

Interest Arbitration  
Illinois State Labor Relations Board

Town of Cicero, Illinois,

Employer

and

Illinois Association of  
Fire Fighters, IAFF Local 717,  
AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-98-230  
FMCS No. 980413-08379-A  
Arbitrator's File 98-120

Issue: In-Town Residency  
Requirement

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November 26, 1999 NOV 29 1999

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Opinion and Award

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**I. Statement of the Case**

The Union represents "all uniformed Fire Fighters and Lieutenants of the Cicero Fire Department" (Agreement of 1/1/94-12/31/97: Joint Exhibit 4).<sup>1</sup> Article XX, Section 20.1 of the Agreement permits the Town "to adopt a residency rule

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<sup>1</sup> In the remainder of this Opinion, I shall cite Joint Exhibits as "JX \_\_\_\_\_," Union Exhibits as "UX \_\_\_\_\_" and Employer Exhibits as "EX \_\_\_\_\_." I shall cite testimony by surname, transcript volume and page reference, for example "Andel I, 98." Volume I is the 9/2/98 transcript, Volume II the 9/9/98 transcript, Volume III the 9/11/98 transcript, Volume IV the 12/8/98 transcript, Volume V the 12/9/98 transcript, and Volume VI the 12/10/98 transcript. I shall cite non-testimonial portions of the transcript by volume and page reference, for example "Tr. I, 100."

for employees covered by this collective bargaining Agreement...." A Town ordinance (JX 6) requires the Town's "officers, officials or employees" to "make their residence and maintain their domicile within the Town of Cicero...."

The parties reached impasse on the Union's proposal to eliminate the residency requirement. Pursuant to the Illinois Public Labor Relations Act (hereinafter the Act) (5 ILCS 315/1, et seq.), the Union invoked interest arbitration. I conducted a hearing on September 2, 9 and 11, 1998 and on December 8, 9 and 10, 1998. The parties waived the tripartite arbitration panel described in the Act and submitted their dispute solely to me for resolution (Tr. VI, 150). Both parties filed post-hearing briefs and reply briefs.

## II. The Issue

The parties stipulated to the issue: "Whether Article 20, Section 20.1 of the Agreement, Joint Exhibit 1, shall be amended by the Union's proposal contained in Union Exhibit 1" (Tr. I, 21). At the hearing, I noted that the issue is "non-economic" and that, accordingly, I have "the right...basically to write my own offer, to modify the offer..., which I may or may not do" (Tr. VI, 150).

### III. The Residency Ordinance

In 1988, Cicero amended its residency ordinance, first enacted in 1979, as follows (JX 6):

#### ARTICLE XII. OFFICIALS, OFFICERS AND EMPLOYEES

##### Section 2-123. Residency Requirement

- (a) All persons accepting appointment or employment with the town as officers, officials or employees, certified or noncertified, must make their residence and maintain their domicile within the Town of Cicero no later than six months after commencing their employment and keep such domicile during the term of the appointment or employment.
- (b) All persons presently appointed or employed with the town as officers, officials or employees, certified or noncertified, must make their residence and maintain their domicile with[in] the Town of Cicero no later than six months after the effective date of this section and keep such domicile during the term of the appointment or employment.
- (c) Failure of any above-described person to comply with the residency and domicile requirements will be sufficient cause for termination of employment or removal from service in a manner prescribed by law.
- (d) Any person unable to comply with the move-in requirement may request an extension of time by submitting a request in writing to the personnel committee of the town board. The personnel committee may grant an extension not to exceed six months upon finding that reasonable good-faith efforts were unsuccessful in obtaining reasonable housing.
- (e) The president and board of trustees shall have the power to waive the foregoing requirements if, in their judgment, such employment requires technical training, knowledge or special expertise not available within the town.

#### IV. The Relevant Contract Clause

The most recent collective bargaining agreement (JX 4) commenced January 1, 1994 and expired December 31, 1997.

Article XX, Section 20.1 of the Agreement provides:

The Town of Cicero reserves the right to adopt a residency rule for employees covered by this collective bargaining agreement provided that no such rule, if adopted, shall be enforced unless it is uniformly applied to all employees and officers of the Town of Cicero, except where such employment requires technical training, knowledge or special expertise. Any language herein to the contrary notwithstanding, the Town of Cicero reserves its right not to submit the issue of residency to arbitration pursuant to 48 Ill. Rev. State. 1985, Section 1614(1). Attached to this Agreement is a copy of the Residency Ordinance for the Town of Cicero.

#### V. The Final Offers

At the hearing, the Union offered the following "Last Proposal" (UX 1):

Effective upon the issuance of an award adopting such language in accordance with the impasse procedures of §14 of the IPLRA, the following language shall be included as a term of the parties' contract as a new paragraph amending §20.1:

Employees covered by the agreement shall be required to reside within the State of Illinois.

The Employer proposed to retain the "current status quo" (Tr. VI, 148). At the close of the hearing, I granted the parties until December 24, 1998 to submit "amended final offers" (Tr. VI, 148). The Union submitted an amended final offer on December 22:

Effective upon the issuance of the Arbitrator's award, Section 20.1 shall be modified to provide as follows:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois

Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East.

The Employer did not amend its final offer of the "status quo."

#### VI. Relevant Provisions of the Act

Section 14(g) of the Act provides that "[a]s to each economic issue, the arbitration panel shall adopt the last offer of settlement which, in the opinion of the arbitration panel, more nearly complies with the applicable factors prescribed in subsection (h)." Section 14(h) sets out the factors used to evaluate economic proposals (the underlined portions of subsection 8(i) were added by Public Act 90-385, the Amendatory Act of 1997):

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.

(i) \*\*\*

In the case of fire fighter, and fire department or fire district paramedic matters, 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) and shall not include the following matters: i) residency requirements in municipalities with a population of at least 1,000,000; .... Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the facts upon which the decision may be based, as set forth in subsection (h).

The changes in this subsection (i) made by this amendatory Act of 1997 (relating to residency requirements) do not apply to persons who are employed by a combined department that performs both police and firefighting services; these persons shall be governed by the provisions of this subsection (i) relating to peace officers, as they existed before the amendment by this amendatory Act of 1997.

The critical factors in economic interest arbitration are contained in paragraphs 3 through 6. The "standards relied upon most frequently and given the greatest weight by interest arbitrators are: (1) comparability; (2) the cost of

living; and (3) the ability to pay. The different emphases placed on those standards, as well as the other standards that are included in public sector interest arbitration statutes, generally depend upon the economic circumstances that exist in the jurisdiction at the time of the arbitration proceeding."<sup>2</sup> The "most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions."<sup>3</sup>

I am not bound by the factors that govern "economic interest arbitration," but to the extent that these factors are appropriate, I shall consider them.

#### VII. The Employer's Motion to Dismiss Arbitration

##### A. The Employer's Position

On September 1, 1998, the Employer filed a "Motion to Dismiss Arbitration Due to Lack of Jurisdiction." Citing *City of Mattoon*, 13 PERI 2004 (ISLRB 1997), the Employer argues that "[o]nly 'mandatory' subjects of collective bargaining are subject to resolution by interest arbitration" (Emp. Brief, 4).<sup>4</sup> The Employer maintains that Section 14 of the Act provides that residency in "municipalities whose population

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<sup>2</sup>Arvid Anderson, Loren Krause & Parker A. Denaco, "Public Sector Interest Arbitration and Fact Finding: Standards and Procedures," Tim Bornstein, Ann Gosline & Marc Greenbaum, eds., *Labor and Employment Arbitration*, 2nd ed. (New York: Matthew Bender, 1998), Vol. II, chap. 48, §48.05[1].

<sup>3</sup> *Ibid.*, at §48.05[2].

<sup>4</sup> Many of the arguments presented in the Employer's motion to dismiss were reiterated in its post-hearing brief. Unless an argument cited is unique to the Employer's original motion, I shall cite the brief.

is in excess of 1,000,000 is not a mandatory subject of bargaining (and is not subject to interest arbitration)," but leaves open the question of whether residency in other municipalities is a mandatory subject of bargaining (Emp. Brief, 4). Determination of this issue, the Employer argues, "requires an analysis of the specific facts of each case, including the particular reasons for and governmental policies underlying the matter at issue" (Emp. Brief, 4-5). See *Village of Franklin Park*, 8 PERI 2039 (ISLRB 1992), citing *State of Illinois, Departments of Central Management Services and Correction*, 5 PERI 2001 (ISLRB 1988).

The Employer goes on to argue that, although an employer must bargain "in good faith with respect to wages, hours and other conditions of employment," an employer is not "required to bargain over matters of inherent managerial policy" (Emp. Brief, 5). When "an issue is both a term and condition of employment and one of inherent managerial policy, a hybrid situation exists and a balancing test must be used to determine whether an issue is a mandatory subject of bargaining" (bold print in original) (Emp. Brief, 5). *County of Cook v. Licensed Practical Nurses Association of Illinois*, 284 Ill. App.3d 145, 671 N.E.2d 787, 791 (1st Dist. 1996). Under the "three-part test" developed by the Illinois Supreme Court in *Central City Education Ass'n v. IELRB*, 149 Ill.2d 496, 523, 499 N.E.2d 892 (1992), if the matter under review is not "one of wages, hours and terms and conditions of employment," there is no threshold duty to bargain. If, how-

ever, the matter involves wages, hours and terms and conditions of employment, it must be determined whether the "matter is also one of inherent managerial authority" (Emp. Brief, 5). If not, "inquiry ends and the matter is a mandatory subject of bargaining" (Emp. Brief, 5-6). If the matter does involve inherent managerial authority, "the third prong is to balance the benefits that the bargaining will have on the decision-making process with the burden that bargaining imposes on the employer's authority" (Emp. Brief, 6). *Cook County v. LPN Assn., supra.*

The Employer concedes the "residency requirement is a... condition of employment," but argues that it "is also a matter of inherent managerial authority" because it "furthers" the "health, safety and prosperity of the Town of Cicero and its residents" (Emp. Brief, 6-7). The Employer "presented persuasive evidence that the residency requirement has significant economic and social benefits, and...removing it would cause great economic and social harm to Cicero" (Emp. Brief, 7).

Finally, the Employer argues, "the benefits of bargaining on the issue of residency [do not] exceed the burdens imposed on the employer's authority"; for "[t]here is simply nothing about the nature of a residency requirement which could benefit by the give-and-take nature of negotiations. It is either a matter of sound public policy or it is not. Public employers should not be required to bargain over policy decisions which are intimately connected to their

governmental mission or which would diminish their ability to effectively perform the services they are obligated to provide" (Emp. Brief, 7). *State of Illinois, Departments of Central Management Services and Correction, supra*. The Employer suggests that the "only benefit to be gained would be to the firefighters," who would be allowed to "flee en masse," thereby putting an "onerous burden" on the Town of Cicero by removing "one of its most effective tools to combat some of the economic and social problems that so plague it" (Emp. Brief, 8).

Citing *Village of Bensenville*, 14 PERI 2042 (ISLRB 1998), the Employer suggests that the final arbiter of whether "residency is a mandatory subject of collective bargaining [should be] the Illinois State Labor Relations Board or its General Counsel" (Emp. Brief, 8-9).

#### **B. The Union's Position**

The Union argues that by amending the Act to permit the arbitration of "residency requirements" the General Assembly made residency "a mandatory subject of bargaining" (Tr. I, 9). Thus, the Union contends, it is "logically absurd" that "the General Assembly [would have] enacted the changes in 14(i) with the intent that they would be meaningless" (Un. Brief, 61). And while the ISLRB "has not had an opportunity to construe the significance of the amendments to 14(i)," it has held that "residency requirements are a mandatory subject of bargaining for existing employees" "not subject to the Section 14 process" (Un. Brief, 61-2). Further, the Union

points out, "the majority of states with public employee collective bargaining laws have concluded that employee residency requirements are mandatory conditions of bargaining because they involve a term and condition of employment" (Un. Brief, 62). The "three-prong test" set forth in *Central City* is not "credibly" applied here, the Union suggests (Tr. 9-10). In the first place, the Employer had the option of seeking "a declaratory ruling through the General Counsel's office." Second, the Act "specifically says that these proceedings are not to be delayed by those kinds of disputes" (Tr. 11). Not having sought a declaratory ruling, the Employer is "in a poor position" to argue that an arbitrator does not have jurisdiction or that there should be a further delay (Tr. 11). In any event, the Union argues, the Employer could and should have filed an unfair labor practice alleging that the Union had improperly compelled it to arbitrate an issue that was not a mandatory subject of bargaining (Tr. 11-12).

### C. Ruling

Had the General Assembly intended to bar the arbitration of "residency requirements," it seems unlikely—indeed inexplicable—that it would have amended the Act to permit the arbitration of "residency requirements." The General Assembly obviously intended residency requirements to be read *in pari materia* with—to be considered in the same category as—all other "wages, hours and conditions of employment" to which "an arbitration decision shall be limited." Clearly, the Gen-

eral Assembly considered "residency" a "condition of employment."

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." The Employer's contention that the "matter is one of inherent managerial authority" because it advances the "health, safety and prosperity of the Town of Cicero and its residents" begs the very issue I must resolve: social benefit versus individual autonomy. Resolution of this issue may be critical to resolution of the merits of this dispute, but it is not critical to resolution of the Employer's claim that I lack subject-matter jurisdiction.

Had the General Assembly not intended to permit arbitral consideration of a residency requirement, it would not, it seems to me, have "included" a residency requirement among the "wages, hours and conditions of employment" to which "the arbitration decision shall be limited." I deny the Employer's "motion to dismiss arbitration due to lack of jurisdiction."

#### VIII. The Merits of the Dispute

##### A. Comparability

As the parties have reminded me, "[t]he most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions" (*City of Aurora*, S-MA-92-194 (Berman 1993)). Since, however, residency is not an economic issue, I "am not constrained by the

factors set out in Section 14(h) of the Act,"<sup>5</sup> including comparability. Even if not mandatory, however, the statutory standards, particularly comparability, are pertinent. In a large urban area encompassing hundreds of municipal fire departments in an extended labor market, it is appropriate to compare Cicero firefighters to firefighters in similar communities. Firefighters unhappy with working conditions in Cicero may seek similar work in many other fire departments in greater Chicago, and Cicero must compete with other communities in attracting and keeping qualified job candidates.

#### 1. Summary of the Parties' Positions

##### (a) The Employer

1. "The most significant standard for interest arbitration in the public sector is comparability of wages, hours and working conditions" (Emp. Brief, 18, citing *City of Aurora*, S-MA-92-194 (Berman 1993)).

2. The "residency requirement must be maintained in order to maintain internal parity amongst the Town's employees"; and "[a]ll of the approximately five hundred Town employees are subject to the residency requirement" (Emp. Brief, 18). "Where there is a well-established internal pattern among the bargaining units in a city or county, the internal pattern shall prevail unless adherence to the internal pattern results in unacceptable relationships between the unit at bar

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<sup>5</sup> *Village of Skokie*, ISLRB S-MA-93-181 (Berman 1995), at 83.

and its external comparables" (Emp. Brief, 19, citing *Village of Arlington Heights*, S-MA-88-89 (Briggs 1991); *Manitowoc School Dist.*, 100 LA 844, 848 (Rice 1992); *City of West Bend*, 100 LA 1118, 1121 (Vernon 1993); *City of Batavia*, S-MA-95-15 (Berman 1996); *City of Detroit*, 65 LA 293, 312 (Platt 1975).

