part, that the purpose of requiring action at public meetings is precisely to give notice of those actions to persons affected by the decisions. Although the Board did not rule on the merits of the charge, it did comment on the Employer's position that the Act (IPLRA) does not require it to bargain over selection criteria based on the premise that prospective employees are not part of the bargaining unit and, accordingly, any requirement connected to the selection process does not 'vitally affect' the interests of unit employees. The Board stated that, in its view, the Ordinance in question appears to be part of the selection process (Jt. Ex. 9C).

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Alternative, Murphey Proposed an Off-the-Record Compromise Proposal For the Arbitrator to Explore With the Union Which Involved Acceptance by the Union of the Validity of the Residency Ordinance and, By So Accepting the City Would Not Apply the Ordinance to Officers McKinney, Kyle, and Williams Contingent on the Condition that All Other Open Issues be Resolved; Murphey Set a Deadline of Monday, June 14, 1999, For a Response By the Union; Letter Dated and Received by the Arbitrator	
Letter From ISLLRB General Counsel, Jacalyn J. Zimmerman, to Union Counsel Green Wherein She Informed Green that Because the Board Had Issued a Dismissal of the November 10, 1998 ULP, the Matter of the Union's Request For Injunctive Relief Did Not Meet the Statutory Criteria for Preliminary Relief Per the Requirements of Section 11(h) of the IPLRA; Letter Dated ++*/	June 09, 1999
Mediation Session Convened at Which, Among Other Issues Considered, the Parties Entered Into a Mutual Agreement To Extend the Probationary Period of Offices McKinney, Kyle and Williams For An Additional Period to and Including December 31, 1999 With the Understanding that Officer Williams May Opt Out of the Agreement by 10:00 a.m., June 13, 1999, in Writing; Date of Mediation Session and Date of Agreement	June 10, 1999
Mediation Session Convened	July 08, 1999

++*/ The Arbitrator recalls that this request by the Union to the ISLLRB for injunctive relief was triggered by Murphey's apprising Green in April of 1999 after Municipal elections were held that the City intended to terminate Officers McKinney, Kyle and Williams because they were not in compliance with the City's Residency Ordinance (see fn. **+/, supra).

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Mediation Session Convened At Which the Parties Reached Tentative Agreement On All Outstanding Issues Except For the Issue of Residency and Where the Parties Entered Into a Mutual Agreement on Ground Rules and Stipulations Governing the Forthcoming Interest Arbitration proceeding; Date of Mediation Session +**/	July 12, 1999
Filing by the City to the ISLLRB of Petition For a Declaratory Ruling Inquiring Whether the City Has a Legal Duty to Bargain Over the Residency Ordinance Adopted in April of 1998 and Whether the City May Terminate the Employment of Probationary Police Officers Who Have Failed to Comply With the Requirements of the Residency Ordinance; Date Petition Filed	August 30, 1999
By Telephone Call From Attorney, J. Dale Berry, Representing the Union, to the Arbitrator, Berry Informed the Arbitrator that Both Parties Had Ratified the Tentative Agreements Reached at the July 12, 1999 Mediation Session But That the Union Still Desired to Proceed to an Interest Arbitration on the Residency Issue Which Was Placed in Abeyance by Mutual Agreement of the Parties; Date of Telephone Call	September 01, 1999

+**/ Among the various stipulations entered into was one specifically addressing the Residency issue wherein it was stated that the City disputes the Arbitrator's jurisdiction to rule upon the Union's Residency proposal specifying a Residency requirement for bargaining unit employees as a provision of the Parties' successor agreement. However, the Parties further stipulated that the Union's Residency proposal would be heard and determined by this Arbitrator if the City withdrew its current objection and/or is required to do so by process of law (Jt. Ex. 9E).

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Union Filed ULP With the ISLLRB Against the City, Alleging the City Had Failed and Refused to Negotiate in Good Faith With Respect to the Subject of Including a Provision in the Parties' Contract Relating to Uniformly Applied Residency Requirement as a Condition of Continuing Employment For All Employees Included Within the Bargaining Unit; In Particular, the Employer Had Refused to Consider or Respond to any Proposal That Allows Any member of the Bargaining Unit Currently Employed But Hired After May 1, 1998 to Establish a Residence Outside the City Limits of Country Club Hills; Among the Remedies Sought by the Union Was an Order by the Board to the City to Cease and Desist From Its Refusal to Submit the Residency Dispute to the Pending Interest Arbitration Before This Arbitrator Without Further Delay; Date ULP Filed	September 09, 1999
By Letter Dated September 9, 1999, Attorney Murphey Informed the Arbitrator that the City Had Filed With the ISLLRB a Petition For Declaratory Ruling Relative to the Issue of Residency and That Since Briefs Were Due to be Filed Relative to This Petition on September 24, 1999, The Parties Were Requesting that the Interest Arbitration Set for October 7, 1999 Be Continued to a Mutually Agreeable Date After October 24, 1999, the Date When the Board's General Counsel Was Expected to Issue the Requested Declaratory Ruling; Date Letter Received by the Arbitrator	September 10, 1999
City Filed Motion With the Arbitrator to Dismiss/Objection to Jurisdiction Requesting that the Interest Arbitration Scheduled to Commence November 11 and 12, 1999 Be Dismissed	November 08, 1999

(continued on next Page

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

or Stayed On Same Grounds It Set Forth in the Parties' July 12, 1999 Ground Rules and Stipulations of the Parties Noting that Neither Condition Precedent Stated in the Ground Rules had Occurred, To Wit: (1) The City Had Not Withdrawn Its Current Objection to this Arbitrator's Jurisdiction to Rule Upon the Union's Residency Proposal Specifying a Residency Requirement for Bargaining Unit Employees and (2) The City Had Not Been Required to Submit This Matter to Arbitration by Process of Law; Date Motion Filed	
ISLLRB General Counsel, Zimmerman, Issued Board's Ruling on the City's Petition For Declaratory Ruling Filed August 30, 1999 Without Benefit of an Accompanying Full Opinion Supporting the Ruling In Consideration of the Parties' Upcoming Interest Arbitration; The Ruling Stated, "... the questions concerning residency requirements for peace officers raised in the instant declaratory ruling proceeding, including the Union's proposal and the Employer's ordinance, involve mandatory subjects of collective bargaining which are properly before the interest arbitrator"; Date Ruling Rendered and Received by the Parties *++/	November 09, 1999
Interest Arbitration hearings Held	November 11, 1999 November 12, 1999

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*++/ In light of the Board's ruling, the Arbitrator ruled to deny the City's November 8, 1999 Motion to Dismiss/Objection to Jurisdiction at the beginning of the November 11, 1999 hearing.

CHRONOLOGY OF RELEVANT EVENTS (continued from previous page)

Original Volumes of the Transcript Received by Attorney J. Dale Berry +*+/	December 02, 1999
NOVEMBER 11, 1999 HEARING VOLUME I, pp. 1-353	
NOVEMBER 12, 1999 HEARING VOLUME II, pp. 1-112	
On Date of December 16, 1999, ISLLRB General Counsel, Jacalyn J. Zimmerman, Issued a Full Opinion Addressing the City's August 30, 1999 Petition For Declaratory Ruling In Support of the Preliminary Ruling She Issued on the Petition on November 9, 1999; Date Declaratory Ruling Received by the Arbitrator	December 17, 1999
Post-Hearing Briefs Received by the Arbitrator:	
EMPLOYER	February 10, 2000
UNION	February 14, 2000
By Letter to the Parties Dated February 14, 2000, the Arbitrator Interchanged the Post-Hearing Briefs and Declared the Case Record In These Proceedings to be Officially Closed As of the Date the Last Brief Was Received; Date Case Record Closed	February 14, 2000

+*+/ Upon request by the Arbitrator, Berry had copies of the two volumes of transcript delivered by messenger to the Arbitrator's office on date of July 18, 2000.

AUTHORITY TO ARBITRATE

ILLINOIS PUBLIC LABOR RELATIONS ACT (IPLRA) - August, 1997
(Ill.Rev.Stat. 1991, Ch. 48, pars. 160 et. seq.) [5 ILCS 315]
Section 14, Security Employee, Peace Officer and Fire Fighter Disputes

RULES AND REGULATIONS (effective September 13, 1993)

Title 80:	Public Officials and Employees
Subtitle C:	Labor Relations
Chapter IV:	Illinois State Labor Relations Board/ Illinois Local Labor Relations Board

Part 1230:	Impasse Resolution
Subpart B:	Impasse Procedures for Protective Service Units
Sections:	1230.70; 1230.80; 1230.90; 1230.110 Covering Compulsory Interest Arbitration

COURT REPORTERS

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LOCATION OF HEARING

COUNTRY CLUB HILLS MUNICIPAL CENTER
4200 West 183rd Street
Country Club Hills, Illinois 60478
(708) 798-2616

WITNESSES (in order of respective appearance)

FOR THE EMPLOYER	FOR THE UNION
NONE	GARY KMETTY Patrol officer & Local 726 Union Steward
	JOHN R. JOYNT x/ Former Police Commissioner
	SHERION REASON x/ Patrol Officer
	KEVIN CASEY x/ Police Officer, University of Chicago Police Department
	DONALD W. KYLE Patrol Officer
	MONTEL J. WILLIAMS Patrol Officer
	EDWARD McKINNEY Patrol Officer
	BONNIE BEACH x/ Patrol Officer
	ERIC C. BERGER x/ Patrol Officer
	JAMES W. GREEN, JR. Staff Counsel, Local 726

OTHERS IN ATTENDANCE AT HEARING

FOR THE EMPLOYER	FOR THE UNION
NONE	JOHN FALZONE Business Agent, Local 726

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x/ Witness's appearance commanded by Subpoena prepared by the Union and signed by the Arbitrator

MOTIONS AND RULINGS

- City moved to seclude witnesses and without objection by the Union, the Arbitrator granted the motion (Vol. I Tr. p. 26).

- City moved to exclude spectators from the hearing pursuant to the Parties' July 12, 1999 Ground Rules and Stipulations of the Parties specifically, Stipulation Number 6 that reads as follows (Vol. I, Tr. p. 33):

  > All sessions of the hearing will be closed to all persons other than the Arbitration Panel, court reporter(s), representatives of the parties, including negotiating team members and witnesses.

  Notwithstanding objections voiced by the Union, the Arbitrator granted the motion.

BACKGROUND

The City of Country Club Hills, hereinafter City or Employer, is a home rule municipality governed by an elected Mayor and Trustees and by elected Aldermen comprising a City Council. The City provides its inhabitants with the gamut of municipal services including public safety in the form of police and fire protection. The City maintains an independent Fire and Police Commission composed of three (3) members appointed by the Mayor. Under home rule status, the principal duties of the Commission relative to its responsibilities with the Police Department is to establish an eligibility list of prospective hirees from which to recommend to the Mayor which candidates to hire as police officers, to establish promotional lists for those patrol officers who aspire to a higher rank, and, to recommend to the Mayor disciplinary actions ranging from varying lengths of suspension through discharge.[1] Local 726 of the International Brotherhood of Teamsters, hereinafter Union or Local 726, is the sole and exclusive collective bargaining representative for all full-time sworn peace officers in the ranks of Patrol Officer, Detective and Sergeant. The City and the Union, hereinafter the Parties, maintain a formal collective bargaining relationship and prior to September of 1999 were governed by the terms, provisions, and conditions of employment mutually agreed to and set forth in their 1995-98 Collective Bargaining Agreement (Jt. Ex. 1).

As provided for in Article XXII, the Termination clause of the 1995-98 Agreement (Jt. Ex. 1), ninety (90) days prior to the expiration date of the Agreement, April 30, 1998, the Union notified the City of its intention to open collective bargaining negotiations for a successor agreement. Between March, 1998 and July, 1999, the Parties engaged in continuing negotiations assisted, at times, with mediation and, on July 12, 1999 reached tentative agreement on all issues previously at impasse except for one, the issue of Residency. At the time the Parties negotiated and consummated their 1995-98 Agreement (Jt. Ex. 1), the issue of Residency was not a mandatory subject of bargaining under the Illinois Public Labor Relations Act (IPLRA), the controlling statute governing collective bargaining between public employers and employees including police. Prior to August 15, 1997, Section 14(i) of the IPLRA provided in pertinent part the following:

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[1] Under non-home rule status, the Fire and Police Commission is the sole source for hiring sworn police officers and for disciplining and discharging officers as well.

> In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and **shall not include the following i) residency requirements** ***. (Emphasis by the Arbitrator).

Effective August 15, 1997, a time when the Parties 1995-98 Agreement (Jt. Ex. 1) was still in force, the Illinois General Assembly amended Section 14(i) to provide the following:

> In the case of peace officers, 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)** ***. (Emphasis by the Arbitrator).

Both prior to negotiating the 1995-98 Agreement (Jt. Ex. 1) and currently, Section 4 of the IPLRA titled, Management Rights, provides in pertinent part the following:

> Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as ... the organizational structure **and selection of new employees** ***. (Emphasis by the Arbitrator).

The Union asserts that when negotiations commenced in March of 1998 for the successor contract to the 1995-98 Agreement (Jt. Ex. 1), it submitted a number of written proposals but inadvertently, it overlooked reducing its proposal on the Residency issue in writing and instead, it advanced said Residency proposal in an oral presentation. According to the Union, its oral proposal was to eliminate the Residency requirement applicable to its bargaining unit police officers that is also applicable to all other City employees as well. The Residency requirement was, and still is, codified as Section 4.3.09 of the City's Code, which reads in pertinent part as follows:

> **4.3.09 RESIDENCY**
>
> **A.** All full time employees of the City (as defined by Section 4.401) shall reside within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills.
>
> **B.** Each employee hired by the City after June 1, 1987, shall make his residence within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills,

Illinois within nine (9) months after completing his probationary period.

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Employee and Personnel
Regulations
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[Jt. Ex. 3B(1)]

The Employer asserts that, at no time, during negotiations did the Union ever advance, either as a written proposal or an oral proposal, a demand to eliminate the existing Residency requirement as applied to members of its bargaining unit. However, the record evidence reflects that the City advanced a proposal regarding a Residency requirement for newly hired bargaining unit police officers that was more restrictive than the one set forth in Section 4.3.09 of the City Code and incorporating this residency requirement as a new section in the successor collective bargaining agreement. This proposal, dated April 22, 1998, read in full as follows:

[NEW SECTION] Residency.

All employees hired after the effective date of this Agreement shall become residents of the City within twelve (12) months from their return from the academy. Any patrol officer promoted to the position of sergeant shall become a resident of the City within eighteen months from the date of promotion.

(Un. Ex. 10)

In a Note at the bottom of this proposal, the City informed the Union it was its position it did not have to bargain this issue and reserved all rights in this regard; that it was submitting this proposal without waiving any rights (Un. Ex. 10). The Union claims that while there was a bargaining session scheduled to be held on April 22, 1998, that session was postponed and, therefore, it never received the City's Residency proposal on April 22nd but that it was given the proposal sometime after April 22, 1998. In the meantime however, the record evidence reflects that on April 27, 1998, the City Council, by Ordinance No. OA-4-98, voted almost unanimously (9 votes for and 1 against) to amend Section 4.3.09 of the City Code by adding Subsection D to the residency requirements applicable to all newly hired employees and therefore, applicable to newly hired police officers. Subsection D reads as follows:

> All full-time employees of the City hired after May 1, 1998, shall become bona fide residents of the City within twelve (12) months after that employee's date of hire.
>
> [Jt. Ex. 3B(2)]

The Union claims it was not aware of the passage of this amendment to the City Code at the time the City Council enacted the amendment and that, upon learning of its enactment, it requested Attorney John B. Murphey, the City's advocate in matters of collective bargaining, to forward a copy of Ordinance OA-4-98 to it for its review. On November 10, 1998, approximately six (6) months following receipt of the Ordinance on date of May 15, 1998, the Union filed an Unfair Labor Practice Charge (ULP) with the Illinois State and Local Labor Relations Board (ISLLRB) claiming the enactment of the Ordinance amending the City Code relative to the Residency requirement had been passed by the City without notice to or demand to bargain with the Union, thereby effecting a unilateral change of a term or condition of employment during the pendency of negotiations for a successor collective bargaining agreement, thus making it an unfair labor practice (Jt. Ex. 9B). By decision dated June 8, 1999, the Executive Director of the ISLLRB ruled to dismiss this unfair labor practice charge on grounds it had not been timely filed (Jt. Ex. 9Bc). Notwithstanding these actions and the continuing dispute between the Parties regarding the Residency issue, negotiations continued and were ongoing by the Parties to secure a successor collective bargaining agreement.

The record evidence reflects that in and around March of 1998, about the same time negotiations commenced for a successor contract to the 1995-98 Collective Bargaining Agreement (Jt. Ex. 1), the three (3) members of the Police and Fire Commission of the City interviewed a number of applicants for patrol officer positions in the City's Police Department. According to the record evidence, applicants were interviewed by Commissioners, Ron Jackson, John Joynt, and Edward Noyes and of these applicants three (3) persons were hired by the City to join the rank of Patrol Officer. These three (3) individuals, all employed as peace officers in other communities at the time they made application to the City through the City's lateral transfer program were: Donald Kyle, Edward McKinney, and Montel Williams.[2] In their respective oral testimony

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[2] Kyle testified that prior to being hired by the City, he had been employed for ten (10) years by the Dixmoor, Illinois Police Department. McKinney testified that prior to being hired by the City, he had been employed for eight (8) years by the Orland Hills, Illinois Police Department. Williams testified that prior to being hired by the City, he had been employed by the City of Harvey, Illinois Police Department.

(continued...)

and written Affidavits, all three (3) Officers attested to approximately the same circumstances pertaining to their being hired. Officer Kyle testified that the print ad he responded to made no mention of a residency requirement. All three (3) Officers stated in their Affidavits (Jt. Ex. 11-Kyle; Jt. Ex. 12-Williams; and Jt. Ex. 14-McKinney) that during the course of their interview by Commissioners Jackson, Joynt and Noyes, they were informed that the City was considering implementing a residency ordinance for newly hired employees but that the City was also negotiating a new collective bargaining agreement with the Union and that the proposed residency requirement was one of the issues being discussed in bargaining. The Officers attested they were advised by the Commissioners that no action would be taken regarding residency as it pertained to any newly hired police officer until such time as the matter was resolved with the Union. But, in any event, all the Officers attested that they were advised by the Commissioners they were being hired under the terms of the old Contract, meaning the 1995-98 Agreement (Jt. Ex. 1).[3] The record

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[2](...continued)

Former Commissioner, John Joynt, as part of his testimony, explained the lateral transfer procedure in the hiring of patrol officers. According to Joynt, sometime in the past, the City established the lateral transfer procedure via an ordinance that permitted the hiring of experienced peace officers employed by other communities at the time the City solicited and accepted their application for prospective employment. Applicants for lateral transfers are solicited by print ads in newspapers. Applicants are interviewed by the three (3) Police and Fire Commissioners and then subjected to polygraph and psychological testing. Names and backgrounds of the applicants passing the tests are compiled on an eligibility list which is then reviewed by the Mayor and City Manager. Routinely, the Mayor or City Manager requests the three (3) Police and Fire Commissioners for their input regarding the applicants on the lateral transfer list but with respect to these applicants, the Commissioners do not have the ultimate authority on who is hired from the list as this prerogative is exercised by the Mayor (Vol. I Tr. p. 96).

[3] The Arbitrator notes that the 1995-98 Agreement was devoid of any provision regarding the issue of residency and that at the time the Officers were apprised they were being hired under the terms of the old Contract which, at the time of their interviews, was still the existing Collective Bargaining Agreement then in force, the City had yet to advance its proposal on Residency with regard to new hires dated April 22, 1998. Thus, the only residency requirement in effect at the time the Officers were interviewed was the then unamended Section 4.3.09 of the City Code which provided that each employee hired by the City after June 1, 1987, shall make his residence within a fifteen (15) mile radius of

(continued...)

evidence reflects that McKinney was offered and accepted employment on or about June 22, 1998 and both Kyle and Williams were offered and accepted employment on or about July 27, 1998. At the time all three (3) Officers were hired, the City had already passed Ordinance OA-4-98 amending Section 4.3.09 of the City Code, and the City had already tendered to the Union its April 22, 1998 Residency proposal during the Parties still ongoing negotiations for their successor collective bargaining agreement. All three (3) Officers attested they accepted employment with the City with the understanding that the Residency requirement was being challenged by the Union and that it would not be implemented until such time as the matter was resolved between the Union and the City. At the time of hire, Kyle resided and, still does, in Oak Forest, Illinois, where he owns a single family residence and lives with his wife and two (2) children. At the time of hire, McKinney resided and still does, in Tinley Park, Illinois where he owns a single family residence and lives with his wife and three (3) children. Both Kyle and McKinney asserted in their respective Affidavits dated May 28, 1999 (Jt. Ex. 11 & Jt. Ex. 14), it would be economically burdensome and disruptive to both them and their families to sell their homes and be forced to relocate into Country Club Hills. At the time of hire, Williams, a single male, resided in a rented residency in Park Forest, Illinois. All three (3) Officers attested that on May 10, 1999, they received a memorandum from the City's Police Department ordering them to advise the City if they intended to comply with the Residency Ordinance on their anniversary date of hire.[4] Williams testified that it was about the time he received this memorandum that he first became aware the City had actually put in place a Residency Ordinance affecting newly hired employees. McKinney asserted in his testimony that when he accepted the Patrol Officer's position with the City in June of 1998 he was not informed by anyone that the City Council had passed a Residency Ordinance affecting full-time employees hired after May 1, 1998 and it was not until he was confronted with the ultimatum by the City to comply with the Residency Ordinance or be fired from his position that he first became aware of the existence of the Ordinance. McKinney testified that had he known of the existence of the subject Residency Ordinance at the time he was offered the Patrol Officer's position with the City's Police Department, he would not have accepted the job offer. On the other hand, Kyle testified he had knowledge that the Residency Ordinance

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[3](...continued)
the corporate limits of the City of Country Club Hills, Illinois, within nine (9) months after completing his probationary period [Jt. Ex. 3B(1)].