3. If "this arbitrator were to...overturn the residency requirement for the 67 firefighters, the 127 police officers and other approximately 330 municipal employees of Cicero would have extremely inequitable working conditions, resulting in much resentment among the municipal ranks. As a result, the other municipal workers would likely seek and obtain a lifting of the residency requirement as to all municipal workers based on obtaining equity with the firefighters, causing extreme economic and social upheaval." (Emp. Brief, 20.)

4. "Cicero is most comparable to the Inner Ring communities" of Maywood, Harvey, Blue Island, Evergreen Park, Calumet City, Melrose Park, Forest Park, Berwyn, Bridgeview and South Holland (Emp. Brief, 20). More than "80% of communities comparable to Cicero have strict in-town residency requirements for their firefighters" (Emp. Brief, 20).

5. The "concentric zone model" endorsed by Dr. Cedric Herring "is the most appropriate method to identify communities which are truly 'comparable' for purposes of determining whether to allow Cicero's residency ordinance to remain intact" (Emp. Brief, 23). Here, "the residency requirement is being used as a tool to address certain social conditions

facing the community" and the "most comparable communities are those which are facing these same issues: racial/ethnic transitions (related in part to proximity to the Chicago border), 'white flight,' lower incomes and home values, and shrinking tax bases" (Emp. Brief, 23).

6. The "Union's proposed comparable communities share few or no relevant characteristics with Cicero" (Emp. Brief, 25). The Union's attorney "simply presented his analysis and commentary on the data," leaving the Town of Cicero "no opportunity to cross-examine a witness on the validity of the selection of the communities contained in Mr. Berry's 'comparable group'" (Emp. Brief, 25). The Union did "precisely what Dr. Herring cautioned against..., 'selective data dredging,' or the finding of "communities that fit a conclusion they want to reach and then use one-factor analyses which will 'prove' that their preconceived conclusions are accurate" (Emp. Brief, 26). The Union "chose one factor— population—among many that are to be considered in determining comparability" (Emp. Brief, 26). The Union "ignores the industry base, race, ethnicity, population density, and per capita income..., which due to Cicero's unique status as a blue collar industrial base community, become particularly relevant" (Emp. Brief, 26).

(b) The Union

1. External comparability favors the Union's proposal (Un. Brief, 24). In this proceeding, comparisons to private-sector employees is significant "because for some employees

the residency requirement as a condition of employment is a factor of overriding importance"—"a reason...to quit" (Un. Brief, 24-5). A "Cicero firefighter for whom residency is an overriding concern, will find a private labor market in which employers will allow him to establish his home where he chooses" (Un. Brief, 25).

2. Of the full-time departments in the Chicago metropolitan area with populations  $\pm 50\%$  of Cicero's population, only Calumet City, Elgin, Joliet and Waukegan "have city limit residency requirements" (Un. Brief, 25-6). None of the "Battalion 11" municipalities of Berwyn, Forest Park, North Riverside, Oak Park and River Forest has a "city limit residency requirement" (Un. Brief, 26). Of the 181 jurisdictions surveyed by the Illinois Professional Firefighters Association in 1998 "68 or 37% had a city limit residency requirement" (Un. Brief, 26). Of those 62% without a city limit residency requirement "jurisdictions were roughly evenly split between no residency requirement at all and a boundary or radius requirement" (Un. Brief, 26).

3. It is not relevant, as Dr. Herring reported, that about 60% of the studied departments have "some type of residency requirement," since the "basic dispute" is whether the "city limits residency requirement will be maintained or the Union's proposed residency requirement within specified boundaries will be adopted" (Un. Brief, 27).

4. Dr. Herring's "own sample" shows that "only 38% of the external communities" he surveyed "maintain city limit residency requirements" (Un. Brief, 28).

5. Dr. Herring has "'cherry-picked' his 'inner ring' of municipalities to include a disproportionate number of municipalities with city limit residency requirements" (Un. Brief, 28). If his "comparability criteria are applied systematically to a broader sample of 'inner ring' communities, the number of comparable communities with city limit residency is only 32% of the sample (28% if Harvey, which does not enforce its rule, is not counted)" (Un. Brief, 28).

6. A "parameter of  $\pm 50\%$  has been frequently approved by arbitrators," but "[a]rbitral application of the proximity parameter has...been more elastic" (Un. Brief, 28-9). See, e.g., *City of Batavia*, ISLRB S-MA-95-15 (Berman 1996) on the "inherent arbitrariness of specific cutoffs" (Un. Brief, 30). In *Village of Oak Brook* (1998), arbitrator Sinclair Kossoff noted that "disparate working conditions between workers who work in close proximity can adversely affect morale" (Un. Brief, 31).

7. The Union's list of comparable communities is "based upon a  $\pm 50\%$  of population parameter" and "concededly encompasses a large geographic area" (Un. Brief, 31). But "it is an appropriate description of the relevant labor market for the residency issue" (Un. Brief, 31). For this issue, a "wide angle lens" is "preferable" because: (1) the issue is one of "fundamental rights," an overriding concern "for some

employees which transcends major economic issues such as wages"; (2) with the exception of Waukegan and North Chicago, all the listed municipalities are "touched by an arc based on a 25 mile radius from Cicero"; (3) applying "additional demographic and financial criteria" would eliminate "communities that might...be options" for applicants and current employees; (4) the Consent Decree defines the relevant labor market as "Chicago, SMSA, PMSA or Cook County"; and (5) on "a rights issue of this order of magnitude" a "standard comparability analysis" might have less weight than "the 'other factors' statutory criterion" (*Village of Arlington Heights*, supra at 13) (Un. Brief, 32-4).

8. Dr. Herring's "report is fatally flawed as to both methodology and content" (Un. Brief, 72). Contrary to his testimony, he did not survey 97 communities; he received questionnaire responses from 47 (Un. Brief, 73). "Town Exhibit 9 reports data as to 35 communities" (Un. Brief, 73). Palatine and Hoffman Estates are listed in Town Exhibit 9 but not listed in the "List of Chiefs" who responded to questionnaires (Un. Brief, 74). Dr. Herring testified that more than 60 percent of the 97 communities surveyed stated that they had a "residency requirement," but he made no distinction between "city limit residency requirements and residency requirements within a defined boundary" or between bargaining unit and non-bargaining unit employees (Un. Brief, 74-5). In fact, 55 percent "have some residency requirement" and 51 percent no residency requirement; 15 of 47 or 31 percent have

city limit residency requirements and 11 or 23 percent have radius residency requirements outside the city limits (Un. Brief, 75). Seventy-four percent have radius residency requirements beyond city limits or no residency requirements (Un. Brief, 75-6). Two "inner ring" municipalities, Harvey and South Holland, listed as having a city-limit residency requirement, do not (Un. Brief, 76). Dr. Herring didn't adequately explain how "he decided to characterize the 10 cities listed on Exhibit 9 as 'inner ring' municipalities" (Un. Brief, 76). Dr. Herring testified that his methodology was based on a study produced by Robert Park and Ernest Burgess in 1967; in fact, this study was "originally published in 1925 and reprinted...in 1967" (Un. Brief, 78). The Park-Burgess study "has only marginal relevance to determining comparable communities. Its primary focus is upon growth in the City of Chicago and cities generally" (Un. Brief, 78). An analysis of the 50 communities surveyed by Dr. Herring plus all suburbs located in the 10 mile inner ring with a population  $\pm 50\%$  of Cicero's shows that 32 percent have city limit residency requirements, 28 percent if Harvey isn't counted (Un. Brief, 83). On cross-examination, Dr. Herring admitted that he could not document the adverse effects his report predicted as a result of eliminating the city limit residency requirement (Un. Brief, 84).

## 2. Discussion and Findings on Comparability

### (a) Towns Considered Comparable by the Employer

Cedric Herring, Ph.D., professor of sociology and public policy at the University of Illinois, testified on behalf of the Employer as an expert witness on comparability and on the social and economic ramifications of Cicero's residency rule (Herring V, 14, 19-20). Dr. Herring received an 81 percent response to 97 questionnaires he mailed to "appropriate people about residency requirements in their town" (Herring V, 20). The questionnaire reads as follows (Un. Brief, Appendix/Attachment D-2):

The Question: Does your department have a residency requirement for its employees?

- No. None for any employees in our department.
- For some employees in our department. (Please specify which employees and what conditions.)
- Yes, for all employees in our department.

Noting that Cicero, while "unique," has "many similarities with other communities in the metropolitan Chicago area," Dr. Herring testified that, following the lead of "other scholars," his choice of comparable communities was based upon what he characterized as the "concentric zone model" (Herring V, 33-4). This model posits three types of communities—"inner ring," "outer ring" and "semi-autonomous satellite cities" (Herring V, 35). Dr. Herring considered Cicero a "prototype of...an inner ring suburban area" (Herring V, 34, 43). According to Herring, "[i]nner ring

suburbs have common characteristics" such as a "more...dense population," older housing stock, an economy based on manufacturing, blue-collar or working class residents, a higher proportion of racial minorities, and lower per capita and median incomes (Herring V, 36-7). Disregarding "geography," that is, proximity to Cicero, Dr. Herring concluded that the "inner-ring" towns of Berwyn, Blue Island, Bridgeview, Calumet City, Forest Park, Harvey, Maywood, Melrose Park and South Holland, "share much with Cicero" (Herring V, 43, 44).<sup>6</sup>

Dr. Herring considered "outer ring" towns—towns not adjacent to Chicago—"very different" (Herring V, 38). They have "lower population concentrations" and are "less likely to be blue-collar in orientation or to be manufacturing based"; they are more "professional and/or managerial" (Herring V, 39). They are also "bedroom communities" with "less racial and ethnic diversity" and "substantially higher" incomes (Herring V, 39). Satellite cities are farther from Chicago than inner- or outer-ring suburbs; they are "urban areas that are in some sense large enough" to be independent of Chicago and they "tend to fall somewhere in between... inner ring suburbs and outer ring suburbs in terms of median income,...racial and ethnic composition," and the age of their housing stock (Herring V, 40).

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<sup>6</sup> For purposes of this Opinion and Award, the terms "town," "city," "village" and "municipality" are synonymous.

The Employer provided the following information on the "inner ring" suburbs it considers comparable to Cicero (EX 9):

**Table 1**

City	Residency Requirement	Pop. Density	Per Capita Income	Median Household Income	Median Home Value	Indebtedness Per Capita
Cicero	Yes	12,470	\$10,687	\$27,170	\$73,200	\$ 880
Berwyn	No	11,687	15,097	31,326	90,200	667
Blue Island	Yes	5,441	11,845	29,234	64,300	924
Bridgeview	Yes	3,676	13,444	33,652	92,900	980
Calumet City	Yes	5,460	13,569	30,138	64,300	1,184
Evergreen Pk	Yes	7,008	15,758	38,834	88,800	469
Forest Park	No	7,521	17,382	30,572	93,000	586
Harvey	Yes	5,109	8,690	23,201	49,900	549
Maywood	Yes	9,171	10,698	30,780	67,900	611
Melrose Park	Yes	5,161	13,249	30,814	99,200	409
S. Holland	Yes	3,096	17,352	45,211	90,600	752

**Table 2**

City	Expenditures Per Capita	Per Capita Public Safety Spending	Pop.	% of White Non-Hispanic	Primary Industry	Primary Occupation of Residents
Cicero	\$ 732	\$159	74,823	45.5%	Manufacturing	Laborer
Berwyn	469	183	46,751	92.2%	Professional Services	Admins.
Blue Island	584	169	21,673	52.3%	Professional	Laborer
Bridgeview	930	302	14,705	90.8%	Manufacturing	Laborer
Calumet City	663	186	38,223	67.3%	Professional	Laborer
Forest Pk	935	258	15,041	76.2%	Professional	Admins.
Harvey	559	153	30,651	18.7%	Retail	Laborer
Maywood	419	N/A	27,513	15.5%	Professional	Laborer
Melrose Pk	1,004	419	20,644	54.0%	Manufacturing	Laborer
S. Holland	665	156	21,673	87.6%	Manufacturing	Admins.

**(b) Towns Considered Comparable by the Union**

The Union cast a wider net: "The Union's Chicago Metro list is based upon a ±50% of population parameter" that, with

the exception of Waukegan and North Chicago, "are touched by an arc based on a 25 mile radius from Cicero" (Un. Brief, 31, 32). The Union argues that "any community that could be viewed as reasonably competitive with Cicero should be included in the list of comparable communities" (Un. Brief, 34). Using the factors of  $\pm 50\%$  population and areas within about 25 miles of Chicago, the Union provided the following data (UX 3-14):

**Table 3**

City	City Residency Required	Other Boundaries	Population	City Square Miles	Population Density
Cicero	Yes		67,436	6	11,239 per sq. mi.
Arlington Heights	No	No	75,468	16	4,717
Aurora	No	No	99,672	34	2,932
Berwyn*	No	Cook County	45,426	4	11,357
Bolingbrook	No	13 miles/ touching	47,691	11	4,336
Buffalo Grove	No	No	40,273	8	5,034
Calumet City	Yes		37,840	7	5,406
Des Plaines	No	Illinois	53,414	14	3,815
Downers Grove	No	No	46,845	14	3,346
Elgin	Yes		77,010	24.6	3,130
Elmhurst	No	No	42,680	10	4,268
Evanston	No	No	73,233	8	9,154
Forest Park*	No	Illinois	14,918	2	7,459
Glenview	No	No	38,437	12	3,203
Hoffman Est.	No	Illinois	46,363	19	2,440
Joliet	Yes		83,189	36	2,311
Lombard	No	No	40,870	9	4,541
Mt. Prospect	No	No	53,168	10	5,317
Naperville	No	Unknown	100,422	28	3,587
N. Chicago	No	10 miles	34,978	7	4,997
N. Riverside*	No		6,180	2	3,090
Oak Lawn	No	No	56,182	8	7,023
Oak Park*	No	No	53,648	5	10,730
Palatine	No	No	41,554	10	4,155
Park Ridge	No	No	37,075	7	5,296

City	City Residency Required	Other Boundaries	Population	City Square Miles	Population Density
River Forest*	No		11,669	3	3,890
Schaumburg	No	No	74,058	19	3,898
Skokie	No	Cook, Lake, DuPage Counties	59,432	10	5,943
Waukegan	Yes		69,392	36	1,928
Wheaton	No	Illinois	51,441	11	4,676