[4] For Williams, this meant he had to comply with the Ordinance on or about June 22, 1998 and for Kyle and McKinney, this meant they had to comply with the Ordinance on or about July 27, 1999.

was in effect at the time he accepted the offer of employment (July 27, 1998) with the City and knew, at this time, he was taking a risk by accepting employment with the City as a Patrol Officer.

The record evidence reflects that three (3) months prior to the issuance of the May 10, 1999 Memorandum sent to Officers Kyle, McKinney and Williams, Attorney for the City, John Murphey, forwarded to James Green, the Union's Staff Attorney, the City's final position on the nine (9) unresolved issues still remaining at that time in negotiations for the successor collective bargaining agreement by letter dated February 12, 1999. With respect to the Residency issue which was one of the nine (9) remaining unresolved issues, Murphey indicated the City stood by the position as to the validity of the amendment to the Residency Ordinance adopted April 27, 1998 but, in the interest of fairness and recognition of the realities of potential arbitration, he would recommend the City stay the enforcement of the Residency Ordinance pending resolution of the Residency issue. However, sometime in April of 1999, some two (2) months after Murphey made this offer, Municipal elections were held changing the composition of both the City's trustees and also the Aldermen in the City Council and, as a result, Murphey informed Green that notwithstanding his previous offer to recommend staying enforcement of the Residency Ordinance pending resolution of the Residency issue, the City had advised him it intended to enforce the Residency Ordinance with respect to Officers Kyle, McKinney and Williams. Green testified that after Murphey informed him the City intended to enforce Subsection D which was added to the Residency Ordinance April 27, 1998 by the City Council to Officers Kyle, McKinney and Williams, he immediately filed for injunctive relief with the ISLLRB seeking to prevent the City from terminating their probationary employment. However, during the pendency of both the ULP filed by the Union on November 10, 1998 and the Request for Injunctive Relief before the ISLLRB, this Arbitrator was apprised by Notice from the ISLLRB dated April 22, 1999 of his mutual selection by the Parties to serve as Chairman of an Interest Arbitration Panel. In response to this Appointment, the Arbitrator arranged to convene a pre-arbitration meeting with the representatives of the Parties for the purpose of identifying the issues at impasse and setting a date certain to convene the Interest Arbitration hearing(s). During the course of this informal meeting held at Murphey's law offices, the Arbitrator worked with the Parties in a mediatory role and, at this meeting the Parties reached tentative agreement on some of the issues but, remained at impasse on several others which they pledged to review in preparation for a second pre-arbitration meeting set to convene June 10, 1999. However, the one issue that persisted and remained at impasse without any indication of a willingness to compromise by either party was the issue of residency. Prior to convening of the June 10, 1999 pre-arbitration meeting, the ISLLRB rendered decisions regarding the Union's November 10, 1998 ULP and its April, 1999 request for injunctive relief to stay the City's intended action to terminate the employment of Officers Kyle,

McKinney and Williams. Neither decision was in the Union's favor. In a Dismissal ruling of the Union's November 10, 1998 ULP, rendered June 8, 1999, the Executive Director of the ISLLRB, Brian Reynolds held that the ULP was not timely filed and, as a result, the charge failed to raise an issue of law or fact sufficient to warrant a hearing. Additionally however, in dicta, Reynolds addressed the City's position it was not required by the IPLRA to bargain over the amendment to the Residency Code enacted by the April 27, 1998 City Ordinance as that amendment constituted selection criteria applicable to prospective employees who are not part of the bargaining unit and, any requirement connected to the selection process does not vitally affect the interests of unit employees. Reynolds held it was the Board's view the subject City Ordinance appeared to be part of the selection process thereby signaling its concurrence in the City's position. Reynolds noted the subject Ordinance on its face excluded current employees and, too, the fact that prospective employees need not comply with this requirement until after their hire may not make the issue a term or condition of employment. Reynolds further noted that NLRB caselaw supported the City's contention it has no duty to bargain over the content of the selection process reasoning that prospective employees are not part of a bargaining unit, and therefore a union may not demand to bargain over these issues. A day after Reynolds rendered his dismissal ruling, ISLLRB General Counsel, Jacalyn Zimmerman rejected the Union's request for injunctive relief on grounds that, since the Board had ruled to dismiss the November 10, 1998 ULP charge, the request for injunctive relief did not meet the statutory criteria for preliminary relief per the provisions set forth in Section 11(h) of the IPLRA that requires the Board to issue a complaint for hearing prior to filing a petition with a court.

At the pre-arbitration meeting convened June 10, 1999, the Parties continued to engage in exploratory discussions regarding possible concessions on the remaining issues at impasse with the Arbitrator assuming a mediatory role. At this meeting, the Parties entered into a written agreement to extend the probationary period of Officers Kyle, McKinney and Williams to and including December 31, 1999 and, additionally, that with respect to this agreement relative to Officer Williams, Williams was granted the option of exempting himself from the agreement by 10:00 a.m. June 13, 1999, in writing (Jt. Ex. 13). Williams testified he elected not to have his probationary period extended and that, as July 27, 1999, the date marking the end of his one (1) year probation approached, he rented a condominium in Country Club Hills, thereby complying with the City's residency requirement applicable to full-time City employees hired after May 1, 1998.[5]

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[5] In his testimony, Williams acknowledged that he continues to rent a single family residence in Park Forest, Illinois, where

(continued...)

Two additional pre-arbitration meetings were held, one on July 8, 1999 and the other on July 12, 1999 at which the Parties and the Arbitrator, acting in a mediatory role, continued to explore proposals to resolve the remaining issues at impasse with the common objective in mind of avoiding having to convene a full blown interest arbitration proceeding. At the pre-arbitration meeting of July 12, 1999, the Parties reached tentative agreement on six (6) of the seven (7) issues then remaining at impasse, leaving the issue of residency as the only open issue to be resolved.[6] The

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[5](...continued)
he resided prior to being hired by the City as a full-time Patrol Officer and that he has kept his furniture and clothes at the Park Forest residence where he continues to sleep three (3) to four (4) nights a week. Notwithstanding this testimony, Williams denied that his renting of a condo in Country Club Hills is a phantom residence to circumvent the residency requirement and that his lease on the condo expires in and around August of 2000. Williams explained that he shares the condo in the City with a friend of his, and that the friend owns the condo and is seeking to convert the condo to Section 8 low income housing. Williams explained that if this conversion occurs, he will be forced to move as his income exceeds that of individuals entitled to reside in low income housing. Williams maintained that if he is forced to move out of the condo, while he is not income eligible to continue to live there, his income is not sufficient to be able to afford other housing in Country Club Hills. Williams averred that he had lived in Country Club Hills years ago when he was in school but that he would prefer to stay and live in Park Forest where he has been for the last four (4) years. Williams noted that Park Forest is located 8 to 9 miles from Country Club Hills which complies with the 15 mile radius residency requirement applicable to employees hired after June 1, 1987.

[6] The six (6) issues that were tentatively agreed to were as follows:

- General Wage Increase for each of the three (3) years of the Contract:
  1998-99; 1999-2000; 2000-2001 for Patrol Officers, Sergeants, and Detectives
- Sick Leave Buy-back
- Personal Days
- Posted Overtime
- Overtime Work
- Compensatory Time

Parties informed the Arbitrator they would present the tentative agreements to their respective constituents for a vote of acceptance but, in the event the agreements were rejected by one or both sides, the Parties drafted Ground Rules and Stipulations governing an interest arbitration proceeding should such a hearing be necessary. These Ground Rules and Stipulations (Jt. Ex. 4 and Jt. Ex. 9E) are incorporated in full herein as Appendix A. As is noted from a reading of this document, the City continued in its position that it had no obligation to bargain the residency issue and, concomitantly, that the Arbitrator lacked jurisdiction to rule on the Union's residency proposal. Nevertheless, the City entered into a stipulation with the Union that this Arbitrator would hear and determine the Union's residency proposal **if the City either withdrew its current objection and/or is required to do so by process of law** (emphasis by the Arbitrator).

The record evidence reflects that the Union ratified the tentative agreements first and that the City Council followed in accepting said tentative agreements.[7] However, prior to submission of the tentative agreements for a vote by either Party, Murphey transmitted a fax on July 22, 1999 to Attorneys Berry and Green with a copy to the Arbitrator, setting forth the final settlement terms. Included in this listing was the added term of Uniform Allowance which had been tentatively agreed to prior to July 12, 1999 and, therefore, had not been included among the list of issues delineated in the Parties' executed Ground Rules and Stipulations (see Appendix A). Additionally, with respect to the remaining issue of residency, Murphey indicated in his fax that this item was to be held in abeyance pending disposition of the City's Petition for Declaratory Ruling. On September 1, 1999, ten (10) days after Murphey faxed the final terms of settlement to be voted on by both Parties, Berry informed the Arbitrator both Parties had ratified the tentative agreements reached on July 12, 1999 and that, notwithstanding the continued resistance on the part of the City to dispose of the residency issue either through negotiation or arbitration, it was the Union's position to proceed to an interest arbitration hearing to dispose of the residency issue. By letter dated September 9, 1999, Murphey confirmed that the City had filed a Petition for Declaratory Ruling with the ISLLRB relative to the issue of residency and requested that the interest arbitration hearing be continued until after the General Counsel of the ISLLRB issued said Declaratory Ruling.[8] As a result, the subject interest

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[7] By telephone call to the Arbitrator, on Wednesday, September 1, 1999, Berry informed him that both Parties had ratified the tentative agreements reached at the July 12, 1999 pre-arbitration meeting.

[8] The record evidence reflects that the City filed its Petition for Declaratory Ruling with the ISLLRB on August 30, 1999 (continued...)

arbitration hearings were rescheduled from October 7, 1999 to November 11 and 12, 1999. The record evidence reflects that in an apparent counter action to the City's filing for a Declaratory Ruling, the Union filed a ULP charge against the City on September 9, 1999 claiming that the City's continued refusal to submit to arbitration the Parties' dispute as to residency requirements applicable to bargaining unit members hired after May 1, 1998 constitutes an interference with its rights under the IPLRA on several grounds, to wit:

- Interference with its rights to have disputes as to **conditions of employment** applicable to members of its bargaining unit proceed to an impartial arbitrator for an expeditious resolution pursuant to Article 14 procedures of the IPLRA (emphasis by the Arbitrator).

- City's refusal to either bargain the issue of residency or to submit the residency issue to an arbitrator for resolution cannot be characterized as a "good faith disagreement over whether the Act (IPLRA) requires bargaining over a particular subject," since unlike other subjects classified as "mandatory," the subject of residency has been made explicitly mandatory by amendment of the Act enacted in July, 1997, by the Illinois General Assembly, allowing disputes concerning the subject of residency requirements in

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[8](...continued)
wherein it specified the following legal issue(s) it sought to have the Board rule upon:

a) Whether the City has a legal duty to bargain over an Ordinance adopted in April, 1998 providing that all new employees hired after said date be required as a condition of their employment to become bona fide residents of the City within one year after their date of hire.

b) Whether the employer may terminate probationary police officers hired subsequent to the effective date of the Ordinance who have failed to comply with the requirements of the Residency Ordinance.

(Jt. Ex. 6)

municipalities with a population under one million (1,000,000) to be submitted for determination by interest arbitrators.

- The ability of an employer, here the City, to unilaterally impose **conditions of employment** upon applicants for full-time employment which cannot be modified after employment necessarily discourages membership and support for the Union.

Among the items of relief sought, the Union requested the ISLLRB to order the City to cease and desist from its refusal to submit the residency issue dispute to the pending interest arbitration before this Arbitrator without further delay (Jt. Ex. 9F).

On November 9, 1999, two (2) days prior to commencement of this interest arbitration hearing, ISLLRB General Counsel Zimmerman issued the Board's ruling, without an accompanying full Opinion, addressing both the City's Petition for Declaratory Ruling and the Union's ULP. This ruling reads as follows:

> It is the ruling of the General Counsel that the questions concerning residency requirements for peace officers raised in the instant declaratory ruling proceeding, including the Union's proposal and the Employer's ordinance, involve mandatory subjects of collective bargaining which are properly before the interest arbitrator.
>
> (Jt. Ex. 7)

Prior to learning of the above ruling, the Arbitrator received at his residence on November 9, 1999 by messenger, a Motion filed by Murphey on behalf of the City to Dismiss/Objection to Jurisdiction which had been prepared on November 8, 1999 prior to General counsel Zimmerman rendering the Board's ruling on the City's Petition for Declaratory Ruling (Jt. Ex. 9). This Motion sought a ruling from the Arbitrator to either dismiss or stay the interest arbitration proceeding that was scheduled to commence November 11, 1999 to hear the sole issue of residency. In Point 13 of its Motion, the City continued to assert the following in good faith:

a) that it has no duty to bargain with respect to the Ordinance (Ordinance OA-4-98);

b) that the Union has waived any right to bargain over the residency issue for this Contract by virtue of the ISLLRB's Dismissal Order of the Union's November 10, 1998 ULP;

c) that the Union never submitted a proposal regarding residency in a timely fashion; and

d) that the City has no duty to bargain over this matter of inherent managerial policy relating to **the selection of new employees** (emphasis by the Arbitrator).

In its Motion, the City submitted the Arbitrator lacked jurisdiction/authority to proceed to arbitration over the issue of the City's residency requirement by virtue of the Parties' July 12, 1999 Ground Rules and Stipulations (see Appendix A of this Findings and Award) specifically, for the following reasons:

A. The City has not withdrawn its "current objection" to this Arbitrator's jurisdiction to rule upon the Union's residency proposal specifying a residency requirement for bargaining unit employees; and

B. The City has not been required to submit this matter to arbitration by **"process of law"** (emphasis by the Arbitrator).

Upon receipt of the Motion, the Arbitrator carefully reviewed it and then contacted Berry to inquire if he too had reviewed the Motion and he indicated he had. Additionally, however, Berry informed the Arbitrator of the Board's November 9, 1999 one paragraph ruling rendered by General Counsel Zimmerman. The Arbitrator had Berry read the ruling over the telephone and then contacted the Executive Director of the ISLLRB, Brian Reynolds and requested Reynolds to e-mail him a copy of the ruling which he did. On the following day, Wednesday, November 10, 1999, the Arbitrator contacted General Counsel Zimmerman by telephone to discuss with her the meaning of the Board's ruling relative to the stipulation on residency entered into by the Parties in their July 12, 1999 Ground Rules and Stipulations, as Murphy, on behalf of the City in an earlier conference call on November 10, 1999 with Berry and the Arbitrator, held to the position that General Counsel Zimmerman's ruling that the residency issue involved a mandatory subject of collective bargaining which was properly before the interest arbitrator did not serve as a requirement by process of law to proceed to arbitration on the residency issue as envisaged by the pertinent stipulation set forth in the Ground Rules and Stipulations. Mr. Berry argued otherwise, which occasioned the Arbitrator's call to Zimmerman. The Arbitrator read the subject stipulation to Zimmerman and asked her if she viewed her one paragraph ruling to satisfy and meet the "by process of law," standard to which she responded in the affirmative. The Arbitrator, in addressing a second concern of the Parties of proceeding to interest arbitration without having the benefit of the Board's full opinion, asked Zimmerman when such a full opinion

could be expected to be rendered, and she indicated it would be forthcoming within the following two (2) weeks. In fact, the full opinion, titled, Declaratory Ruling (Case No. S-DR-00-001) was not rendered until December 16, 1999 and received by the Arbitrator December 17, 1999. This full opinion is incorporated herein as Appendix B. At the hearing of November 11, 1999, the Arbitrator stated for the record he was rejecting the City's Motion to Dismiss/Objection to Jurisdiction on grounds that the General Counsel of the ISLLRB considered the Board's one paragraph ruling to constitute a "process of law" as that term was envisaged by the Parties in their Ground Rules and Stipulations.

Based on the foregoing discussion and ruling by the Arbitrator, the interest arbitration hearing on the sole issue of residency went forward and proceedings were held on November 11 and 12, 1999.

STATUTORY AUTHORITY OF THE ARBITRATOR

Section 14 of the IPLRA makes provision for neutral assistance in the form of mediation and of arbitration to parties in their collective bargaining of agreements covering security employees, peace officers and firefighters. In the case at bar, the Parties resolved all issues in their collective bargaining for a successor agreement to the 1995-98 Agreement (Jt. Ex. 1) except for the issue of residency which now comes before this Arbitrator for resolution, notwithstanding the Employer's steadfast position, even in light of the ISLLRB's December 16, 1999 Declaratory Ruling (see Appendix B), that the Arbitrator lacks jurisdiction and authority to hear the subject residency issue and to render a ruling. Section 14(g) provides in pertinent part the following:

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

The Arbitrator notes for the record that the issue of residency at impasse in this arbitral proceeding is a **non-economic issue** and therefore, the Arbitrator is granted the latitude of fashioning an appropriate remedy rather than being restricted to selecting one Party's final offer over the other Party's final offer (emphasis by the Arbitrator).

The factors to be considered by the Arbitrator in resolving the issue at impasse as set forth in Section 14(h) are as follows:

(1) The lawful authority of the employer.

(2) Stipulations of the parties.

(3) The interests and welfare of the public and the financial ability of the unit of government to meet those costs.

(4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:

(A) In public employment in comparable communities.

(B) In private employment in comparable communities.

(5) The average consumer prices for goods and services, commonly known as the cost of living.

(6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.

(7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

(8) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

It is acknowledged by both Parties and the Arbitrator that not all eight (8) factors are applicable to arriving at a determination in resolution of the impasse issue. The Arbitrator notes the Union submits that Factors (1), (2), (3), (4), (7) and (8) have relevance in varying degrees whereas, the Employer submits that Factors (3), (4) and (8) are the most pertinent. The Arbitrator will consider all six (6) factors submitted by the Union with special emphasis on the three (3) overlapping factors, specifically, (3), (4) and (8).

FINAL PROPOSALS

At the hearing, the Union advanced the following residency proposal as its final offer:

> All members of the bargaining unit shall be free to reside within a geographic area defined by 15 miles from the corporate limits of the City of Country Club Hills.

Employees who fail to maintain a residence within such area shall be subject to disciplinary action up to and including discharge.

New employees shall establish residency within such area within one year after their date of hire as a condition of continued employment.

Employees who comply with the contractual residency requirement of this section shall be deemed to be in compliance with the City's residency rules notwithstanding any other or more restrictive condition accepted by them or required of them by the City as a condition for application or appointment from an eligibility list.

Consistent with the provisions of 65 ILCS 5/10-2.1-6(b), if any current employee was hired under a less restrictive residency rule than specified herein, such employee shall continue to be subject to such less restrictive rule.

(Jt. Ex. 3A)

The Employer's final proposal on residency is City Code 4.3.09 as amended by City Ordinance No. OA-4-98 adopted by the Mayor and City Council on April 27, 1998 which reads in pertinent part as follows:

A. All full time employees of the City (as defined by Section 4.401) shall reside within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills.

B. Each employee hired by the City after June 1, 1987, shall make his residence within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills, Illinois within nine (9) months after completing his probationary period.

* * * *

D. All full-time employees of the City hired after May 1, 1998, shall become bona fide residents of the City within twelve (12) months after that employee's date of hire.

(Jt. Ex. 3B(1) and Jt. Ex. 9A)

CONTENTIONS

PARTIES' RESPECTIVE POSITIONS

Both Parties advanced multiple arguments in their respective extensive post-hearing briefs in support of their respective positions that the Arbitrator should find to adopt their residency proposal. The most pertinent of these arguments will be addressed by the Arbitrator in the following Findings section in conjunction with each relevant Subsection (h) factor as identified hereinabove and where applicable.

FINDINGS

Although the City advanced a proposal during negotiations that pertained to residency of all employees hired after the effective date of the successor collective bargaining agreement to the 1995-98 Agreement (Jt. Ex. 1) and it did so prior to enactment by the City Council of Ordinance OA-4-98 amending the Residency Section of the City Code, Section 4.3.09, it nevertheless maintained throughout the twenty (20) months the Parties were in negotiations, even up to the time this arbitral proceeding commenced, that it was not obligated to bargain the issue of residency and made it clear that by putting forth such a proposal it was not waiving any of its rights. The City predicated its position on the argument that residency requirements applicable to new employees constitute a criterion for the selection of said new employees and thus is subject to the terms of Section 4 of the IPLRA which deems selection criteria a matter of inherent managerial authority. The City distinguished its action of creating a residency requirement for newly hired employees from imposing this same, more restrictive requirement on incumbent employees, acknowledging that to do so would constitute a change in a condition of employment which, according to the amendment to Section 14(i) of the Act by the General Assembly, effective August 15, 1997, made the issue of residency for municipalities with a population under one million (1,000,000) a mandatory topic of bargaining. The City asserts, though the Union contends otherwise, that the Union never advanced any proposal having to do with residency of incumbent employees and that the only time it has done so is through the final written proposal on residency it tendered in this arbitration. Otherwise, the City submits, all discussions the Parties engaged in that pertained to residency had to do with the new, more restrictive residency requirement applicable only to those employees hired after May 1, 1998. The Union's position throughout bargaining, irrespective of whether the issue of residency during negotiations pertained to incumbent employees or just to new hires, has been that any aspect of residency must be treated as a mandatory subject of bargaining and, as a result, the City's enactment of Ordinance OA-4-98 adding Subsection D to the City Residency Code constituted a violation of the IPLRA as it altered the status quo during the pendency of negotiations. On the other hand, the City maintains it established a two-tiered residency requirement, one applicable to employees hired prior to May 1, 1998 which permit these employees to reside within a 15 mile radius of the corporate limits of the City and, one applicable to employees hired after May 1, 1998 which require these employees to reside within the corporate limits of the City within one year of their date of hire. The City argues that its two-tiered residency rule represents the status quo and that it is the Union, through its final proposal tendered in this arbitral proceeding, that is attempting to alter the status quo during the pendency of negotiations. Specifically, with respect to incumbent employees, the City alleges the Union's proposal appears

to provide that any employee hired "under a less restrictive residency rule than specified herein" shall no longer be subject even to the current ordinance provision of the 15 mile radius. However, the City maintains, under the existing 15 mile radius requirement, even an employee who was hired 25 years ago, prior to any residency rule, is subject to the residency requirement if he or she moves. The City claims the Union's proposal would also undo the residency requirement established for new hirees by the April 27, 1998 Ordinance. Additionally, the City alleges the Union's proposal violates Section 14(i) of the IPLRA in that it does not limit residency to the State of Illinois, noting that Country Club Hills is within 15 miles of the Indiana border.