\* Battalion 11 Municipalities

**Table 4**

City	Housing Units Per Square Mile	% of EAV which is Residential	# of Applicants (City Limit)	# of Applicants (No City Limit)
Cicero	4,283	48.7	24	
Arlington Hts	1,878	53.2		1,512
Aurora†	1,063	72.7		500
Berwyn*	5,139	67.3		400
Bolingbrook	1,152	78.8		250
Buffalo Grove	1,733	77.0		300
Calumet City	2,272	36.3	50	
Des Plaines	1,444	39.0		800
Downers Grove	1,336	71.1		350
Elgin†	1,276	69.7	300	
Elmhurst	1,533	77.9		300
Evanston	3,739	60.7		1,200
Forest Park*	3,257	38.0	50	
Glenview	1,147	69.2		350
Hoffman Est.	888	56.1		300
Joliet†	1,045	71.3	600	
Lombard	1,704	62.5		200
Mt. Prospect	2,034	55.0		250
Naperville	1,108	74.6		NA
N. Riverside*	1,895	30.2		285
N. Chicago	1,071	53.9	60	
Oak Lawn	2,599	61.1		300
Oak Park*	5,015	69.0		100
Palatine	1,601	59.5		50
Park Ridge	2,003	75.5		NA
River Forest*	1,679	88.5		NA
Schaumburg	1,569	30.3		500-600
Skokie	2,317	46.5		1,512

City	Housing Units Per Square Mile	% of EAV which is Residential	# of Applicants (City Limit)	# of Applicants (No City Limit)
Waukegan†	1,162	64.5	500	
Wheaton	1,678	83.4		280

\*Battalion 11 Municipalities

•Total Applicants for Northwest Municipal Conference Consortium

†Central Cities

(c) Ruling

(i) A Broad Base of Comparison Is Appropriate

In evaluating competing economic proposals, arbitrators generally compare nearby, demographically similar towns of comparable population. Nor is it unusual for the negotiators themselves to draw comparisons to nearby towns of comparable population and socioeconomic rank. In this case, however, my resolution of the non-economic issue under review will directly affect neither employees' wages and other economic benefits nor the Town's treasury. Rather, I have been asked to resolve a "lifestyle" issue relating to one of the basic, personal decisions one must make—where to live; where to make perhaps the largest financial investment of one's life; where to raise and educate one's children; whom to associate with; where to plant roots. A residency requirement affects not only the employee himself but his spouse and children.<sup>7</sup>

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<sup>7</sup> I use the masculine pronoun as a neutral-gender word to avoid such awkward double locutions as "his or her," "he or she," "him or her," etc.

A residency requirement may also be important to a municipality. Aware that residency restrictions may limit the pool of qualified employees,<sup>8</sup> municipalities do not generally impose a residency limitation for casual or adventitious reasons. As in this case, there may be serious reasons for imposing a residency limitation on municipal employees. Cicero is a relatively poor community with many of the social problems associated with poverty. The Town thus wishes to hold onto its firefighters, who are among its more affluent residents.<sup>9</sup>

In weighing the competing needs of Cicero and its employees, I am not required to, and shall not, restrict comparability to the few communities suggested by the Employer or to Battalion 11 communities. Although I question the comparability of such distant towns as Waukegan, North Chicago and Aurora (Union) and Calumet City (Employer), I consider it appropriate to consider the comparable communities suggested by both parties. Because of the significance of the residency issue and the mobility of labor in such a large, interdependent urban area as greater Chicago, I shall cast a wider net

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<sup>8</sup> See, for example, Table 4, supra, at 24-5.

<sup>9</sup> The relative socioeconomic standing of a community is of some significance. To use an obvious example, the Town of Cicero would seem to have more at stake in a town-limit residency requirement than the Village of Lake Forest. In Cicero, firefighter salaries are among the highest of all residents and contribute to the Town's tax base and social stability. It is unlikely, however, that a firefighter's salary would be enough for even a "modest" home in Lake Forest.

than I might in an interest arbitration limited to economic issues.

(ii) Dr. Herring's Report Is Flawed

Not only do I consider a broad base of comparison appropriate in this case, I do not have confidence in Dr. Herring's "Summary Report" (EX 7), which employed the "Concentric Zone Model" to find that the 10 "inner-ring" cities of Berwyn, Blue Island, Bridgeview, Calumet City, Evergreen Park, Forest Park, Harvey, Maywood, Melrose Park and South Holland are comparable to the inner-ring city of Cicero (EX 7, at 9).

Dr. Herring wrote (EX 7, at 8-9):

Inner ring suburban communities share several commonalities and similarities. For example, they tend to be older and historically reliant upon an industrial base. They are near the border of the City of Chicago. Typically, they have experienced some type of racial and/or ethnic transition. They generally have higher population concentrations than other suburban communities. These communities also tend to have older (and thus less expensive) housing stock. Because they also tend to have higher proportions of blue-collar workers, they also tend to have somewhat lower than average incomes and property values.

\* \* \*

Outer ring suburban communities are distinct from their inner ring counterparts. Generally, these communities tend to be more affluent and less dependent on an industrial base. They tend to be located further away from the Chicago border, and their residents are more likely to be involved in commerce and high-skill services than are the residents of the inner ring suburbs. Many outer ring communities are "bedroom communities" that have very little in the way of traditional industry. Several outer ring suburban communities are relatively young. They have little racial or ethnic diversity. Typically, much of the housing stock in

these communities is newer, subject to building requirements for larger square footage per home and per lot and other ordinances that result in lower population densities. Because such communities are likely to have residents who are professionals and managers, their median income levels tend to be higher. This is also reflected in the median home values for many of these communities.

Dr. Herring considered Arlington Heights, Bolingbrook, Buffalo Grove, Des Plaines, Downers Grove, Elmhurst, Hoffman Estates, Lombard, Mount Prospect, Oak Lawn, Oak Park, Palatine, Park Ridge, Western Springs and Wheaton outer ring communities (EX 7, at 10).

I have no cause to reject the ten inner-ring towns enumerated by Dr. Herring. However, the evidence Dr. Herring produced did not establish that these ten towns—out of scores in the Chicago area—are uniquely comparable to Cicero. Not only did Dr. Herring not explain why his “inner-ring” towns—some farther from Cicero than other, presumably similar, towns—were limited to the ten he selected, he did not explain why two villages that border both Chicago and Cicero, Stickney and Oak Park, a Battalion 11 town, are not comparable to Cicero. For reasons not made clear, Dr. Herring omitted many towns on Chicago's border. He did not explain why (moving roughly from south to north around Chicago) Burnham, Dolton, Riverdale, Calumet Park, Merrionette Park, Alsip, Evergreen Park, Oak Lawn, Hometown, Burbank, Bedford Park, Summit, Forest View, Stickney, Oak Park, River Forest, Elmwood Park, Franklin Park, River Grove, Norridge, Harwood

Heights, Park Ridge, Niles, Skokie, Lincolnwood and Evanston were not comparable, inner- ring cities.

The Employer offered an explanation for Dr. Herring's selections (Emp. Brief, 21, n. 4):

As Dr. Herring explained in his testimony, he did not run his analysis on all of the communities in the metropolitan Chicago area because it would have been too time consuming. Rather, Dr. Herring focused on those communities which bear a closer relationship to Cicero in terms of either proximity, racial/ethnic composition and upheaval, and/or socioeconomic factors. (Herring, Tr. V at 44).<sup>10</sup>

The Union noted that Dr. Herring "gave the impression that he had surveyed 97 'communities'"; but in fact he surveyed just fifty, forty-seven of which responded (Un. Brief, 73). In the end, the Union wrote, Dr. Herring compared 35 communities (Un. Brief, 73). Of these, ten were in the so-called inner ring. Interestingly, as the Union also pointed out, 13 communities without city-limit residency requirements that responded to Dr. Herring were excluded from Dr. Herring's list of comparable communities: Bellwood, Brookfield, Carol Stream, Elmhurst, Elmwood Park, Franklin Park, Glenwood, Hillside, Riverside, Skokie, Stickney, Summit and Westchester (Un. Brief, 74).

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<sup>10</sup> Without having "run his analysis on all...the communities [my italics] in the metropolitan Chicago area," I do not know how Dr. Herring was able to decide which, if any, "bear a closer relationship to Cicero in terms of...racial/ethnic composition and upheaval, and/or socioeconomic factors." It appears that he pre-selected ten comparable, inner-ring towns without the benefit of evidence establishing that these ten towns were, in fact, *uniquely comparable* to Cicero.

Dr. Herring responded as follows to my question, "Why did you include these particular [inner-ring] communities in this report?" (Herring V, 125-26):

...there are a combination of factors. As I made reference earlier, we sent surveys to 97 communities.... Okay. And a portion of this was that we had responses from not all of these communities, and so in some sense we would have incomplete information, so they would not be relevant with respect to talking about the residency requirement. The second thing is, and I made an effort to include as part of this analysis communities that had shown up prominently in previous testimony, and so I am not going to sit here and say that, you know, that is a *comprehensive list of all communities*, but instead this is a subset of *possible communities that could be included* [my italics], but I will go back to the previous statement when I said that with the survey, we got 60 percent of the responses saying that they had a residency requirement. And so for the subsets that we were using to include 44 percent—or I forget the exact number—but 44 percent having residency requirement—actually, that is a little bit different. Does not suggest that it's an overstatement of how common such communities are in this universe. Wrong word.

I also asked Dr. Herring why he did not consider Franklin Park comparable to Cicero. His reply is instructive (Herring V, 127-28):

I am not going to be able to respond to each of more than 300 municipalities in the Chicago area in any kind of detail. I will say this, though. Arguably, Franklin Park could, in fact, be considered an inner ring community from what I know of it. I mean, because it does have certain characteristics, but there are also some characteristics of Franklin Park that would go against that notion.

In the end, Dr. Herring testified, "I have no problem with the characterization of Franklin Park as being an inner ring community" (Herring V, 129).

Dr. Herring's equivocal response to these questions, coupled with his concession that Franklin Park may be considered an "inner-ring community," expose the flaws in his study. First, he conceded that his list of comparable towns was just a "subset of possible communities that could be included." Second, he did not explain why this "subset" was more valid than any other "subset" he might have selected. Third, without having suggested that he had reviewed any pertinent data, Dr. Herring conceded that Franklin Park could be considered comparable to Cicero. If pressed, would Dr. Herring have conceded the comparability of almost any town near Chicago?

Had Dr. Herring provided data to show why, of the many suburbs adjacent to or near Chicago, only Berwyn, Blue Island, Bridgeview, Calumet City, Evergreen Park, Forest Park, Harvey, Maywood, Melrose Park and South Holland are comparable to Cicero, I might consider his analysis persuasive. Perhaps these communities are comparable to Cicero and perhaps, for reasons not made evident at this hearing, they are "most comparable" to Cicero. But Dr. Herring produced no demographic or economic data to show why or how he had selected one "subset of possible communities" over any other "subset of possible communities." Had Dr. Herring produced evidence, instead of merely asserting, that he had in fact "focused on those communities which bear a closer relationship to Cicero in terms of either proximity, racial/ethnic composition and upheaval, and/or socioeconomic factors" (Emp.

Brief, 21, n. 4), his analysis would be more credible. As about one-half of the towns of comparable population within 25 miles of Cicero do not have residency requirements and 86 percent do not have city-limit residency requirements, it seems more than coincidental that 80 percent of the towns in Dr. Herring's limited "subset" impose some sort of residency requirement on firefighters. It is improbable that any random selection of a "subset" would have ended up so heavily weighted in favor of a residency requirement.

There is another problem. The Employer did not distinguish between a city-limit residency requirement and less restrictive residency requirements. Since a city-limit restriction in the six-square-mile Town of Cicero is markedly more confining than many other geographical restrictions disclosed in this hearing, the fact that certain cities have some *undisclosed restriction* has little, if any, analytic or probative significance. Depending on circumstances, a 20-mile restriction not limited to a particular municipality may be quite generous.

The Union's analysis was not unflawed. Its ±50%-population list (UX 5) contains cities distant, and economically and demographically different, from Cicero. Nevertheless, since the Union's list of comparable cities factors in only the single objective consideration of population, it is not, and could not be, biased. No one could have pre-selected the 26 "comparable communities" proposed by the Union in order to advance a particular position. The other suggested list of

comparables, the nearby Battalion 11 communities that share area-wide fire-fighting responsibilities with Cicero are a mix of similar and dissimilar villages. Neighboring Oak Park and Berwyn have a comparable population, but it is likely that they are economically and demographically dissimilar in material ways. Forest Park (also an Employer comparable), North Riverside and River Forest each has fewer than 15,000 residents, compared to Cicero's population in excess of 67,000.

In the end, it is significant, if not dispositive, that 86 percent of area-wide cities of comparable population do not impose a city-limit residency requirement on fire-fighters.

## **B. Other Factors**

### **1. Summary of Arguments**

#### **(a) The Employer**

In summary, the Employer makes the following arguments:

1. "The interests and welfare of the public and the financial ability to meet those costs" support retaining the city-limit residency requirement:
  - (a) to "maintain economic stability";
  - (b) to enhance "the safety of the public by having its firefighters residents of the community";
  - (c) to avoid "exacerbation" of "certain social problems";
  - (d) "to avoid "continued 'white flight.'"; and
  - (e) "to enhance "community pride and spirit."

2. Internal and External Comparability support maintaining the city-limit residency requirement.
3. The "overall compensation" currently received by firefighters is "extremely generous" and helps to "attract and retain qualified firefighters."
4. Other factors support retention of the city-limit residency requirement:
  - (a) The Union "has not provided compelling reasons to overturn a longstanding contractual provision";
  - (b) If the residency requirement is lifted, the "Town will then be under great pressure to lift it for all of the approximately 500 Town employees";
  - (c) "It is likely that many, if not all, of the highly paid employees will move out of Town if the residency requirement is lifted"; and
  - (d) "The arbitrator should respect the will of the people of Cicero, as expressed in two referenda supporting the residency requirement."

**(b) The Union**

In summary, the Union argues:

1. "The Town's final offer represents a regression from the Town's January 1997 promise to agree to a 'relaxation' of the existing city limits residency rule."
2. "The Town's existing residency requirement represents a severe restraint on a life choice that most people would rank as one of the most fundamental: Where do I want to make my home and raise my family?"
3. "A great majority of municipalities in the Chicago metro area have eliminated city limit residency as a condition of employment for their firefighters."
  - (a) "Retention of the Town's city limit residency requirement would adversely affect

the Town's ability to retain and recruit the best and brightest firefighters."

- (b) "The Town's residency rule is a barrier to achieving the diversity goals of the 1986 Consent Decree."
- 4. "Modifying Cicero's existing residency rule would remove a major source of conflict and turbulence within Cicero's work force":
    - (a) "Prior to the Union's grievance initiative in 1995, the Town's enforcement of its residency rule was indifferent and selective"; and
    - (b) "The Town's policy and practice of utilizing many non-residence people to perform significant functions for the Town potentiates additional conflict."
  - 5. "The Town has failed to provide any good reasons to continue the severe restrictions on firefighters' choice of residency dictated by the existing residency rule."
2. **The Interests and Welfare of the Public and the Financial Ability To Meet Costs**

(a) **Economic Stability**

Joseph Persky, Ph.D., Professor of Economics at the University of Illinois at Chicago, prepared a "Summary Report" for the Employer (EX 4). Dr. Persky "estimate[d] that if a Cicero town employee moves from Cicero to another community, for every one thousand dollars of his or her earnings:

- "1. the value of goods and services produced in Cicero will decline at least \$260 and at most \$410;
- "2. income of Cicero residents will fall at least \$1060 and at most \$1090; and
- "3. at current tax rates, these losses will result in a decline in municipal revenue of approximately \$70" (EX 4, at 2)."