Even though the Union advanced the position to the ISLLRB in its brief responding to the City's Petition for Declaratory Ruling that the matter of whether the disputed issue of residency was a mandatory subject of bargaining was better suited to be resolved in arbitration rather than by a declaratory ruling given that the determination of whether a particular matter is a mandatory or permissive subject of bargaining is extremely fact-intensive, nevertheless, General Counsel Zimmerman found the City's position the residency requirement enacted by the City Council April 27, 1998 pertaining to employees hired after May 1, 1998 constituted a selection criterion as opposed to being a condition of employment "missed the mark". General Counsel Zimmerman held in pertinent part the following:

> [The City's] ordinance does not state that an individual must be a City resident to apply for a municipal position. Rather, it requires that individuals who have <u>already been hired</u> as full-time regular employees become City residents within 12 months of their hiring dates. Those employees are also thereafter, at least by implication, required to maintain residency as a condition of keeping their City employment, thus impacting their employment far beyond their initial selection (see Appendix B, p. ix).

The Arbitrator concurs one hundred percent with Zimmerman's finding that Ordinance OA-4-98 adding Subsection D to City Code 4.3.09 is not a selection criterion within the meaning of Section 4 of the IPLRA as so asserted by the Employer and, concurs, as well, with the rationale Zimmerman set forth in support of her finding that Subsection D is a residency requirement as so asserted by the Union. Additionally, Zimmerman held that the Union's residency proposal involved matters relating to terms and conditions of employment for bargaining unit employees and, the Arbitrator concurs in this finding as well. Zimmerman further found that by amending Section 14(i) of the IPLRA to provide that arbitration decisions "shall be limited to wages, hours and conditions of employment (which may include residency requirements ...)," the General Assembly obviously intended residency requirements to be

categorized as a condition of employment. The Arbitrator fully concurs with this finding. Zimmerman also found the City's Ordinance directly impacts employees' conditions of employment to which finding the Arbitrator also subscribes. In applying the third prong of the three (3) part test devised by the Illinois Supreme Court in Central City Education Association, IEA/NEA v. Illinois Educational Labor Relations Board, 149 Ill.2d 496, 599 N.E.2d 892 (1992), that is, balancing the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the Employer's authority, Zimmerman concluded that the City is required to bargain regarding the subject of residency and the Arbitrator echoes this conclusion. Zimmerman found there is a clear legislative mandate supporting the submission of disputes regarding residency to interest arbitration and expressed her belief that the consideration of residency issues such as those presented herein is well suited to the arbitration process. Zimmerman opined that once the parties have presented their evidence in support of their positions, the interest arbitrator is in an ideal position to compare the employees' individual autonomy with regard to living conditions to the societal benefit of the proposed restriction. Zimmerman noted that upon a full factual record, the Arbitrator can determine what sort of residency requirement is appropriate by weighing the interests of this particular Employer and employees, considering the public welfare, and comparing the employees at issue with peace officers in similar communities as provided for by Section 14(h) of the Act. The Arbitrator concurs with Zimmerman's observations regarding the suitability of residency issues at impasse being determined by an interest arbitration.

The Arbitrator finds that Zimmerman's various holdings set forth in the December 16, 1999 Declaratory Ruling and his concurrence with those holdings, completely invalidates the Employer's position asserted during negotiations for the successor agreement to the 1995-98 Agreement (Jt. Ex. 1) that it was not obligated to bargain the issue of residency as it applied to employees hired after May 1, 1998. It was, in fact, obligated to bargain the issue and by the City Council passing Ordinance OA-4-98 during the pendency of collective bargaining for the successor agreement, it was the Employer, and not the Union, that altered the status quo. Zimmerman's rulings and this Arbitrator's concurrence in those rulings as cited hereinabove, also negates the City's position asserted since the entrance of this Arbitrator into the matter of the Parties' impasse on various issues in bargaining, that he lacks authority/jurisdiction to rule on the residency issue. It is abundantly clear to this Arbitrator that he is vested by statute with the authority and jurisdiction to rule on this sole issue of residency that is the subject of this instant interest arbitration.

The City argues among other things that the Union's residency proposal should be rejected because this Arbitrator should not give to the Union in arbitration what it was not able to gain through

bargaining. In general, the Arbitrator holds that while this well established arbitral concept has applicability to grievance arbitration, it has virtually no applicability or meaning when applied to the arena of interest arbitration for the very reason that, unlike grievance arbitration which is an extension of the Contract, making it a living document, interest arbitration is an extension of the negotiations phase of collective bargaining. The whole orientation and thrust of interest arbitration is to overcome the bargaining impasse without invoking economic sanctions such as a strike or lockout, and that orientation inherently dictates that one party or the other engaged in the bargaining process is going to secure a benefit it was unable to secure at the bargaining table. Specifically however, the Employer's argument here makes even less sense since it was the City that prevented meaningful negotiations on the issue of residency from occurring, in that, less than two (2) months into bargaining for the successor agreement, the City Council preempted further negotiations from taking place when it enacted City Ordinance OA-4-98 amending Residency Code 4.3.09. Henceforth, the City took the position it was not obligated to bargain the residency issue and that the Ordinance was the controlling authority. The City's further argument it was willing to make concessions during the pre-arbitration meetings conducted by this Arbitrator regarding grandfathering Officers Kyle, McKinney and Williams so that they would not be subject to the Ordinance contingent on the Union's acceptance of the Ordinance, is not regarded by the Arbitrator as exemplifying a reasonable approach and willingness to bargain on an issue the City continued to maintain it had no obligation to bargain. Such proposals by the City were not, in fact, subject to negotiations but rather they were take it or leave it offers to entice the Union to accept the validity of the Residency Ordinance for the quid pro quo of saving the jobs of Officers Kyle, McKinney and Williams. Where the City's contention the Union should be barred form securing a benefit in this interest arbitration it was unable to secure at the bargaining table does have validity, lies in the claim by the City refuting the Union's claim, that the Union never advanced a proposal, all throughout negotiations, that concerned residency as it pertained to incumbent employees. Rather, the City contends that all discussions regarding residency that occurred at the bargaining table including its formal written proposal advanced in April of 1998 prior to enactment by the City Council of Ordinance OA-4-98 and, the negotiations that occurred under the mediatory pre-arbitration meetings conducted and overseen by this Arbitrator, all pertained to residency as it applied to new hirees. The Union readily admits that the proposal it advanced regarding residency at the very outset of bargaining was a verbal one in light of the fact that it inadvertently failed to include its residency proposal among the written demands it presented to the City. While Union Staff Attorney Green testified the Union advanced a proposal to eliminate the residency requirement its bargaining unit members were obligated to comply with under the pre-April 27, 1998 Section 4.3.09 of the City Code, there exists no

written evidence or other oral testimony in this record that supports this testimony. On the other hand, evidence in the form of a written proposal dated April 22, 1998 does exist to support the City's claim that the whole of what was discussed by the Parties during negotiations regarding the issue of residency had to do with its applicability to new hirees. At this juncture in negotiations, the Union had an opportunity to make a written response in the form of a counter-proposal but, for whatever its reasons, it failed to seize the opportunity. While the Union might have argued here, though it did not, that advancing any counter-proposal would have been futile in light of the City Council's enactment of Ordinance OA-4-98, there was a period of nearly two (2) weeks from the date the Ordinance was passed where the Union by its own assertion had no knowledge the subject Ordinance had been enacted. Without knowing the details of the bargaining history as to the precise dates the Parties convened bargaining sessions, the Arbitrator is not privy as to whether the Union received the City's written residency proposal before or after it became aware of the passage of the April 27, 1998 amendment to City Code OA-4-98. However, the fact remains that at some point in time during the negotiations, the City advanced its residency proposal intended to be tendered to the Union at the negotiation session initially scheduled for April 22, 1998 but, apparently was not, due to the sessions postponement, and the Union did not, even at this time, make a written counter-proposal in writing. Absent conclusive evidence therefore, supporting the Union's claim of a persistent effort throughout negotiations, on its part, to exempt its bargaining unit officers altogether from the pre-April 27, 1998 Residency Ordinance, the Arbitrator is unwilling in this proceeding, to consider any change that pertains to residency requirements applicable to incumbent bargaining unit employees hired before May 1, 1998. The findings that follow therefore, address the issue of residency solely as it pertains to bargaining unit officers hired at any time during the pendency of negotiations through the Award date of this interest arbitration, a time frame that spans from March of 1998 through August 10, 2000.

In accord with the above ruling, the Arbitrator notes that the first paragraph of the Union's final residency proposal pertaining to all members of the bargaining unit is nearly identical to Paragraph A of Section 4.3.09, the City Residency Code, with respect to the requirement of having to reside within a fifteen (15) mile radius of the corporate limits of the City of Country Club Hills. The departure in the Union proposal however, with respect to all members of the bargaining unit which includes all current bargaining unit officers as well as new hirees is the sanction that employees who fail to maintain a residence within the provided for fifteen (15) mile radius would then become subject to disciplinary action up to and including discharge. However, as a means of protecting bargaining unit officers currently employed from being disciplined for not being in compliance with the fifteen (15) mile radius requirement, the Union proposal grandfathers any

current employees who were hired under a less restrictive residency rule, providing, that such employees shall continue to be subject to such less restrictive residency requirements. As these departures do not materially alter the core residency requirement set forth in Paragraph A of City Code 4.3.09, the Arbitrator is predisposed to adopt this part of the Union's proposal as part of a new Section 18.8, a Residency clause to be added and incorporated into the 1998-2001 successor Collective Bargaining Agreement (Jt. Ex. 2).

The third paragraph of the Union's residency proposal however, is viewed by the Arbitrator as very narrowly aimed at specifically preserving the continued employment of Officers Kyle, McKinney, and Williams and, in this regard is deemed by him to be superfluous in light of the proposed second paragraph of the proposal that addresses new employees. This language provides that new employees are required to establish residency within the fifteen (15) mile radius from the corporate limits of the City as is required of all members of the bargaining unit within one year after their date of hire as a condition of continued employment. The remainder of the Union's argument is all centered in support of the Union's position that, unlike Subsection D of Section 4.3.09 of the City Code, there are cogent reasons why new hirees to fill bargaining unit officer positions of the City's Police Department should not be expected to adhere to stricter residency requirements than those applicable to full-time employees hired after June 1, 1987 but before May 1, 1998.

Foremost, on a comparative basis, relative to conditions of employment, which is Factor Number 4 in the list of eight (8) factors which Section 14(h) of the Act requires an arbitrator to consider in making his findings, opinions, and orders with respect to non-economic issues such as the residency issue in the case at bar, the Union argues that an analysis of the comparable communities stipulated to by the Parties in their July 12, 1999 Ground Rules and Stipulations (Appendix A) strongly favors the Union's proposal. With respect to Factor Number 2 under Section 14(h), "stipulations of the parties," the Parties specified a total of nine (9) communities they mutually agreed were comparable to the City for purposes of comparisons and two (2) other communities the Union asserted were comparable but the City disagreed. Given that nine (9) of eleven (11) communities is statistically significant for the purpose of making critical comparisons, the Arbitrator rules to reject the two (2) communities, specifically Matteson and Oak Forest that the City argued were not comparable. Alphabetically, the nine (9) communities mutually deemed by the Parties to be comparable to the City are as follows:

1. Flossmoor	4. Homewood	7. Park Forest
2. Glenwood	5. Markham	8. Richton Park
3. Hazelcrest	6. Midlothian	9. Riverdale

The Union argues that the relevant comparison here is between those municipalities which have an in-city residency requirement and those municipalities which allow residency outside their limits plus municipalities with no residency requirement. Of the nine (9) comparable communities listed above, eight (8) do not have an in-city limit residency requirement such as the Employer here legislated in Ordinance OA-4-98 for employees hired after May 1, 1998. Of these eight (8) communities, four (4) had residency requirements that established an outer boundary in miles outside their cities. Riverdale's boundary is sixteen (16) miles from village hall; Flossmoor's boundary is fifteen (15) miles from village hall; Hazelcrest, define boundaries of approximately eight (8) miles of the city; and Markham's boundary is seven (7) miles of the city. The one and only city that has an in-city residency requirement of the nine (9) comparable communities is Midlothian and that has been established by city ordinance. The Arbitrator concurs in the Union's analysis of these comparable communities that the overwhelming majority of municipalities (88%) do not require their peace officers to reside in the city in which they work. Thus, the Union argues, if the City's proposal is adopted, Country Club Hills' bargaining unit officers will not, as a result, maintain equivalent working conditions with these other nearby communities. While the City concedes that residency requirements vary from one comparable community to the other, citing Arbitrator Goldstein's observation in Village of South Holland, Case No. S-MA-97-150 (1999) that there exists a real "hodgepodge" of residency rules among suburban Cook County municipalities, the City maintains the comparison that is more significant than the external comparability factor argued exclusively by the Union is, the internal comparability factor that exists here which the Union was completely silent about. In noting that the 1998 Ordinance is a wall-to-wall requirement applicable to all full-time City employees, not just bargaining unit police officers, the City invokes the rationale of Arbitrator Goldstein in South Holland, that there is a "legitimate and logical concern on the part of the management of the [City] 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 ..." This Arbitrator could not agree more with this rationale but finds that, rather than supporting the City's position, it actually serves to refute the City's unilateral action of adopting Ordinance OA-4-98 which erected a two-tiered system of residency, one for employees hired prior to May 1, 1998 and one for employees hired after May 1, 1998. By so doing, there is nothing uniform about the residency requirements applicable to all full-time bargaining unit police officers. Arbitrator Goldstein further noted that if a non-uniform residency requirement were to be established, there would have to be a compelling reason for doing so and, nowhere in this record proceeding, has the City presented a compelling reason for requiring employees hired after May 1, 1998 to abide by a different residency requirement than those employees hired prior to May 1,

1998, either as a general case or, in particular, as it relates to police officers. This Arbitrator is persuaded that it is more important and significant to maintain uniformity in residency requirements within certain segmented groups of employees than it is to maintain such uniformity among all employees. That is to say there is nothing sacred in the principle that one size fits all if there is no adequate defense put forth to justify a one size fits all approach. There might, in fact, be compelling reasons for police officers to reside within in-city limits whereas, such compelling reasons are lacking for other classifications of employees to be subject to the same residency requirement and vice-versa. But, there appears to be no compelling reason for one group of police officers to abide by one residency requirement and another whole group of police officers to be subjected to a more restrictive residency requirement. The City here has asserted no argument with regard to the safety and well-being of its inhabitants to have police officers reside within its corporate limits whereas, the Union has advanced persuasive argument that police officers who live in the same community they work in are at risk of being retaliated against by citizens of their community simply by performing their law enforcement duties.

The City claims the two-tiered residency requirement that resulted from the passage of Ordinance OA-4-98 represents the status quo which places the burden on the Union to demonstrate by persuasive argument the reason why the status quo should not be maintained. The Arbitrator rejects the City's position regarding this argument. As discussed elsewhere above, the City and not the Union altered the status quo by unilaterally implementing a change in residency requirement affecting bargaining unit police officers at a time the City and the Union were in negotiations to obtain a successor collective bargaining agreement to the 1995-98 Agreement (Jt. Ex. 1). While the Union may have been inept to some degree in the way in which it proceeded to object to this change in the status quo, it nevertheless made known its objection and its refusal to stand by passively in acceptance of this change. The best evidence in support of this finding is the advent of this interest arbitration proceeding which occurred as a result of the Union's persistent effort to secure its statutory right to participate in collectively bargaining the issue of residency.

Based on the foregoing findings with respect to the comparability factor, the Arbitrator concludes that relative to external comparability, the Union's position is overwhelmingly persuasive whereas, relative to internal comparability, the City's position is not, in the least, persuasive. On the strength of this conclusion by itself, without having to address any of the other arguments asserted by either Party which would not be of any consequence to the bottom line decision, the Arbitrator rules that the more reasonable proposal on residency is the one advanced by the Union and, as such, is the proposal that shall be adopted but, in a modified version, to be incorporated, into the 1998-2001 Collective Bargaining Agreement as Section 18.8.

A W A R D

Based on the rationale set forth in the preceding Findings section, the Arbitrator rules that the Union's proposal, in modified form as follows hereinbelow, shall be incorporated as new section, Section 18.8 - Residency, in the 1998-2001 Collective Bargaining Agreement (Jt. Ex. 2):

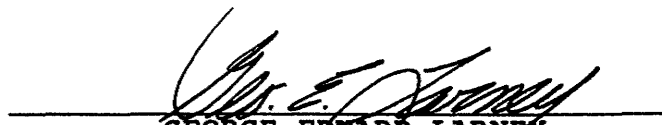
Section 18.8 - Residency

All members of the bargaining unit shall be free to reside within a geographic area defined by 15 miles from the corporate limits of the City of Country Club Hills as long as said geographic area falls within the boundaries of the State of Illinois. Employees who comply with the contractual residency requirement of this section shall be deemed to be in compliance with the City's residency rules.

Employees, currently full-time officers of the Police Department, who may have been hired under a less restrictive residency rule than specified herein, shall continue to be subject to such less restrictive residency rule. Newly hired employees are required to establish residency within the defined geographic area set forth hereinabove within one (1) year after their date of hire as a condition of continued employment.

Employees who fail to abide by the residency provisions set forth in this Section 18.8 shall be subject to disciplinary action up to and including discharge.

UNION PROPOSAL, AS MODIFIED, ADOPTED.



GEORGE EDWARD LARNEY
Sole Interest Arbitrator

Chicago, Illinois
August 10, 2000

APPENDIX A

1999 INTEREST ARBITRATION
BETWEEN
CITY OF COUNTRY CLUB HILLS
AND
IBT LOCAL 726

******

GROUND RULES AND
STIPULATIONS OF THE PARTIES

1. The Arbitrator shall be George E. Larney. The parties stipulate that the procedural prerequisites for convening the arbitration have been met, and that the Arbitrator has jurisdiction and authority to rule on the following issues:

   1) General Wage Increase (XV)
   2) Sick Leave Buy Back (§12.2)
   3) O.T. DISTRIBUTION (§5.8)
   4. PERSONAL DAYS (§5.5)
   5. COMPENSATORY TIME §5.8(d)
   6. OVERTIME DEFINITION (§5.5)
   7. RESIDENCY. (NEW ARTICLE) *

* The parties further stipulate that as to the residency issue, the village disputes the arbitrator's jurisdiction to rule upon the Union's residency proposal specifying a residency requirement for bargaining unit employees as a provision of the parties' successor agreement.

The parties further stipulate that the Union's residency proposal shall be heard and determined by Arbitrator George Larney if the Village withdraws its current objection and/or is required to do so by process of law.

Notwithstanding the parties' current dispute as to the Arbitrator's jurisdiction to determine their residency dispute, the parties agree to proceed with an evidentiary hearing as to the above referenced items as further specified herein.

2. The preliminary hearings in said case were convened on May ~~10~~ 21, 1999, June 10, 1999 ~~and~~ July 8, 1999, and July 12, 1999. The evidentiary hearing(s) will be held in Country Club Hills, Illinois on Aug. 5 and 6, 1999. The parties waive the 15 day hearing requirement of Section 14(d) of the Act.

3. The evidentiary hearing will be transcribed by a court reporter or reporters whose attendance is to be secured for the duration of the hearing by mutual agreement of the parties.

4. The parties have stipulated to the following comparable communities for purposes of comparisons pursuant to §14(h)(4) of the Act:

1) Flossmoor
2) Glenwood
3) Hazelcrest
4) Homewood
5) Markham
6) Matteson*
7) Midlothian
8) Oak Forest*
9) Park Forest
10) Richton Park
11) Riverdale

*The City disputes the inclusion of Matteson and Oak Forest and agrees that the issue of the inclusion of the municipalities shall be submitted to the Arbitrator for determination.

5. The parties agree that the arbitration hearing involved "collective negotiating matters between public employers and their employees or representatives", and, therefore is not subject to the public meetings requirement of the Illinois Open Meetings Act, 5 ILCS 120/1.

6. All sessions of the hearing will be closed to all persons other than the Arbitration Panel, court reporter(s), representatives of the parties, including negotiating team members and witnesses.

7. The parties agree that the following package of information shall be submitted by stipulation to the Arbitration Panel on 7.23.99.

a) A listing of all tentatively agreed to changes for a Labor Contract, agreed to by the parties in the collective bargaining negotiations preceding the arbitration hearing.

b) Each party's Last Offer of Settlement on each of the economic and/or non-economic issues to be considered and decided by the Arbitrator. Last Offers of Settlement are to be exchanged by the parties at a mutually agreeable time and place on or before 5PM. 7.23.99, subject to the provisions and process set forth in Section 14(g) of the Illinois Public Labor Relations Act.

c) These Ground Rules And Stipulations Of The Parties.

8. The Union shall proceed first with its case-in-chief as to the terms in dispute as to which it is the moving party. The Village shall then proceed with its case-in-chief as to the issues, if any, as to which it is the moving party. Once both parties have presented their cases-in-chief, both parties may present rebuttal evidence and/or witnesses.