"Looking at the demographic trends," Dr. Persky estimated that "the incomes of the groups of people moving into the Cicero area...are substantially below the incomes of city employees, and especially of fire and police employees" (Persky V, 194). Thus, there "will be a filtering down of housing and a drop in value of housing throughout the community" (Persky V, 195). "Very likely, given the demographic trends,...any replacements...are going to be moving in at the bottom housing they can afford with the incomes that they currently have" (Persky V, 195). Further, according to Persky, "the concentration of poverty and low incomes" in municipalities "impacts...the cost of services per capita" (Persky V, 196). The "primary effect will be on resident income. Resident incomes necessarily must go down as people leave," the "production activity" of business is "going to go down as the income [leaves] and the...level of demand goes down" (Persky V, 196, 197).

Dr. Persky illustrated his thesis as follows (EX 4, at 2-3):

**Annual Per Employee Impacts**

	<u>Salary</u>		<u>Lower</u>	<u>Upper</u>
Per Avg. Employee	\$31,999	Production	\$ 8,320	\$13,120
		Income	33,919	34,879
		Taxes	2,240	
Per Firefighter	\$56,921	Production	\$14,800	\$23,338
		Income	60,336	62,044
		Taxes	3,984	
Per Police Employee	\$45,346	Production	\$11,790	\$18,592
		Income	48,067	\$49,428
		Taxes	3,174	

Annual Impact If All Employees in Given Category Left Cicero

	<u>Number</u>	<u>Salaries</u>		<u>Lower</u>	<u>Upper</u>
All Mun. Workers	524	\$16,757,467	Production	\$ 4,359,000	\$ 6,874,000
			Income	17,773,000	18,276,000
			Taxes	1,173,000	
Fire	67	\$ 3,813,718	Production	\$ 991,000	\$ 1,563,000
			Income	4,042,000	4,156,000
			Taxes	266,000	
Police	127	\$ 5,758,987	Production	\$ 1,497,000	\$ 2,361,000
			Income	6,104,000	6,277,000
			Taxes	403,000	

"In the worst case," Dr. Persky wrote, "if all municipal workers left the city, resident income would fall by \$18.3 million per year and remaining residents would have to make up almost \$1.2 million in taxes" (EX 4, at 3).

Dr. Persky concluded as follows (EX 4, at 4):

The lifting of the residency requirement for municipal employees would cause negative repercussions for the entire Cicero economy, affecting the residents of Cicero, the Cicero town government, local businesses, and on the public schools. The lower income/production in the town of Cicero would create a loss of income to Cicero residents, resulting in the demand for housing and the purchasing power of residents to decline. The town of Cicero would have a lower tax revenue which would cause it to either increase taxes to provide the same services or decrease local services, like law enforcement, fire fighting, streets and sanitation, and other municipal services. For businesses providing goods and services for consumption and/or use in Cicero, the decrease in income/production would mean lower sales and lower revenues, eventually leading to a loss of employment and lower investment rate in the community and a possible out-migration of local businesses. Similarly, the public school district in Cicero would face a substantial decrease in its budget which would again require the school district to either raise taxes or significantly reduce services. The effects of the lifting of the requirement, in conjunction with existing trends in Cicero would

likely contribute to a snowballing negative effect on the town.

(b) Freedom of Choice

The Union points out that (1) "Cicero, despite a population of over 67,000, encompasses a geographic area of only six square miles"; (2) Cicero has a "population density that is more than 186% higher than the density for all comparable municipalities" and 340.1% higher than the average density "[a]mong municipalities with city limit residency"; (3) "[w]ithin Cicero's city limits, the supply of acceptable housing is limited"; (4) Cicero firefighters "consider Cicero's schools unacceptable"; and (5) firefighters consider "personal safety and gang crime...primary considerations" (Un. Brief, 18-20).

Ten firefighters testified that they consider their freedom and the safety and well-being of their families compromised by having to live in Cicero. They also "feel that as [citizens] of the United States, we should have the right to say where we want to bring up our family" (Andel I, 168). The Union argues that the "Town of Cicero has no special license to appropriate the earnings of firefighters as an asset of the Town's economy" (Un. Brief, 100).

I need not summarize this voluminous record to identify the critical underlying issue: individual choice versus social good. For the most part, I do not quarrel with Dr. Persky's model of the economic consequences of "firefighter flight" from Cicero. The City is properly concerned with

"continued white flight" (Emp. Brief, 17). Nor, on the other hand, do I quarrel with firefighters' reasons for wishing to be free to live where they choose, to have the opportunity to make their homes in whatever community they consider compatible with their families' needs and values. In the end, these issues come down to the classic political choice between personal liberty and social welfare.

Other issues are tangential and may thus have a tangential impact on my decision, but they are not critical to resolution of the overriding philosophical choice between the "liberty" of the individual firefighter and the social and economic "welfare" of the Town of Cicero. In the final analysis, it is not of overriding importance whether two recent referenda on residency restrictions for Town employees accurately represented the "will of the citizens" or whether these elections were "rigged" by Town officials;<sup>11</sup> whether the residency restrictions impede the "diversity goals" of the 1986 Consent Decree; whether residency restrictions have been selectively enforced; or whether residency restrictions adversely affect employee morale. These are peripheral concerns, marginal to the overriding significance of the conse-

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<sup>11</sup> By making residency requirements an arbitral condition of employment, the General Assembly made residency referenda and ordinances subordinate to decisions reached through collective bargaining or interest arbitration. The "will of the people," as expressed in a referendum or ordinance, cannot override a statutorily valid residency decision made by the parties or an arbitrator.

quences and broader ramifications of a choice between "liberty" and "general welfare."

The outcome of this debate will undoubtedly have unpredictable, even unintended, consequences. A decision eliminating the residency rule may have the dire consequences anticipated by Dr. Persky. Exodus of a small group of relatively affluent, white firefighters may dramatically accelerate "white flight," leaving Cicero more impoverished and more segregated, without a sufficient tax base or adequate municipal services, and plagued by a downward spiral of increasing poverty, crime and social malaise and dysfunction. Or a decision upholding the residency rule may lead to the wholesale resignation of firefighters who then seek more compatible employment in other communities. And if Cicero cannot attract enough qualified replacements, the quality of the Fire Department could deteriorate. With or without firefighters (and other municipal employees) in residence, however, there could still be "white flight," leaving Cicero more impoverished and more segregated, without a sufficient tax base or adequate municipal services, and plagued by a downward spiral of increasing poverty, crime and social malaise and dysfunction.<sup>12</sup>

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<sup>12</sup> It can be suggested that, inevitably, "...the inner-ring suburbs are much more like the central city than the next ring of suburbs. The problems of the city have suburbanized" in that "[n]early all are losing residents. Both homes and infrastructure are aging. They have no room for growth. Many are undergoing racial change. And most are coping with

No one is clairvoyant. I cannot predict the consequences of modifying (or not modifying) the residency rule. I need not be clairvoyant, however, to realize that the impact on firefighters of modifying or not modifying the current residency rule is immediate and practical. I must ask whether the theoretical cost of economic viability and social cohesion in a town of more than 67,000 should be extracted from 67 firefighters, or about 0.1% (1 in 1000) of Cicero's population (EX 4, at 3). Should, or can, they be expected to carry this burden? I think not.

### 3. Conclusion

I can hardly be unaware of the economic and demographic problems of Cicero.<sup>13</sup> Nor have I discounted Dr. Herring's opinion that "general community spirit and pride" is heightened when firefighters live in town (EX 7, at 7) or, as Dr. Herring suggested, that "social distance" between fire-

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a broad range of problems once thought confined to the city, such as rising crime, growing poverty and stagnating home values" (Laurie Goering, "Inner-Ring Losing Its Glow," *Chicago Tribune*, Sunday, September 4, 1994: Union Brief, Appendix F). Obviously, this newspaper article is not evidence. I mention it not only because it comports with my understanding of demographic trends in metropolitan Chicago but because it is consistent as well with Dr. Herring's analysis: "The Town of Cicero is faced with serious social problems in the areas of employment, housing, education, crime, loss of industry and tax base, white flight and maintenance of municipal services. The Town's size, age, proximity to Chicago, dramatic demographic shifts and commercial decline make the socioeconomic conditions more severe than in many other Chicago suburbs" (EX 7, at 6).

<sup>13</sup> In terms of a combination of demographic factors, including crime, education, home values, property taxes and commuting time, the Chicago Sun-Times ranked Cicero 152nd among 153 suburbs analyzed (Tr. I, 96; UX 15).

fighters and residents may "have a public safety impact." I can only suggest that the evidence did not show that the substantial majority of like villages and cities in metropolitan Chicago without city-limit residency requirements have experienced these negative consequences.

In modern American society it seems an anachronism, a vestige of patronage or race- and ethnic-based politics,<sup>14</sup> to compel the in-town residence of municipal employees of a geographically small town with limited housing opportunities and crowded schools. A residency restriction may make sense (and be less onerous) in Chicago, with its wide choice of neighborhoods, housing, cultural opportunities and schools; it makes less sense in Cicero.

Cicero's needs are great. Should firefighters (and other Town employees) move out, Cicero will lose some of its most affluent and well-educated residents; and the enormous problems of poverty and segregation may well be exacerbated. But

---

<sup>14</sup> On the other hand, the world may be devolving into widespread tribal, ethnic and religious conflict: "In this new world, the most pervasive, important, and dangerous conflicts will not be between social classes, rich or poor, or other economically defined groups, but between peoples belonging to different cultural entities." Samuel P. Huntington, *The Clash of Civilizations and the Remaking of World Order* (New York: Simon & Schuster, 1997), 28. American history may be studied from the perspective of racial and ethnic conflict; and I leave to the judgment of history whether residency restrictions might aggravate or assuage these all-too-prevalent antagonisms. If the *sole consideration* were keeping some racial, ethnic or social-class balance, a city-limit residency requirement might be considered an appropriate political instrument. Not only, however, are other considerations relevant, I consider it problematic that such restrictions will have the intended result.

it seems futile to ask a small unit of firefighters (and their innocent families) to solve socioeconomic problems not of their making and over which they have little, if any, control. In the end, I cannot conclude that the evidence established that Cicero's social and economic problems can be cured, or even substantially relieved, by maintaining residency limitations that are rapidly becoming outdated in our increasingly mobile society. Current social and economic trends cannot be charted on a straight line into the future, but Cicero's problems do not seem amenable to the simple panacea of a residency limitation.<sup>15</sup> The projected or hypothetical needs of Cicero cannot take precedence over the actual here-and-now freedom of the individual firefighter to exercise a basic right enjoyed by most unincarcerated U.S. residents.<sup>16</sup> That most cities and towns of comparable popula-

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<sup>15</sup> The problems may seem insoluble, but things can change. Manufacturing may make a comeback. Affordable housing may attract young, upwardly mobile buyers. Auto racing in nearby Stickney may have a positive economic ripple effect in Cicero. The state or federal government may some day make an effective effort to relieve urban distress through education, training, infrastructure improvement and economic redevelopment. Cicero may experience a social and economic renaissance. On the basis of the evidence adduced, however, I simply cannot predict that holding on to a small group of firefighters will have much of an impact on Cicero's fortunes.

<sup>16</sup> Obviously, a firefighter who resigns from the Cicero Fire Department may live anywhere. I simply do not believe that *the evidence established* that the social or economic needs of the community override the basic "liberty" considerations of the individual employee or that requiring firefighters to live in Cicero would stop or even substantially decelerate "white flight" and alleviate other social ills.

tion in metropolitan Chicago do not have city-limit residency requirements is relevant, if not critical, to my decision.

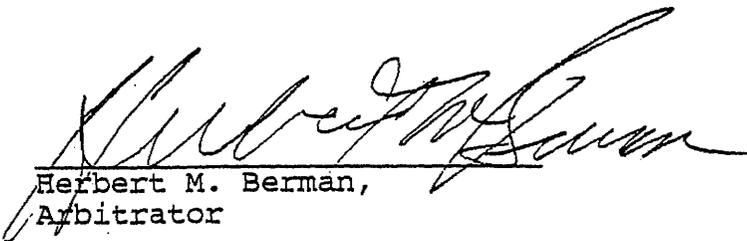
In its final offer of December 22, 1998, the Union proposed to restrict residency to a large area of northern Illinois. In practical terms, this "restriction," which stretches the limits of a reasonable commute, would offer firefighters a wide choice of homes in a variety of communities. To some degree, the limitation proposed by the Union raises issues of safety and efficiency: The need to have firefighters capable of responding rapidly to an emergency when off duty. In light, however, of the battalion system and pacts among cooperating fire protection districts, this problem seems more theoretical than real. It was not raised by the Employer.

#### Award

I adopt the Union's final offer of December 22, 1998:

Effective upon the issuance of the Arbitrator's award, Section 20.1 of the collective bargaining agreement shall be modified to provide as follows:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East.

  
Herbert M. Berman,  
Arbitrator

November 26, 1999

BEFORE  
HERBERT BERMAN, ARBITRATOR

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IN THE MATTER OF ARBITRATION )

Between )

TOWN OF CICERO )

Residency Interest Arbitration  
FMCS #980413-08379-A

And )

IAFF LOCAL 717 )

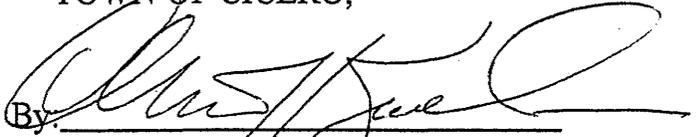
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CERTIFICATE OF SERVICE

To: Illinois State Labor Relations Board  
320 W. Washington, Suite 500  
Springfield, Illinois 62701

PLEASE TAKE NOTICE that on December 16, 1999, the undersigned served upon Arbitrator Herbert Berman, the neutral arbitrator and IAFF, Local 717 c/o J. Daley Berry, its attorney a copy of the Board of Trustees of the Town of Cicero Resolution No. 296-99 constituting a rejection of the interest arbitration award issued on November 16, 1999. A copy of Resolution No. 296-99 is attached hereto and herewith served upon the Illinois State Labor Relations Board.