9. The Arbitrator shall base his findings and decision upon the factors as applicable as set forth in Section 14(h) of the Illinois Public Labor Relations Act.

10. Nothing contained herein shall be construed to prevent negotiations and settlement of the terms of the contract prior, during or subsequent to the arbitration hearing.

CITY OF COUNTRY CLUB HILLS

BY: _____

Date: 7-12-99

IBT LOCAL 726 (COUNTRY CLUB HILLS POLICE)

By: _____

Date: 7-12-99

APPENDIX B

STATE OF ILLINOIS
ILLINOIS STATE LABOR RELATIONS BOARD

City of Country Club Hills,	)	
	)	
Petitioner	)	
	)	
and	)	Case No. S-DR-00-001
	)	
International Brotherhood of Teamsters, Local #726,	)	
	)	
	)	
Union	)	

DECLARATORY RULING

On August 30, 1999, the City of Country Club Hills (Employer or City) filed a Petition for Declaratory Ruling pursuant to Section 1200.140 of the Rules and Regulations of the Illinois Labor Relations Board, 80 Ill. Admin. Code, Section 1200 through 1230 (Rules), requesting determinations as to whether the City has a duty to bargain concerning its application of a residency ordinance to newly hired police officers and whether it has a duty to bargain regarding a residency proposal applicable to all bargaining unit members offered by the International Brotherhood of Teamsters, Local #726 (Union or Teamsters). The Union did not join in the filing of the petition. Both parties filed timely briefs.

On November 9, 1999, I issued a preliminary ruling that the questions concerning residency requirements for peace officers raised in the instant declaratory ruling proceeding, including the Employer's ordinance and the Union's proposal, involved mandatory subjects of collective bargaining within the meaning of the Illinois Public Labor Relations Act, 5 ILCS 315 (1998) (Act).

I. Background

The Union represents a bargaining unit of peace officers in the ranks of patrol officer and sergeant. The City and the Union were parties to a collective bargaining agreement which expired on May 1, 1998. They have reached agreement on a successor contract from May 1, 1998 to April 30, 2001, except for the matters at issue herein.

On April 27, 1998, the City adopted an ordinance stating:

> All full time employees of the City hired after May 1, 1998 shall become bona fide residents of the City within twelve (12) months after that employee's date of hire.

The ordinance was adopted without notice to the Union or the opportunity to bargain. The City subsequently hired three police officers. Section 1.2 of both the parties' expired collective bargaining agreement and its new contract provides, in relevant part:

> The probationary period shall be twelve (12) months in duration or such other time as may be established by the Board of Fire and Police Commissioners pursuant to 65 ILCS 5/10-2.1-15 provided such probationary period does not extend more than eighteen (18) months of initial appointment. . . . During the probationary period . . . the City may suspend or discharge a probationary officer without cause and such action shall be final and the officer shall have no recourse under the grievance procedure or otherwise to contest such suspension or discharge.

On November 10, 1998, as the end of the three newly-hired officers' probationary periods approached, the Union filed an unfair labor practice charge in Case No. S-CA-99-63 alleging that the Employer's unilateral adoption of the ordinance violated Section 10(a)(4) of the Act. On June 8, 1999, the Executive Director dismissed the charge on the basis that it was untimely; that is, that it was not filed within six months of the City's April 1998 adoption of the ordinance. The parties entered into an agreement extending the officers' probationary periods for an additional six months.

Meanwhile, the parties were engaged in bargaining for a successor collective bargaining agreement. Throughout negotiations, the City refused to bargain with the Union regarding the Union's various proposals to include a provision in the parties' contract for a uniformly applied residency requirement as a condition of continuing employment for all bargaining unit employees. The Union's final residency proposal, which the Employer again refused to consider, provided:

> Section 18.8 Residency
>
> All members of the bargaining unit shall be free to reside within a geographic area defined by 15 miles from the corporate limits of the Village of Country Club Hills Village Hall. Employees who fail to maintain a residence within such area shall be subject to disciplinary action up to and including discharge.
>
> New employees shall establish residency within such area within one year after their date of hire as a condition of continued employment.
>
> Employees who comply with the contractual residency requirement of this section shall be deemed to be in compliance with the Village's residency rules notwithstanding any other or more restrictive condition accepted by them or required by the Village as a condition for application or appointment from an eligibility list.
>
> Consistent with the provisions of 65 ILCS 5/10-2.1-6(b) if any current employee was hired under a less restrictive residency rule than specified herein, such employee shall continue to be subject to such less restrictive rule.

By July 12, 1999, the parties had reached agreement on all contractual issues except residency. On that date, the City formally refused to submit the Union's latest residency proposal to an interest arbitrator selected by the parties pursuant to Section 14 of the Act, asserting that the arbitrator lacked jurisdiction to consider that proposal. On September 9, 1999, the Union filed an unfair labor practice charge in Case No. S-CA-00-053, asserting that the Employer violated Section 10(a)(4), (2) and (1) by failing to negotiate in good faith regarding the Union's residency proposal. This charge is currently under investigation by the Board. The parties' interest arbitration was scheduled for November 11, 1999.

II. Relevant Statutory Provisions

The duty to bargain is defined in Section 7 of the Act, which provides in relevant part:

> Section 7. Duty to Bargain
>
> A public employer and the exclusive representative have the authority and duty to bargain collectively set forth in this Section.
>
> For the purposes of this Act, "to bargain collectively" means the performance of the mutual obligation of the public employer or his designated representative and the representative of the public employees to meet at reasonable times, including meetings in advance of the budget-making process, and to negotiate in good faith with respect to wages, hours and other condition of employment, not excluded by Section 4 of this Act, or the negotiation of an agreement, or any question arising thereunder and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession.

Section 4 of the Act, titled Management Rights, states, in relevant part:

> Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as . . . selection of new employees, ... Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.

Prior to August 15, 1997, Section 14(i) of the Act provided that:

> In the case of peace officers, the arbitration decision shall be limited to wages, hours, and conditions of employment and shall not include the following: i) residency requirements; . . .

Effective August 15, 1997, the General Assembly amended Section 14(i) to provide:

> In the case of peace officers, 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) . . .

III. Parties' Positions

The City asserts that it has no duty to bargain with the Union over the adoption or enforcement of its ordinance because it is a criterion for the selection of new employees, and thus falls within the terms of Section 4 of the Act, which makes selection criteria a matter of inherent managerial authority. The Employer argues that pursuant to Sections 4 and 14(i) of the Act, an employer is allowed to impose a residency requirement on newly hired employees, but not to unilaterally impose a new residency requirement upon incumbent employees. The Employer also contends that its ordinance is not a mandatory subject of bargaining within the meaning of the balancing test set forth in Central City Education Association v. Illinois Educational Labor Relations Board, 149 Ill.2d 496, 599 N.E.2d 892 (1992), because it does not directly affect the wages, hours or terms and conditions of employment for existing members of the bargaining unit.

Further, the Employer contends that the parties have already bargained regarding the application of the residency requirement to probationary peace officer, as demonstrated by Section 1.2 of the collective bargaining agreement, which grants the City the authority to discharge probationary officers without cause. The Employer also asserts that by agreeing to that provision, the Union has waived its right to bargain regarding the residency ordinance as it applies to probationary officers. Alternatively, the Employer requests that I find that it may discharge probationary police officers hired subsequent to the ordinance's effective date if they fail to comply with said ordinance.

The Union asserts that the purposes of the Act would best be served by deferring the declaratory ruling to either interest arbitration or to the processing of

the unfair labor practice charge in Case No. S-CA-00-053. The Union contends that the City's petition for a ruling flies in the face of the legislature's clear mandate authorizing the submission of residency issues to interest arbitration. The Union asserts that the determination of whether a particular subject is a mandatory or permissive subject of bargaining is extremely fact-intensive under Central City. Since the declaratory ruling process does not allow the consideration of disputed factual issues, the Union argues that this matter is better suited to arbitration and/or the unfair labor practice proceedings.

With regard to the merits, the Union contends that residency requirements such as those at issue herein are clearly mandatory subjects of bargaining under section 14(i) of the Act, which now legislatively designates residency as a matter of wages, hours and terms and conditions of employment. The Union also contends that even under the Central City analysis, residency is a mandatory subject of bargaining because the legislature has specifically identified residency as a condition of employment, and because it is not a subject of inherent managerial rights. The Union states that a majority of states with public employee collective bargaining laws have concluded that residency requirements are not matters of inherent managerial authority but are mandatory subjects of bargaining, citing cases from Michigan, Massachusetts, and Pennsylvania.

As for the balancing portion of the Central City test, the Union argues that the legislature's adoption of Section 14(i) reflects its determination that for resolving disputes over residency requirements, the benefits of bargaining outweigh any burdens to the Employer's authority. Accordingly, the Union contends that residency must be treated as a mandatory subject of bargaining, and the parties should be allowed to proceed to interest arbitration to resolve their dispute.

IV. Discussion

To resolve the tension between an employer's duty to bargain in good faith and its inherent managerial authority, in Central City Education Association,

IEA/NEA v. Illinois Educational Labor Relations Board, 149 Ill.2d 496, 599 N.E.2d 892 (1992), as confirmed in City of Belvidere v. Illinois State Labor Relations Board, 181 Ill.2d 191, 692 N.E.2d 295, 14 PERI ¶4005 (1998), the Illinois Supreme Court established a three-part test for determining whether any given subject is a mandatory or permissive subject of bargaining:

> The first part of the test requires a determination of whether the matter is one of wages, hours and terms and conditions of employment. ... If the answer to this question is no, the inquiry ends and the employer is under no duty to bargain.
>
> If the answer to the first question is yes, then the second question is asked: Is the matter also one of inherent managerial authority? If the answer to the second question is no, then the analysis stops and the matter is a mandatory subject of bargaining. If the answer is yes, then the ... matter is within the inherent managerial authority of the employer and it also affects wages, hours and terms and conditions of employment.
>
> At this point in the analysis the [Board] should balance the benefits that bargaining will have on the decision making process with the burdens that bargaining will impose on the employer's authority. Which issues are mandatory, and which are not, will be very fact-specific questions which the [Board] is eminently qualified

Central City, 599 N.E.2d at 905. This Board, the Illinois Local Labor Relations Board and the courts have indicated that Section 7 of the Act must be broadly construed to effectuate the legislature's intent to grant public employees full freedom of association, self-organization, and designation of representatives for the purpose of negotiating over wages, hours, and other terms and conditions of employment. AFSCME Council 31 v. Cook County, 145 Ill.2d 475, 584 N.E.2d 116 (1991); City of Decatur v. AFSCME, Local 268, 122 Ill.2d 353, 522 N.E.2d 1219 (1988).