TOWN OF CICERO,

By:   
One of Its Attorneys

Michael J. Kralovec  
Nash, Lalach & Kralovec  
30 N. LaSalle St., Suite 1526  
Chicago, IL 60602  
312/372-5464

RESOLUTION NO. 296-99

Whereas, An opinion and award was issued by Arbitrator Herbert M. Berman (the "Arbitrator") on November 26, 1999 in ISLRB Case No. S-MA-98-230, Town of Cicero, Employer and Illinois Association of Fire Fighters, IAFF Local 717, AFL-CIO, CLC, Union (the "Case");

Whereas, at issue in the case was the applicability of the residency requirement to Cicero Firefighters as set forth in Town Ordinances and Section 20.01 of the collective bargaining agreement; and

Whereas, the Arbitrator found that the needs of the Town of Cicero could not take precedence over the freedom of the individual firefighter to exercise his or her right to live where they pleased; and

Whereas, the Arbitrator adopted as his award the Union's final offer to amend Section 20.01 of the collective bargaining agreement to read:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East; and

Whereas, pursuant to 5 ILCS 315/14(e) the Town Board as governing body is required to review the terms decided by the arbitrator within 20 days of their issuance and may reject or accept those terms;

**NOW, THEREFORE BE IT RESOLVED**, by the President and Board of Trustees of the Town of Cicero, that:

1. The foregoing whereas clauses are hereby incorporated and herein adopted.
2. That the terms of the Arbitrator's opinion and award are hereby rejected for the following reasons:
  - a. That Public Act 90-385 which provides for the arbitration of issues involving residency and which was relied upon for the institution of the Case is unconstitutional in that it violates the single subject matter clause of the Illinois Constitution of 1970 (Article I, Section 8 (d)).
  - b. That the Arbitrator exceeded its statutory authority in that it denied the Town's Motion to Dismiss regarding jurisdiction.
  - c. That the decision of the Arbitrator is arbitrary and/or capricious in that the decision usurped the authority of the Town Board of Trustees and administration to address issues of social and economic concern.
  - d. That the decision of the Arbitrator is arbitrary and/or capricious in that the arbitrator

erroneously found that the elimination of the residency requirement would "affect neither employees wages and other economic benefits nor the Town's treasury. (Opinion and award at page 25). In fact, the arbitrator conceded to the potential negative effect the decision may have to the Town's economy. Moreover, the potential negative effect to the Town may directly effect wages or benefits to firefighters and other Town employees.

e. That the Arbitrator's opinion is arbitrary and/or capricious in the Arbitrator rejected the testimony of Dr. Herring in favor of the Arbitrator's own opinions, where the Union failed to present any witnesses to counter Dr. Herring.

f. That the Arbitrator's decision is arbitrary and/or capricious in that the Arbitrator failed to fully accept Dr. Persky's model of economic consequences without benefit of any sworn testimony or other competent evidence to the contrary presented by the Union.

g. That the decision of the Arbitrator is arbitrary and/or capricious in that the arbitrator fully accepted testimony of firefighters regarding social and economic conditions found in the Town without a proper basis in fact.

h. That the decision of the Arbitrator is arbitrary and/or capricious in that the Arbitrator disregarded direct evidence that the decision affected only 67 firefighters where in fact the decision may effect almost 500 Town employees.

*Betty Lofen-Maltese*  
Betty Lofen-Maltese, Town President

ATTEST:  
*Marilyn Colpo*  
Marilyn Colpo, Town Clerk

Date of Passage: 12-14-99

Interest Arbitration  
Illinois State Labor Relations Board

Town of Cicero, Illinois,  
Employer

and

Illinois Association of  
Fire Fighters, IAFF Local 717,  
AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-98-230  
FMCS No. 980413-08379-A  
Arbitrator's File 98-120

Issue: In-Town Residency  
Requirement

Herbert M. Berman,  
Arbitrator

J. Dale Berry  
CORNFIELD AND FELDMAN,  
Attorney for Union

Michael J. Kralovec  
NASH, LALICH & KRALOVEC  
and

Terence P. Gillespie  
GENSON & GILLESPIE,  
Attorneys for Employer

September 21, 2000

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**Supplemental Opinion and Decision**

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ILLINOIS LABOR  
RELATIONS BOARD

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Interest Arbitration  
Illinois State Labor Relations Board

Town of Cicero, Illinois,

Employer

and

Illinois Association of  
Fire Fighters, IAFF Local 717,  
AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-98-230  
FMCS No. 980413-08379-A  
Arbitrator's File 98-120

Issue: In-Town Residency  
Requirement

Herbert M. Berman,  
Arbitrator

J. Dale Berry  
CORNFIELD AND FELDMAN,  
Attorney for Union

Michael J. Kralovec  
NASH, LALICH & KRALOVEC  
and

Terence P. Gillespie  
GENSON & GILLESPIE,  
Attorneys for Employer

September 21, 2000

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**Supplemental Opinion and Decision**

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**I. Statement of the Case**

The Union represents "all uniformed Fire Fighters and Lieutenants of the Cicero Fire Department" (Agreement of 1/1/94-12/31/97: Joint Exhibit 4).<sup>1</sup> Article XX, Section 20.1 of the Agreement permits the Town "to adopt a residency rule for employees covered by this collective bargaining

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<sup>1</sup> In the remainder of this Opinion, I shall cite Joint Exhibits as "JX \_\_\_\_," Union Exhibits as "UX \_\_\_\_" and Employer Exhibits as "EX \_\_\_\_." I shall cite testimony by surname, transcript volume and page reference, for example "Andel I, 98." Volume I is the 9/2/98 transcript, Volume II the 9/9/98 transcript, Volume III the 9/11/98 transcript, Volume IV the 12/8/98 transcript, Volume V the 12/9/98 transcript, and Volume VI the 12/10/98 transcript. I shall cite non-testimonial portions of the transcript by volume and page reference, for example "Tr. I, 100." I shall refer to my initial Opinion and Award as "Cicero I."

Agreement...." A Town ordinance (JX 6) requires the Town's "officers, officials or employees" to "make their residence and maintain their domicile within the Town of Cicero...."

The parties reached impasse on the Union's proposal to eliminate the residency requirement. Pursuant to the Illinois Public Labor Relations Act (hereinafter the Act) (5 ILCS 315/1, et seq.), the Union invoked interest arbitration. I conducted a hearing on September 2, 9 and 11, 1998 and on December 8, 9 and 10, 1998. The parties waived the tripartite arbitration panel described in the Act and submitted their dispute solely to me for resolution (Tr. VI, 150).

On November 26, 1999, I issued the following Decision (also referred to as "Award") in *Cicero I*:

I adopt the Union's final offer of December 22, 1998:

Effective upon the issuance of the Arbitrator's award, Section 20.1 of the collective bargaining agreement shall be modified to provide as follows:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East.

On December 14, 1999, the Town enacted Resolution 296-99 rejecting the foregoing Award (Supp. JX 1):

Whereas, an opinion and award was issued by Arbitrator Herbert M. Berman (the "Arbitrator") on November 26, 1999 in ISLRB Case No. S-MA-98-230, Town of Cicero, Employer and Illinois Association of Fire Fighters, Local 717, AFL-CIO, CLC, Union (the "Case");

Whereas, at issue in the case was the applicability of the residency requirements to Cicero Firefighters as set forth in Town Ordinances and Section 20.01 of the collective bargaining agreement; and

Whereas, the Arbitrator found that the needs of the Town of Cicero could not take precedence over the freedom of the individual firefighter to exercise his or her right to live where they pleased; and

Whereas, the Arbitrator adopted as his award the Union's final offer to amend Section 20.01 of the collective bargaining agreement to read:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East; and

Whereas, pursuant to 5 ILCS 315/14(e) (sic) the Town Board as governing body is required to review the terms decided by the arbitrator within 20 days of their issuance and may reject or accept those terms;

NOW, THEREFORE BE IT RESOLVED, by the President and Board of Trustees of the Town of Cicero, that:

1. The foregoing whereas clauses are hereby incorporated and herein adopted.
2. That the terms of the Arbitrator's opinion and award are hereby rejected for the following reasons:
  - a. That Public Act 90-385 which provides for the arbitration of issues involving residency and which was relied upon for the institution of the Case is unconstitutional in that it violates the single subject matter clause of the Illinois Constitution of 1970 (Article I, Section 8(d)).
  - b. That the arbitrator exceeded its (sic) statutory authority in that it (sic) denied the Town's Motion to Dismiss regarding jurisdiction.
  - c. That the decision of the Arbitrator is arbitrary and/or capricious in that the decision usurped the authority of the Town Board of Trustees and administration to address issues of social and economic concern.
  - d. That the decision of the Arbitrator is arbitrary and/or capricious in that the arbitrator erroneously found that the elimination of the residency requirement would "affect neither employees' wages and other economic benefits nor the Town's treasury" (Opinion and Award at page 25). In fact, the arbitrator conceded to the potential negative effect the decision may have to the Town's economy. Moreover, the potential negative effect to the Town may directly effect (sic) wages or benefits firefighters and other Town employees.

- e. That the Arbitrator's opinion is arbitrary and/or capricious in [that] the Arbitrator rejected the testimony of Dr. Herring in favor of the Arbitrator's own opinions, where the Union failed to present any witnesses to counter Dr. Herring.
- f. That the arbitrator's opinion is arbitrary and/or capricious in that the arbitrator failed to fully accept Dr. Persky's model of economic consequences without benefit of any sworn testimony or other competent evidence to the contrary presented by the Union.
- g. That the decision of the arbitrator is arbitrary and/or capricious in that the arbitrator fully accepted testimony of firefighters regarding social and economic conditions found in the Town without a proper basis in fact.
- h. That the decision of the arbitrator is arbitrary and/or capricious in that the arbitrator disregarded direct evidence that the decision affected only 67 firefighters where in fact the decision may effect (sic) almost 500 Town employees.

I convened a supplemental hearing on January 12, 2000. Both parties have submitted supplemental post-hearing briefs. This Supplemental Decision is issued pursuant to Section 14(o) of the Act (5 ILCS §315/14(o)).

## **II. Discussion and Findings**

I shall review each ground for rejection of the Award in *Cicero I* set forth in Resolution 296-99.

- A. Public Act 90-385 which provides for the arbitration of issues involving residency and which was relied upon for the institution of the Case is unconstitutional in that it violates the single subject matter clause of the Illinois Constitution of 1970 (Article I, Section 8 (d)).**

I cannot declare a statute unconstitutional, and I shall not burden this proceeding with either a meaningless discussion or a futile act. The issue of unconstitutionality is best addressed to a court of law that may invalidate a statute on constitutional grounds.

In this proceeding, I have responded to the parties' request to resolve this contractual issue in accordance with the Act. Waiving the tripartite arbitration panel described in the Act, the parties submitted the issue of "[w]hether Article 20, Section 20.1 of the Agreement...shall be amended by the Union's proposal" solely to me for arbitration. I have met that responsibility.

The Town maintains that the statute permitting it to appeal an arbitrator's award is "poorly written" in that it "doesn't provide litigants...a lot of guidance in how to proceed" (Supp. Tr. 101-02). The Town was concerned that "if we did not come back to the arbitrator on a supplemental proceeding," a judge might say "you had your shot to go back there, you didn't, you can't come here" (Supp. Tr. 103). The town has preserved its rights. Should I deny this motion for reconsideration, the Town may address its constitutional argument to a court of law. I respectfully decline the Town's invitation to rule on the constitutionality of a legislative enactment.

**B. The Arbitrator exceeded his statutory authority in that he denied the Town's Motion to Dismiss regarding jurisdiction.**

The Employer reiterated the argument, first raised in its motion to bar arbitration of a residency requirement in *Cicero I*, that I do not have jurisdiction to consider this issue. As before, I can only suggest that the General Assembly has authorized arbitration of this issue. If, as the Town argues, residency is not a "mandatory subject of bargaining,"

but "an issue of inherent managerial authority," the General Assembly would not have authorized interest arbitration on that subject. In any event, this issue of statutory interpretation argument is best addressed to a court of law.

**C. The decision of the Arbitrator is arbitrary and/or capricious in that the decision usurped the authority of the Town Board of Trustees and administration to address issues of social and economic concern.**

As much of the hearing was devoted to evidence presented by *both parties* on "issues of social and economic concern," this argument seems almost disingenuous. In *Cicero I*, the Town maintained that the city-limit residency requirement was needed in part "to maintain economic stability"; "to avoid exacerbation of certain social problems"; "to avoid continued 'white flight'"; and "to enhance community pride and spirit" [my italics] (*Cicero I*, at 33). As requested, I addressed these and other issues of "social and economic concern." As the concerns noted by the Town illustrate, and as both parties have recognized, the issue of required residency necessarily involves matters of "social and economic concern" that might affect employees, the Town and its residents.<sup>2</sup>

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<sup>2</sup> See, in this connection, *Village of Maywood/Maywood Firefighters, SEIU, Local 1*, S-MA-95-167 (Malin 1996), cited by the Employer for the principle that "[g]enerally, an arbitrator should not award any 'breakthroughs' that would substantially change the longstanding status quo" (Emp. Brief, 19). In denying the Union's request to modify the existing village-wide residency requirement, arbitrator Martin Malin considered "issues of social and economic concern": "the problems of crime and poor schools" and preservation of "the residency requirement," which he considered "necessary to preserve [the Village's] middle class" (*Maywood*, at 16). Arbitrator Malin noted that, as here, "the differences [between the parties] are as much philosophical as...empirical" (*Ibid.*).

In *Cicero I*, the Town argued that a residency requirement "furthers" the "health, safety and prosperity of the Town of Cicero and its residents" and "has significant economic and social benefits" (*Cicero I*, at 9). The Town went on to suggest that eliminating the residency requirement "would cause great economic and social harm to Cicero" (*Cicero I*, at 9). I can only assume that the Town would not have presented issues of "social and economic concern" to me had it not intended for me to consider them. I suspect that the problem is not that I acted as a "super-Town Board" but that, from the Town's perspective, I made a bad decision. However, my role was, and remains, that of an independent decision-maker, not a rubber stamp for the Town Board.

In my opinion, the argument that my "policy decision" on residency "has done irreparable damage to the democratic process and to future bargaining between the parties" (Emp. Supp. Brief, at 3-4) would be best addressed to the General Assembly, which "include[d] residency requirements" in all Illinois municipalities except Chicago as a form of "wages, hours, and conditions of employment" subject to interest arbitration.

The Town also argues that I "arbitrarily and capriciously decided not to follow" the "eight express standards for an interest arbitrator to consider in shaping his or her award" (Emp. Supp. Brief, 6). As noted by the Town, I stated—

As the parties have reminded me, "[t]he most significant standard for interest arbitration in the

public sector is comparability of wages, hours and working conditions" (*City of Aurora*, S-MA-92-194 (Berman 1993)). Since, however, residency is not an economic issue, I "am not constrained by the factors set out in Section 14(h) of the Act," including comparability [footnote omitted] (*Cicero I*, at 12-13).

The final sentence of this passage is in error. However, I went on to note, at 13:

Even if not mandatory, however, the statutory standards, particularly comparability, are pertinent. In a large urban area encompassing hundreds of municipal fire departments in an extended labor market, it is appropriate to compare Cicero firefighters to firefighters in similar communities. Firefighters unhappy with working conditions in Cicero may seek similar work in many other fire departments in greater Chicago, and Cicero must compete with other communities in attracting and keeping qualified job candidates.