Initially, I conclude that the subject of this declaratory ruling is a residency requirement as opposed to a criterion for the selection of new employees, as the Employer argues. The Employer asserts that its residency requirement is a selection criterion because it applies only to "prospective" employees hired after May 1, 1998. The City urges that its ordinance thus falls within its inherent managerial authority under Section 4 of the Act, which specifically designates the selection of new employees as a matter of policy about which employers cannot be required to bargain.[1] The Employer's argument misses the mark. Its ordinance does not state that an individual must be a City resident to apply for a municipal position. Rather, it requires that individuals who have already been hired as full-time regular employees become City residents within 12 months of their hiring dates. Those employees are also thereafter, at least by implication, required to maintain residency as a condition of keeping their City employment, thus impacting their employment far beyond their initial selection[2].

In finding that the ordinance is not a selection criterion within the meaning of Section 4 of the Act, I find persuasive the reasoning of the Michigan Supreme Court in Police Officers Association v. City of Detroit, 291 Mich. 44, 214 N.W.2d 803, 85 L.R.R.M. 2536 (1974), where the court rejected a similar argument by an employer that a municipal ordinance imposing a residency requirement was merely a "recruitment" requirement. The court stated that a residency requirement,

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[1] I note, however, that merely finding that a matter involves the Employer's inherent managerial authority within the meaning of Section 4 of the Act does not mean that the Employer is not required to bargain if the matter directly involves the employees' wages, hours and terms and conditions of employment, and the issue is otherwise amenable to bargaining. City of Belvidere v. Illinois State Labor Relations Board, 181 Ill.2d 191; Central City Education Association, IEA/NEA v. Illinois Educational Labor Relations Board, 149 Ill.2d 496.

[2] In my view, a residency requirement also significantly differs from a true selection criteria – such as education or experience – which is applicable at the time of hire but does not thereafter continue to affect or restrict the employee's life.

regulating as it does the conduct of police officers throughout their years on the force, could not be characterized as a "continuing recruiting requirement."[3] The court further reasoned that residency could not be a "recruiting" requirement because the employer's ordinance allowed new officers one year from their date of employment to establish residency in the City of Detroit. The court thus found that police officers had to comply with the residency requirement to maintain their already acquired employment. The court concluded that residency was a term or condition of employment and thus a mandatory subject of bargaining under the Michigan collective bargaining statue. Therefore, the city could not avoid collective bargaining by enacting a municipal ordinance. Based on the foregoing, I conclude that the City's ordinance is not a selection criterion,[4] but a residency requirement, as asserted by the Union. I thus turn to the Central City analysis to determine whether the City has the duty to bargain regarding the issue of residency.

I find that both the ordinance and the Union's residency proposal meet the first prong of the Central City test; that is, that each is clearly a matter of terms and conditions of employment for bargaining unit employees. By amending Section 14(i) to provide that arbitration decisions "shall be limited to wages, hours and conditions of employment (which may include residency requirements...)," the General Assembly obviously intended residency requirements to be categorized as a condition of employment.

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[3] The Michigan Supreme Court stated that a genuine recruiting requirement focuses on that point in time at which a candidate for employment is hired, providing that at that moment, the new recruit must meet established standards.

[4] As a matter of policy, I further believe that to find as the Employer urges would encourage employers to attempt to restrict bargaining as to important terms and conditions of employment by unilaterally adopting ordinances which purport to specify employment conditions for new hires and designating them "selection criteria." Such a result would in no way further the policy of the Act, which is to encourage negotiation of matters affecting employees' wages, hours and terms and conditions of employment.

Moreover, I find that the ordinance directly impacts employees' conditions of employment. The City contends that it has no duty to bargain with the Union because the ordinance does not affect the terms and conditions of employment of bargaining unit employees, but merely applies to "prospective" employees hired after May 1, 1998. As previously noted, however, the ordinance requires individuals who have already been hired as full-time regular employees to become City residents within 12 months. The residency requirement is a condition of employment which directly affects the Union's membership because the probationary employees are full-time regular employees who are members of the bargaining unit. See, Police Officers Association v. City of Detroit, 291 Mich. 44, 214 N.W.2d 803, 85 L.R.R.M. 2536 (1974). It restricts employees in their choice of where to live, significantly impacting matters ranging from cost of living to choice of school district. The employees are also thereafter, at least by implication, required to maintain residency as a condition of keeping their City employment. Employees who do not abide by the ordinance's terms are subject to discharge, thus making residency within the City a condition of their employment. Contrary to the Employer's argument, the ordinance thus directly impacts the incumbent unit members terms and conditions of employment. I thus conclude that the first part of the Central City analysis is satisfied.

With regard to second part of the Central City analysis, I have previously rejected the Employer's argument that the matter is one of inherent managerial authority because the ordinance concerns selection criterion for new employees. However, an employer obviously possesses a significant managerial interest in ensuring that its peace officers have a swift response time in emergency situations. Police Officers Association v. City of Detroit, 291 Mich. 44, 214 N.W.2d 803, 85 L.R.R.M. 2536; Village of University Park and I.A.F.F., Local No. 3661, Case No. S-MA-99-123, interest arbitration award issued June 16, 1999; Town of Cicero and I.A.F.F. Local 717, Case No. S-MA-98-230, interest arbitration award issued November 26, 1999.

Therefore, turning to the third part of Central City and balancing the benefits that bargaining will have on the decision-making process with the burdens that bargaining will impose on the Employer's authority, I conclude that the Employer is required to bargain regarding the subject of residency. I believe that the General Assembly has, by amending Section 14(i) to permit an arbitration decision to include residency requirements where previously that had been prohibited, recognized employees' compelling interest in this subject and provided a legislative mandate for the use of arbitration to settle such disputes. Indeed, then-Representative Schakowsky, a sponsor of the amendment to Section 14(i), stated that the purpose of the amendment was to "allow residency requirements for downstate firefighters to be a subject of bargaining and utilize the arbitration process as a way to settle unresolved disputes over the issue." (See, transcript of debate in House of Representatives, May 12, 1997, p. 111). As noted by Arbitrator Herbert M. Berman in Town of Cicero and I.A.F.F. Local 717, Case No. S-MA-98-230, interest arbitration award issued November 26, 1999, had the General Assembly intended to prevent the arbitration of residency requirements, it would be inexplicable that it would have amended the Act to permit such arbitration.

Not only do I find that there is a clear legislative mandate supporting the submission of disputes regarding residency to interest arbitration, I believe that the consideration of residency issues such as those presented herein is well suited to the arbitration process. Once the parties have presented their evidence in support of their positions, the interest arbitrator is in an ideal position to compare the employees' individual autonomy with regard to living conditions to the societal benefit of the proposed restriction. Town of Cicero and I.A.F.F. Local 717, Case No. S-MA-98-230, interest arbitration award issued November 26, 1999. Upon a full factual record, the arbitrator can determine what sort of residency requirement is appropriate by weighing the interests of this particular Employer and employees, considering the public welfare, and comparing the employees at issue with peace officers in similar communities, as allowed by Section 14(h) of the Act.

My conclusion that residency issues such as those presented herein are eminently suited to arbitration is supported by the fact that several arbitration decisions concerning residency issues have issued since the amendment of Section 14(i). In Village of University Park and I.A.F.F., Local No. 3661, Case No. S-MA-99-123, interest arbitration award issued June 16, 1999, Arbitrator Matthew W. Finkin rendered a decision concerning a residency proposal for firefighters. In Town of Cicero and I.A.F.F. Local 717, Case No. S-MA-98-230, interest arbitration award issued November 26, 1999, Arbitrator Herbert M. Berman also issued a decision concerning a residency requirement for firefighters.[5] I therefore conclude that the questions concerning residency requirements for peace officers raised in the instant declaratory ruling proceeding, including the Union's proposal and the Employer's ordinance, involve mandatory subjects of collective bargaining.[6]

My conclusion is not altered by the Employer's argument that because the parties have agreed to a contract clause permitting the City to discharge probationary police officers without cause, the parties have already bargained regarding the application of the residency requirement to probationary police employees or, alternatively, the Union has waived its right to bargain this issue. I

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[5] Significantly, in Cicero, the employer challenged the arbitrator's subject matter jurisdiction, arguing that residency requirements are a matter of inherent managerial authority which have significant economic and social benefits. Arbitrator Berman rejected this argument, stating that: "the argument that a residency requirement is a matter of 'inherent managerial authority' fails in light of the General Assembly's pointed inclusion of 'residency requirements' in the 'wages, hours and conditions' to which 'arbitration shall be limited'" under the amendment to Section 14(i) of the Act.

[6] My conclusion that a residency requirement is a mandatory subject of bargaining is in accord with the holdings of a majority of other public labor relations agencies. See, e.g., City of Perth Amboy, 24 NJPER ¶29006 (NJ PERC 1997); City of Highland Park, 7 MPER ¶25078 (MI ERC 1994); Township of Moon v. Police Officers of the Township of Moon, 508 Pa. 495, 498 A.2d 1305, 16 PPER ¶16196 (PA S.Ct. 1985); City of Chester v. Fraternal Order of Police, Lodge 19, 23 PPER ¶23180 (PA Commw. Ct. 1992); City of St. Bernard, 11 OPER ¶1488 (OH Ct. App. 1994); City of Akron, 14 OPER ¶1242 (OH SERB H.O. 1997); City of New Haven v. Connecticut State Board of Labor Relations, 410 A.2d 140, 145 (1979).

cannot agree. The declaratory ruling process is limited to the determination of whether bargaining is required regarding a particular subject or subjects.[7] Its purpose is to give parties to collective bargaining relationships guidance as to whether certain matters are mandatory subjects of bargaining, and not to interpret the parties' agreements or to resolve factual conflicts. Village of Arlington Heights, 6 PERI ¶2052 (IL SLRB 1990). The question of whether a contract clause bars negotiations regarding a mandatory subject of bargaining is the type of disputed factual and legal issue which this procedure is not designed to address. I therefore limit my determination to the issue of whether the residency requirement at issue is a mandatory subject of bargaining which is properly before the interest arbitrator. I have concluded that it is.

Finally, I reject the Employer's alternative request for a ruling that it has the right to discharge probationary police officers who are not in compliance with the residency ordinance. I have previously concluded that the Employer is required to bargain over the subject of residency as it relates to both probationary and incumbent employees. The Employer is therefore not free to unilaterally apply its residency requirement.

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[7] Section 1200.140 (b) of the Rules provides that :

> In protective service employee bargaining units covered by 80 Ill. Adm. Code 1230. Subpart B, **if, after the commencement of negotiations and before reaching agreement, the exclusive representative and the employer have a good faith disagreement over whether the Act requires bargaining over a particular subject or particular subjects,** they may jointly petition for a declaratory ruling concerning the status of the law. If a request for interest arbitration has been served in accordance with 80 Ill. Adm. Code 1230.70 and either the exclusive representative or the employer has requested the other party to join it in filing a declaratory ruling petition and the other party has refused the request, the requesting party may file the petition on its own, provided that the petition is filed no later than the first day of the interest arbitration hearing. (emphasis added).

V. Conclusion

Based on the foregoing, I find that the questions concerning residency requirements for peace officers raised in the instant declaratory ruling proceeding, including the Union's proposal and the Employer's ordinance, involve mandatory subjects of collective bargaining which are properly before the interest arbitrator.

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