I devoted the next 20 pages of my Opinion to a discussion and analysis of "comparability." It is thus difficult to conclude that I did not apply what is perhaps the most significant factor in interest arbitration or, as the Town suggests, that I gave "lip service only" to this and other factors (Emp. Supp. Brief, 6).

I agree with the Town that Section 14(h) of the Act does not explicitly list the "liberty interest" of firefighters. However, Section 14(h)(8) Act also permits an arbitrator to consider—

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.

In the State of Illinois, mandatory arbitration of a "residency requirement" is unusual, to say the least. Thus, it was difficult to take into consideration those "factors... normally or traditionally taken into consideration." There has not been sufficient mandatory arbitration of the issue of a residency requirement or, so far as the record shows, bargaining under the Amendatory Act of 1997, to establish which "other factors...are normally or traditionally taken into consideration..." with respect to this issue. Obviously, I have placed substantial weight on the normal and traditional factors of comparability and "the interests and welfare of the public."<sup>3</sup> In addition, I considered other factors the parties considered relevant and material. I did not ignore the "social welfare" factors raised by the Employer, but in the final analysis I considered these factors outweighed by the "liberty interests" of the firefighters. As the arguments presented by the parties suggest, deciding whether a firefighter must live in Cicero requires that an arbitrator exercise his discretion to determine which factors are relevant and material and weigh them against each other.

In addition to the traditional issues of comparability and the interests and welfare of the public, I was asked to, and did, balance the "liberty interests" of firefighters

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<sup>3</sup> Although the Town maintained that adoption of the Union's proposal might result in "white flight" and reduced tax revenues, as well as an obligation to extend the same proposal to other employees, the Town did not argue that it did not have the "ability to pay" for this non-economic item.

against the articulated interests of the Town in "economic stability," "public safety," "social problems," "white flight," "community pride," and the presumed impact on other Town employees. I did not, as the Town has suggested, "pick and choose which factors" to apply. I applied two traditional factors and balanced "other factors" urged upon me by the parties.

Had the Employer not wished me to consider particular "social factors," I can only assume it would not have pursued them through evidence and argued them vigorously in its post-hearing brief.

**D. The decision of the Arbitrator is arbitrary and/or capricious in that the Arbitrator erroneously found that the elimination of the residency requirement would "affect neither employees' wages and other economic benefits nor the Town's treasury" (Opinion and Award, at page 25). In fact, the Arbitrator conceded the potential negative effect to the Town may directly affect wages or benefits to firefighters and other Town employees.**

Whether the Town will choose to eliminate, or will be pressured to eliminate, residency requirements for other employees is conjectural. I agree that "the decision may [affect] almost 500 Town employees."<sup>4</sup> But I was not asked to, and cannot, determine residency requirements for any unit of employees except firefighters.

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<sup>4</sup> *May affect* is the operative phrase. No one can predict what will happen.

**E. The Arbitrator's opinion is arbitrary and/or capricious in that the Arbitrator failed to fully accept Dr. Persky's model of economic consequences without benefit of any sworn testimony or other competent evidence to the contrary presented by the Union.**

I did not and do not understand my role as that of a conduit for expert opinion. I note, perhaps unnecessarily, that "opinion"—even the opinion of an expert, is not "fact"—and that it was my job to weigh "expert opinion," as well as the implications and ramifications of that opinion, against other opinions and other evidence. In the end, I had to reach my own conclusions. Dr. Persky's study was predictive; it was a forecast based upon particular assumptions. He forecast the social and economic effects of eliminating or relaxing the residency requirement. No one, including Dr. Persky, could reasonably suggest that his predictions were factual; they were an estimate.

In fact, I did not take exception to Dr. Persky's study. I wrote that "[f]or the most part, I do not quarrel with Dr. Persky's model of the economic consequences of 'firefighter flight.'" I concluded, however, that "these issues come down to the classic political choice between personal liberty and social welfare" (*Cicero I*, 38-9), an example of the "philosophical differences" noted by arbitrator Malin in *Village of Maywood, supra*, at 16.

F. The Arbitrator's opinion is arbitrary and/or capricious in that the Arbitrator rejected the testimony of Dr. Herring in favor of the Arbitrator's own opinions, where the Union failed to present any witnesses to counter Dr. Herring.

The Town argued that I also erred by failing to consider or to adopt Dr. Herring's analysis. I shall not rehash my discussion of Dr. Herring's report and testimony. It suffices to say that I found his report flawed. I did not, and do not, accept it *in toto*.

I noted that I had "no cause to reject the ten inner-ring towns enumerated by Dr. Herring," but went on to suggest that Dr. Herring did not explain why these ten towns, and these ten towns only, were "uniquely comparable to Cicero" or why he excluded two bordering towns and at least 26 other "inner ring" towns from his analysis (*Cicero I*, 28-9). Because of the inexplicable omission of these "inner ring" communities from Dr. Herring's analysis, I did not, and do not now, have any confidence in the conclusions he reached. In my judgment, his report seemed tendentious and thus of limited probative significance. Perhaps, as the Employer suggests, "the subset of inner ring communities ended up so heavily in favor of residency" because they "are truly comparable to Cicero in terms of the issues they are facing" and their "need for a residency requirement" (*Emp. Supp. Brief*, 14). But that conclusion was merely asserted, not empirically demonstrated. In a sense, the Employer and Dr. Herring took for granted what they set out to prove. If, indeed, as the Employer suggests, Dr. Herring brought "specialized knowledge

and experience into play in making some initial evaluations of communities" (Emp. Supp. Brief, 13), he failed to demonstrate, at least to my satisfaction, that "knowledge and experience" in his report or testimony.

The Employer also suggests that I made other "invalid assumptions which are not supported by the evidence" (Emp. Supp. Brief, 16). The Employer writes that I stated that "...a decision upholding the residency rule may lead to the wholesale resignation of firefighters who then seek more compatible employment in other communities'" (*Cicero I*, 40). I wrote—

Exodus of a small group of relatively affluent, white firefighters may dramatically accelerate "white flight," leaving Cicero more impoverished and more segregated, without a sufficient tax base or adequate municipal services, and plagued by a downward spiral of increasing poverty, crime and social malaise and dysfunction" (*Cicero I*, at 40).

If the foregoing statement is read in context, it seems obvious that I was comparing and contrasting the predicted benefits and gains projected by each party. I was not, as suggested by the Employer, making a "critical assumption or conclusion" (Emp. Supp. Brief, 16).

Noting that "the evidence did not show that the substantial majority of like villages and cities in metropolitan Chicago without city-limit residency requirements have experienced these negative consequences" (*Cicero I*, 42), the Employer also suggested that I erred by rejecting Dr. Herring's opinion "regarding the sociological benefits of having a resident firefighting force and the corresponding negative

ones of having a non-resident force" [my italics] (Emp. Supp. Brief, 17).<sup>5</sup> As the Employer pointed out, Dr. Herring presented the only evidence "on the subject of the sociological benefits or disadvantages of a resident/non-resident fire-fighting force" (Emp. Supp. Brief, 18). If, however, an arbitrator must adopt the opinion of an "expert," interest arbitration could be drastically simplified. Under the theory advanced by the Employer, even where there are dueling experts, an arbitrator could not exercise independent judgment; he would have to select one of the competing expert opinions. I do not believe that an interest arbitrator is so constrained, that he or she is or should be foreclosed from analyzing the evidence, making inferences drawn from the record, and formulating conclusions—even conclusions that may diverge from the opinion of an expert hired by one of the parties.

In the final analysis, Dr. Herring made a prediction—offering his "opinion" on a complex and highly abstract matter not subject to instant factual verification. Only time will tell whether he was right. I did not wholly accept his

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<sup>5</sup> Interestingly, the Town claims that I "usurped the authority of the Town Board...and administration to address issues of social and economic concern," but argues that I erred by rejecting its expert witness's analysis of "sociological benefits." The Employer cannot have it both ways. One may reasonably argue that an arbitrator should not "address issues of social and economic concern," but it is unreasonable to argue at the same time that he must adopt the employer's "sociological" arguments. If I cannot address issues of "social and economic concern," I cannot somehow adopt the Employer's arguments on issues of "social and economic concern."

predictions and found his opinion with respect to "negative consequences" unpersuasive. I still do.

**G. The decision of the Arbitrator is arbitrary and/or capricious in that the Arbitrator fully accepted testimony of firefighters regarding social and economic conditions found in the Town without a proper basis in fact.**

It was my job to make factual determinations. I did. And I have been offered no valid reason to reconsider them.

**H. The decision of the Arbitrator is arbitrary and/or capricious in that the Arbitrator disregarded direct evidence that the decision affected only 67 firefighters where in fact the decision may affect almost 500 Town employees.<sup>6</sup>**

See Section II(D) herein.

#### **I. Other Issues**

In its brief, although not in Resolution 296-99, the Employer argued that I have failed to adhere to settled arbitral law. I shall address this argument.

##### **1. Breakthrough**

The Employer argues that I "should not have granted a breakthrough without any legal justification" (Emp. Supp. Brief, 18).

In *City of Burbank/Illinois FOP*, S-MA-97-56 (Goldstein 1998), a case relied on by the Employer, arbitrator Elliott Goldstein discussed the matter of "breakthrough" in some detail. He wrote at pages 9-10 of his Opinion:

At its core, interest arbitration is a conservative mechanism of dispute resolution. Interest arbitration is intended to resolve an immediate impasse,

---

<sup>6</sup> I assume that the Employer meant that I accepted, not that I "disregarded," "direct evidence that the decision affected only 67 firefighters."

but not to usurp the parties' traditional bargaining relationship. The traditional way of conceptualizing interest arbitration is that parties should not be able to obtain in interest arbitration any result which they could not get in a traditional collective bargaining situation. Otherwise, the entire point of the process of collective bargaining would be destroyed and parties would rely solely on interest arbitration rather than pursue it as a course of last resort:

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

Under this theory, there should not be any substantial "breakthroughs" in the interest arbitration process. If the arbitrator awards either party a wage package which is significantly superior to anything it would likely have obtained through collective bargaining, that party is not likely to want to settle the terms of its next contract through good faith collective bargaining. It will always pursue the interest arbitration route and this defeats the purpose. *Village of Bartlett*, FMCS Case No. 90-0839 (Kossoff, 1990).

Arbitrator Goldstein noted that an arbitrator must select a final offer and that "the parties must come to the interest arbitration with realistic proposals...or run the almost certain risk of losing" (*Burbank*, at 12). Accordingly,

the parties "necessarily come close together on final offers," leading to the likelihood of settlement as the "parties see the wisdom of settling instead of arbitrating" (*Burbank*, at 12). He wrote that "interest arbitration is not supposed to revolutionize the parties' collective bargaining relationship; the most dramatic changes are best accomplished through face-to-face negotiation" (*Burbank*, at 12).

Two points are significant. *First*, arbitrator Goldstein dealt with an "economic" issue, a "wage package." *Second*, because of the relative novelty of mandatory interest arbitration on the issue of residency, any award that overturned a residency requirement would probably amount to a "breakthrough." Until the Act was amended on July 24, 1997 (see Supp. JX 2) to permit arbitration of a non-grandfathered residency requirement, bargaining on this subject was generally permissive, not mandatory. In the absence of a grandfathered-in residency clause protected under Section 14(i) of the pre-amended Act, a municipal employer could establish a residency requirement without being legally compelled to bargain over this issue.

Here, for all practical purposes, any "breakthrough" with respect to a residency requirement would not break the pattern of bargaining on this issue. It will not, as arbitrator Goldstein wrote, "revolutionize the parties' collective bargaining relationship." In one critical respect, as my reference to the "grandfather clause" in the foregoing paragraph suggests, *Village of Maywood* is distinguishable from the

instant case. In *Maywood*, arbitrator Malin overruled the Village's objection to arbitration of the "issue of residency," stating that "the matter was properly before [him] in light of Section 14(i)'s express preservation of historical bargaining rights" (*Maywood*, at 1). The "grandfather clause" of Section 14(i) of the Act alluded to by arbitrator Malin provides:

To preserve historical bargaining rights, this subsection shall not apply to any provision of a fire fighter collective bargaining agreement in effect and applicable on the effective date of this Act; provided, however, nothing herein shall preclude arbitration with respect to any such provision.

Since, however, the Union won a representation election in this bargaining unit in 1990 and the first "formal collective bargaining agreement" between the Union and the Town of Cicero "was in 1991" (*Andel I*, 100-01), some eight years after the effective date of the Act, the "residency rule" was not grandfathered into the contract and the Employer was not, as it concedes (*Emp. Supp. Brief*, 20-1), required to bargain about it. Until the current negotiations, the Employer, aware that an impasse on this issue would not lead to interest arbitration, had no legally enforceable reason to "come to the interest arbitration with realistic proposals...or run the almost certain risk of losing" (*Burbank*, at 12). As the parties could have reached impasse over this issue without the risk (or reward) of interest arbitration, the "collective bargaining relationship" with respect to residency differed from the "collective bargaining relationship" with respect to wages, hours and conditions of employment subject to interest

arbitration. There was no pattern of lawfully required bargaining with respect to residency—a pattern I might either conform to or “break through.” In the past, if the parties did not agree on residency, the Town, without fear of legal consequences, could unilaterally impose any solution it deemed appropriate.

Now that the General Assembly has seen fit to legitimize the arbitration of a dispute over residency with respect to a “non-grandfathered” residency clause, it has itself established a “breakthrough”—a breakthrough whose effects and ramifications I am obliged to consider. In the end, *Maywood* has limited value. In *Maywood* “one party [sought] unilaterally to change a long-standing contractual term” (*Maywood*, at 16). However, in *Maywood* the contractual term—unlike the term under consideration here—had, as a consequence of Section 14(i) of the Act, long been subject to a requirement of good-faith bargaining culminating in interest arbitration.

The Employer argues that the “status quo analysis” should apply because the Town bargained in good faith over residency even though not compelled to do so (Emp. Supp. Brief, 20-1). I submit that there is a profound difference between permissive and mandatory bargaining. The legal and practical consequences of impasse in each setting—permissive or mandatory bargaining—differ enough to amount to a difference in kind, not just degree.

In effect, the Employer disputes my judgment. My judgment is not infallible, but the parties have contracted for it. I have no choice but to exercise it.

## 2. Arbitral Policy-Making

The Town argues that I erred by "impos[ing] a policy decision on the Town" it would never have agreed to in bargaining (Emp. Supp. Brief, 22). This argument is related to the "breakthrough" argument. My response to it is similar. *First*, until the law was amended the Town had no duty to bargain over the issue of residency; and an impasse over this issue, although having political and other consequences, would not necessarily result in interest arbitration. In the context of collective bargaining, the Town had no legal incentive until recently to modify its position on residency. *Second*, the argument made by the Employer may be reversed without changing the sense of its logic (key words in the Employer's argument are underlined; key words I have substituted are *italicized* and placed in brackets): "The arbitrator's decision effectively abolishing [*sustaining*] the residency requirement will send a loud and clear message not only to Local 717 [*the Town of Cicero*] but to all Illinois protective services units [*all Illinois municipal employers*] that they do not need to bargain about residency because they can go to an arbitrator and get concessions [*the status quo*] for free" (See Emp. Supp. Brief, 22). In short, bargaining is a dialogue. To suggest that an arbitrator cannot adopt any given proposal because the other party opposes it is to

suggest that interest arbitration is meaningless. To avoid change, a party need only be stubborn.

I do not argue with the general principle that in economic interest arbitration "the parties should not be able to obtain any result which they could not get in traditional bargaining situations" (Emp. Supp. Brief, 22). If mean and median wages in comparable bargaining units, as well as the cost-of-living, have increased at the rate of 2.5% annually, and there are no other significant factors to consider, an arbitrator might well be criticized for adopting a union's proposal of a 10% annual wage increase—a wage increase that the negotiating parties would probably not have agreed upon.

While I might have effected a compromise here between the competing offers by narrowing the geographic limits of residency, establishing a target date by which to end strict residency requirements, or by developing some other formula, I was, in effect, required either to adopt or reject a city-limit residency requirement. To suggest that it is wrong to adopt the Union's proposal because the Town would "never have agreed to [it] in bargaining" (Emp. Supp. Brief, 22) is to suggest that I should not have applied the standards developed by the General Assembly and that I should not have used my judgment as an arbitrator. Rather, the Town would suggest, perhaps implicitly, that I should reward intransigence, that a firm position resolutely held by one of the parties can never be changed.

It might also be suggested the Union would never have agreed to a city-limit residency requirement. When the parties do not agree, I cannot refuse to make a decision on the ground that one party or the other "would never have agreed to [it] in bargaining." It is just as appropriate to make a decision the Employer "would never have agreed to" as a decision the Union "would never have agreed to." In the end, I must decide one way or the other.

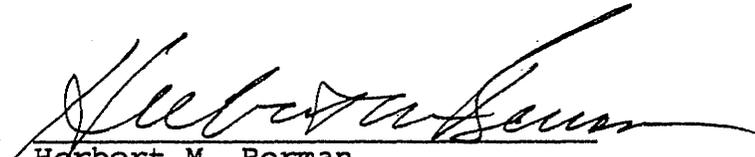
### 3. Internal Comparability

The Town argues that I improperly ignored internal comparability. Internal comparability is a factor. I did not believe that it was an overriding, decisive or dispositive factor, especially since there has never before been mandatory bargaining over this issue between the Firefighters and the Town.

### Supplemental Decision

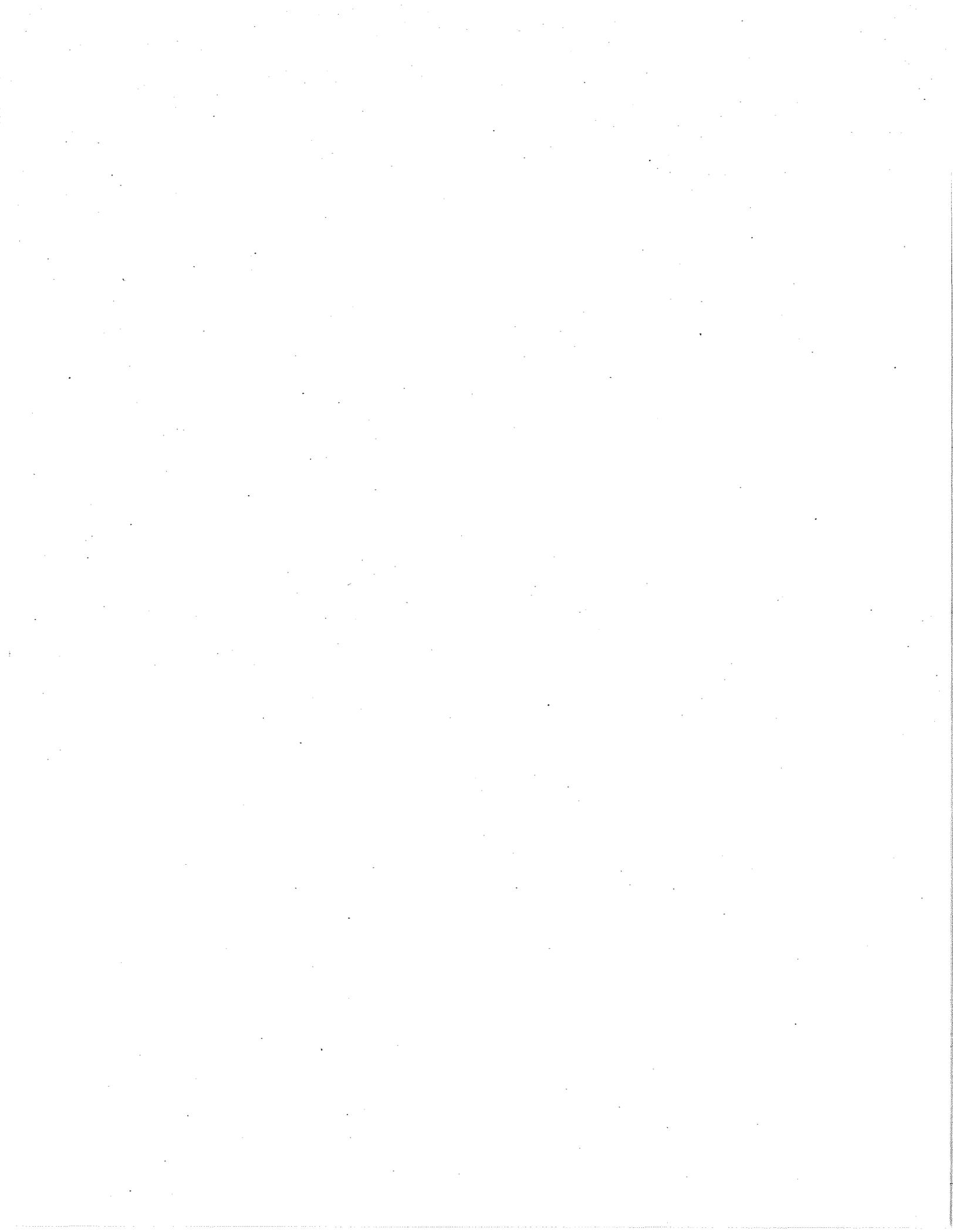
The Town's motion for reconsideration is denied. I reaffirm my Decision in *Cicero I*.

Pursuant to Section 14(o) of the Act, my fees and expenses shall be paid entirely by the Town of Cicero.



Herbert M. Berman,  
Arbitrator

September 21, 2000



Interest Arbitration  
Illinois State Labor Relations Board

RECEIVED  
DEC 18 2000  
ILLINOIS LABOR  
RELATIONS BOARD

Town of Cicero, Illinois,  
Employer

and

Illinois Association of  
Fire Fighters, IAFF Local 717,  
AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-98-230  
FMCS No. 980413-08379-A  
Arbitrator's File 98-120

Issue: In-Town Residency  
Requirement

Herbert M. Berman,  
Arbitrator

J. Dale Berry  
CORNFIELD AND FELDMAN,  
Attorney for Union

Michael J. Kralovec  
NASH, LALICH & KRALOVEC  
and  
Terence P. Gillespie  
GENSON & GILLESPIE,  
Attorneys for Employer

December 12, 2000

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**Arbitrator's Ruling and Order on Employer's Motion to  
Schedule Further Proceedings Following Employer's  
Rejection of Supplemental Opinion and Decision**

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Interest Arbitration  
Illinois State Labor Relations Board

Town of Cicero, Illinois,

Employer

and

Illinois Association of  
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December 12, 2000

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**Arbitrator's Ruling and Order on Employer's Motion to  
Schedule Further Proceedings Following Employer's  
Rejection of Supplemental Opinion and Decision**

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**I. Statement of the Case**

The parties waived the tripartite panel described in the Illinois Public Labor Relations Act ("Act") (5 ILCS 315/1, et seq.), and submitted their dispute solely to me for resolution. On November 26, 1999, I issued the following Decision:

I adopt the Union's final offer of December 22, 1998:

Effective upon the issuance of the Arbitrator's award, Section 20.1 of the collective bargaining agreement shall be modified to provide as follows:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the

South; Illinois Route 22 on the North; and Lake Michigan on the East.

Pursuant to Sections 14(n) and 14(o) of the Act, the Town of Cicero rejected my decision and returned it to me for supplemental proceedings. On September 21, 2000, I issued a Supplemental Opinion and Decision denying the Town's motion for reconsideration and reaffirming my prior decision.

On October 10, 2000, the Town rejected my Supplemental Decision and set forth its reasons for rejection (Resolution No. 311-00, copy attached hereto as Exhibit A). By letter dated October 25, 2000, and received on October 31, 2000, the Town "return[ed] this matter" to me "for further proceedings" (10/25/00: Michael J. Kralovec to Herbert M. Berman, copy attached hereto as Exhibit B).

On November 28, 2000, I met with representatives of the Town and the Union to discuss the Town's request for "further proceedings." The Union argued that further proceedings were barred because the Town had not yet paid the "reasonable costs" of this supplemental proceeding, including reasonable attorney's fees and the arbitrator's fee, in accordance with Section 14(o) of the Act. The Union stated that it had filed an unfair labor charge with the Illinois State Labor Relations Board ("Board") alleging that the Town's failure to date to pay the Union's attorney's fees violated the Act. At this writing, this charge is pending. Noting that the Union's claim for attorney's fees was pending before the Board, I declined the Union's invitation to enter an order pertaining to this issue.

In all other respects, the parties have authorized me to determine whether further supplemental proceedings are either permitted or required under the Act. I also note, as the Union stated in its "Post-Supplemental Hearing Brief," that an interest arbitrator exercises a quasi-legislative function in interpreting and applying the Act. Accordingly, as requested by the parties, I shall determine whether the Act contemplates a second supplemental proceeding.

## **II. Relevant Provisions of the Act**

### Section 14. Security Employee, Peace Officer and Fire Fighter Disputes

- (n) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means.

The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, or in the case of firefighters employed by a state university, at the next regularly scheduled meeting of the governing body after issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

- (o) If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

### III. Discussion and Findings

For the foregoing reasons, I find that the Act authorizes only one supplemental proceeding:

1. Section 14(n) contains two deadlines. First, the governing body must reject an arbitrator's decision within 20 days of its issuance. Second, the governing body must provide reasons for its rejection within 20 days thereafter. Without setting forth any time limitation, Section 14(n) authorizes the governing body to return a rejected decision to the arbitrator for further proceedings and issuance of a supplemental decision.

2. Section 14(o) contains the only time limitation governing the return of a decision to an arbitrator "for further proceedings and issuance of a supplemental decision": "within 30 days from the issuance of the reasons for rejection."

3. Read together, *in pari materia*, Sections 14(n) and (o) constitute a coherent system that provides clear time limits and deadlines at each step. When harmonized, Sections 14(n) and (o) provide the following precise time limitations at each critical step: (1) 20 days to reject the decision; (2) 20 days after rejection to provide reasons for rejection; and (3) 30 days thereafter to return to the arbitration panel for further proceedings and a supplemental decision.

4. Section 14(o) requires the parties to return a rejected term or terms of a decision to the arbitrator "for... issuance of a supplemental decision" (my emphasis). I have emphasized "a" for an obvious reason.<sup>1</sup> Had the legislature contemplated that there would be more than one—more than "a"—supplemental decision, it could easily have made that preference clear on its face. That it did not do so indicates that it contemplated no more than one supplemental decision.

5. Section 14(o) also provides that the employer shall pay the "reasonable costs of such supplemental proceeding," referring again to one decision, not to "decisions." In this context, the adjective "such" clearly means "the same as what was stated before."<sup>2</sup> "What was stated before," indeed in the immediately preceding sentence, was "a supplemental decision."

6. I cannot believe that the General Assembly intended to create an endless process. Only an incoherent, almost pointless system would result in the patently absurd spectacle of a case being swatted back and forth like a ping-pong ball: A once-rejected item is returned by the employer to the arbitrator, reaffirmed by the arbitrator, referred back to the employer, then back to the arbitrator, *ad infinitum*.

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<sup>1</sup> To return to basics, the dictionary supplies a useful definition of "a": "the indefinite article, used before a *singular* countable noun to refer to *one* person or thing not previously known or specified, in contrast with 'the,' referring to somebody or something known to the listener" [my emphasis] (Encarta World English Dictionary (New York: St. Martin's Press, 1999)).

<sup>2</sup> Webster's Dictionary of the English Language Unabridged, Encyclopedic Edition (New York: Publishers International Press, 1977).

7. Resolution 311-00 (Exhibit A) was in part a reiteration of prior Resolution 296-99 rejecting the initial Decision and in part a critique of the Supplemental Decision. Resolution 311-00 did not suggest that the Town intended to offer newly discovered evidence. In my judgment, in the absence of a timely claim by the Town that it intends to offer newly discovered evidence not previously discoverable through due diligence, one supplemental proceeding that results in reaffirmation of the first decision suffices. All else is delay and wasted resources. Constitutional and other legal arguments raised by the Town may be resolved in court.

In short, under the Act I do not have the authority either to reconsider my Supplemental Decision or issue a second Supplemental Decision.

#### **IV. Ruling**

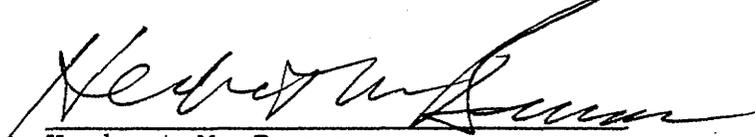
I deny the Town's motion to schedule further proceedings for my review and consideration of the Town's rejection of my Supplemental Opinion and Decision of September 21, 2000.

#### **V. Order**

My decisions herein of November 26, 1999 and September 21, 2000 are reaffirmed.

Pursuant to Section 14(o) of the Act, my fees and expenses herein shall be paid entirely by the Town of Cicero.

*Entered at Deerfield, Illinois this 12th day of December, 2000.*

  
Herbert M. Berman  
Arbitrator

RESOLUTION NO. 311-00

Whereas, An opinion and award was issued by Arbitrator Herbert M. Berman (the "Arbitrator") on November 26, 1999 in ISLRB Case No. S-MA-98-230, Town of Cicero, Employer (the "Town") and Illinois Association of Fire Fighters, IAFF Local 717, AFL-CIO, CLC, Union (the "Case");

Whereas, at issue in the case was the applicability of the residency requirements to Cicero Firefighters as set forth in Town Ordinances and Section 20.01 of the collective bargaining agreement; and

Whereas, the Arbitrator found that the needs of the Town of Cicero could not take precedence over the freedom of the individual firefighter to exercise his or her right to live where he or she pleases; and

Whereas, the Arbitrator adopted as his award the Union's final offer to amend Section 20.01 of the collective bargaining agreement to read:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East ; and

Whereas, pursuant to 5 ILCS 315/14(e) the Town Board as governing body is required to review the terms decided by the arbitrator within 20 days of their issuance and rejected those terms in Resolution No. 296-99 on December 14, 1999; and

Whereas, the Town then timely submitted the issue to the Arbitrator for supplementary proceedings pursuant to which the Arbitrator held a Supplementary Hearing on January 12, 2000; and

Whereas, the Arbitrator issued his Supplemental Opinion and Decision on September 21, 2000 reaffirming his original Opinion and Award dated November 26, 1999 granting the firefighters almost unlimited freedom to reside anywhere in Northern Illinois.

**NOW, THEREFORE BE IT RESOLVED**, by the President and Board of Trustees of the Town of Cicero, that:

1. The foregoing whereas clauses are hereby incorporated and herein adopted.
2. That the terms of the Arbitrator's opinion and award are hereby rejected for the following reasons:
  - a. The Arbitrator improperly acted as a Super-Town Board by making a crucial policy decision which ignored the will of the people as expressed in two referenda, and usurped the Town of its authority to make policy decisions for the Town.
  - b. The Arbitrator was without or exceeded his statutory authority and his order was arbitrary and capricious in the following ways:

1. The Arbitrator failed to adhere to the statutory guidelines in this case in that he did not base his findings upon the enumerated factors set out in Section 14 of the Illinois Public Labor Relations Act.

2. In basing his award on the firefighters' "liberty interest", the Arbitrator relied on a factor the legislature did not intend for him to consider.

3. The Arbitrator failed to consider or give weight to the expert Dr. Cedric Herring's analysis, which was the only creditable evidence presented on the comparability issue.

4. The Arbitrator made invalid assumptions in reaching his decision, which are not supported by the evidence.

c. The Arbitrator failed to adhere to settled arbitral law in the following ways:

1. The Arbitrator should not have granted a breakthrough without any legal justification.

2. The Arbitrator imposed a policy decision on the Town which the Town would never have agreed to in bargaining.

3. The Arbitrator ignored the importance of internal comparability.

d. The Arbitrator lacked jurisdiction as this issue was not subject to interest arbitration under the Illinois Public Labor Relations Act.

e. The Illinois Public Labor Relations Act is Unconstitutional for the following reasons:

1. The Illinois Public Labor Relations Act violates the single subject clause of the Illinois Constitution of 1970.

2. The Illinois Public Labor Relations Act violates the prohibition against special legislation found in the Illinois Constitution.

*Betty Loren-Maltese*  
Betty Loren-Maltese, Town President

ATTEST:  
*Marilyn Colpo*  
Marilyn Colpo, Town Clerk

Date of Passage: 10-10-00

# NASH, LALICH & KRALOVEC

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Exhibit B

OF COUNSEL  
DANIEL C. MEENAN, JR.

October 25, 2000

Arbitrator Herbert Berman  
P.O. Box 350  
Deerfield, Illinois 60015

**RE: Town of Cicero and IAFF Local 717  
Interest Arbitration**

Dear Arbitrator Berman:

Please be advised that on October 10, 2000, the Town Board of the Town of Cicero rejected the Supplemental Opinion and Decision issued by you on September 21, 2000 in connection with the above-captioned matter. The reasons for the rejection are set forth in a Resolution adopted by the Town Board, a copy of which I am enclosing with this letter.

We are returning this matter to you for further proceedings as it appears is required under the Illinois Public Labor Relations Act. Kindly contact the parties to schedule the further proceedings.

Very truly yours,

Michael J. Kralovec

MJK:sk  
enclosure  
cc: Terence P. Gillespie, Esq.  
J. Dale Berry, Esq.

Interest Arbitration  
Illinois State Labor Relations Board

RECEIVED  
DEC 18 2000  
ILLINOIS STATE  
LABOR RELATIONS BOARD

Town of Cicero, Illinois,  
Employer

and

Illinois Association of  
Fire Fighters, IAFF Local 717,  
AFL-CIO, CLC,

Union

ISLRB Case No. S-MA-98-230  
FMCS No. 980413-08379-A  
Arbitrator's File 98-120

Issue: In-Town Residency  
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Attorneys for Employer

December 12, 2000

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**Arbitrator's Ruling and Order on Employer's Motion to  
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I adopt the Union's final offer of December 22, 1998:

Effective upon the issuance of the Arbitrator's award, Section 20.1 of the collective bargaining agreement shall be modified to provide as follows:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the

South; Illinois Route 22 on the North; and Lake Michigan on the East.

Pursuant to Sections 14(n) and 14(o) of the Act, the Town of Cicero rejected my decision and returned it to me for supplemental proceedings. On September 21, 2000, I issued a Supplemental Opinion and Decision denying the Town's motion for reconsideration and reaffirming my prior decision.

On October 10, 2000, the Town rejected my Supplemental Decision and set forth its reasons for rejection (Resolution No. 311-00, copy attached hereto as Exhibit A). By letter dated October 25, 2000, and received on October 31, 2000, the Town "return[ed] this matter" to me "for further proceedings" (10/25/00: Michael J. Kralovec to Herbert M. Berman, copy attached hereto as Exhibit B).

On November 28, 2000, I met with representatives of the Town and the Union to discuss the Town's request for "further proceedings." The Union argued that further proceedings were barred because the Town had not yet paid the "reasonable costs" of this supplemental proceeding, including reasonable attorney's fees and the arbitrator's fee, in accordance with Section 14(o) of the Act. The Union stated that it had filed an unfair labor charge with the Illinois State Labor Relations Board ("Board") alleging that the Town's failure to date to pay the Union's attorney's fees violated the Act. At this writing, this charge is pending. Noting that the Union's claim for attorney's fees was pending before the Board, I declined the Union's invitation to enter an order pertaining to this issue.

In all other respects, the parties have authorized me to determine whether further supplemental proceedings are either permitted or required under the Act. I also note, as the Union stated in its "Post-Supplemental Hearing Brief," that an interest arbitrator exercises a quasi-legislative function in interpreting and applying the Act. Accordingly, as requested by the parties, I shall determine whether the Act contemplates a second supplemental proceeding.

## **II. Relevant Provisions of the Act**

### Section 14. Security Employee, Peace Officer and Fire Fighter Disputes

- (n) All of the terms decided upon by the arbitration panel shall be included in an agreement to be submitted to the public employer's governing body for ratification and adoption by law, ordinance or the equivalent appropriate means.

The governing body shall review each term decided by the arbitration panel. If the governing body fails to reject one or more terms of the arbitration panel's decision by a 3/5 vote of those duly elected and qualified members of the governing body, within 20 days of issuance, or in the case of firefighters employed by a state university, at the next regularly scheduled meeting of the governing body after issuance, such term or terms shall become a part of the collective bargaining agreement of the parties. If the governing body affirmatively rejects one or more terms of the arbitration panel's decision, it must provide reasons for such rejection with respect to each term so rejected, within 20 days of such rejection and the parties shall return to the arbitration panel for further proceedings and issuance of a supplemental decision with respect to the rejected terms. Any supplemental decision by an arbitration panel or other decision maker agreed to by the parties shall be submitted to the governing body for ratification and adoption in accordance with the procedures and voting requirements set forth in this Section. The voting requirements of this subsection shall apply to all disputes submitted to arbitration pursuant to this Section notwithstanding any contrary voting requirements contained in any existing collective bargaining agreement between the parties.

- (o) If the governing body of the employer votes to reject the panel's decision, the parties shall return to the panel within 30 days from the issuance of the reasons for rejection for further proceedings and issuance of a supplemental decision. All reasonable costs of such supplemental proceeding including the exclusive representative's reasonable attorney's fees, as established by the Board, shall be paid by the employer.

### III. Discussion and Findings

For the foregoing reasons, I find that the Act authorizes only one supplemental proceeding:

1. Section 14(n) contains two deadlines. First, the governing body must reject an arbitrator's decision within 20 days of its issuance. Second, the governing body must provide reasons for its rejection within 20 days thereafter. Without setting forth any time limitation, Section 14(n) authorizes the governing body to return a rejected decision to the arbitrator for further proceedings and issuance of a supplemental decision.

2. Section 14(o) contains the only time limitation governing the return of a decision to an arbitrator "for further proceedings and issuance of a supplemental decision": "within 30 days from the issuance of the reasons for rejection."

3. Read together, *in pari materia*, Sections 14(n) and (o) constitute a coherent system that provides clear time limits and deadlines at each step. When harmonized, Sections 14(n) and (o) provide the following precise time limitations at each critical step: (1) 20 days to reject the decision; (2) 20 days after rejection to provide reasons for rejection; and (3) 30 days thereafter to return to the arbitration panel for further proceedings and a supplemental decision.

4. Section 14(o) requires the parties to return a rejected term or terms of a decision to the arbitrator "for... issuance of a supplemental decision" (my emphasis). I have emphasized "a" for an obvious reason.<sup>1</sup> Had the legislature contemplated that there would be more than one—more than "a"—supplemental decision, it could easily have made that preference clear on its face. That it did not do so indicates that it contemplated no more than one supplemental decision.

5. Section 14(o) also provides that the employer shall pay the "reasonable costs of such supplemental proceeding," referring again to one decision, not to "decisions." In this context, the adjective "such" clearly means "the same as what was stated before."<sup>2</sup> "What was stated before," indeed in the immediately preceding sentence, was "a supplemental decision."

6. I cannot believe that the General Assembly intended to create an endless process. Only an incoherent, almost pointless system would result in the patently absurd spectacle of a case being swatted back and forth like a ping-pong ball: A once-rejected item is returned by the employer to the arbitrator, reaffirmed by the arbitrator, referred back to the employer, then back to the arbitrator, *ad infinitum*.

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<sup>1</sup> To return to basics, the dictionary supplies a useful definition of "a": "the indefinite article, used before a *singular* countable noun to refer to *one* person or thing not previously known or specified, in contrast with 'the,' referring to somebody or something known to the listener" [my emphasis] (Encarta World English Dictionary (New York: St. Martin's Press, 1999)).

<sup>2</sup> Webster's Dictionary of the English Language Unabridged, Encyclopedic Edition (New York: Publishers International Press, 1977).

7. Resolution 311-00 (Exhibit A) was in part a reiteration of prior Resolution 296-99 rejecting the initial Decision and in part a critique of the Supplemental Decision. Resolution 311-00 did not suggest that the Town intended to offer newly discovered evidence. In my judgment, in the absence of a timely claim by the Town that it intends to offer newly discovered evidence not previously discoverable through due diligence, one supplemental proceeding that results in reaffirmation of the first decision suffices. All else is delay and wasted resources. Constitutional and other legal arguments raised by the Town may be resolved in court.

In short, under the Act I do not have the authority either to reconsider my Supplemental Decision or issue a second Supplemental Decision.

#### **IV. Ruling**

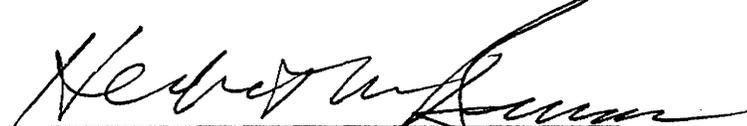
I deny the Town's motion to schedule further proceedings for my review and consideration of the Town's rejection of my Supplemental Opinion and Decision of September 21, 2000.

#### **V. Order**

My decisions herein of November 26, 1999 and September 21, 2000 are reaffirmed.

Pursuant to Section 14(o) of the Act, my fees and expenses herein shall be paid entirely by the Town of Cicero.

*Entered at Deerfield, Illinois this 12th day of December, 2000.*

  
Herbert M. Berman  
Arbitrator

RESOLUTION NO. 311-00

Whereas, An opinion and award was issued by Arbitrator Herbert M. Berman (the "Arbitrator") on November 26, 1999 in ISLRB Case No. S-MA-98-230, Town of Cicero, Employer (the "Town") and Illinois Association of Fire Fighters, IAFF Local 717, AFL-CIO, CLC, Union (the "Case");

Whereas, at issue in the case was the applicability of the residency requirements to Cicero Firefighters as set forth in Town Ordinances and Section 20.01 of the collective bargaining agreement; and

Whereas, the Arbitrator found that the needs of the Town of Cicero could not take precedence over the freedom of the individual firefighter to exercise his or her right to live where he or she pleases; and

Whereas, the Arbitrator adopted as his award the Union's final offer to amend Section 20.01 of the collective bargaining agreement to read:

All bargaining unit employees shall reside within the geographical area bounded by: Illinois Route 59 on the West; Interstate 80 on the South; Illinois Route 22 on the North; and Lake Michigan on the East ; and

Whereas, pursuant to 5 ILCS 315/14(e) the Town Board as governing body is required to review the terms decided by the arbitrator within 20 days of their issuance and rejected those terms in Resolution No. 296-99 on December 14, 1999; and

Whereas, the Town then timely submitted the issue to the Arbitrator for supplementary proceedings pursuant to which the Arbitrator held a Supplementary Hearing on January 12, 2000; and

Whereas, the Arbitrator issued his Supplemental Opinion and Decision on September 21, 2000 reaffirming his original Opinion and Award dated November 26, 1999 granting the firefighters almost unlimited freedom to reside anywhere in Northern Illinois.

**NOW, THEREFORE BE IT RESOLVED**, by the President and Board of Trustees of the Town of Cicero, that:

1. The foregoing whereas clauses are hereby incorporated and herein adopted.
2. That the terms of the Arbitrator's opinion and award are hereby rejected for the following reasons:
  - a. The Arbitrator improperly acted as a Super-Town Board by making a crucial policy decision which ignored the will of the people as expressed in two referenda, and usurped the Town of its authority to make policy decisions for the Town.
  - b. The Arbitrator was without or exceeded his statutory authority and his order was arbitrary and capricious in the following ways:

1. The Arbitrator failed to adhere to the statutory guidelines in this case in that he did not base his findings upon the enumerated factors set out in Section 14 of the Illinois Public Labor Relations Act.

2. In basing his award on the firefighters' "liberty interest", the Arbitrator relied on a factor the legislature did not intend for him to consider.

3. The Arbitrator failed to consider or give weight to the expert Dr. Cedric Herring's analysis, which was the only creditable evidence presented on the comparability issue.

4. The Arbitrator made invalid assumptions in reaching his decision, which are not supported by the evidence.

c. The Arbitrator failed to adhere to settled arbitral law in the following ways:

1. The Arbitrator should not have granted a breakthrough without any legal justification.

2. The Arbitrator imposed a policy decision on the Town which the Town would never have agreed to in bargaining.

3. The Arbitrator ignored the importance of internal comparability.

d. The Arbitrator lacked jurisdiction as this issue was not subject to interest arbitration under the Illinois Public Labor Relations Act.

e. The Illinois Public Labor Relations Act is Unconstitutional for the following reasons:

1. The Illinois Public Labor Relations Act violates the single subject clause of the Illinois Constitution of 1970.

2. The Illinois Public Labor Relations Act violates the prohibition against special legislation found in the Illinois Constitution.

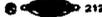
*Betty Loren-Maltese*  
Betty Loren-Maltese, Town President

ATTEST:  
*Marilyn Colpo*  
Marilyn Colpo, Town Clerk

Date of Passage: 10-10-00

**NASH, LALICH & KRALOVEC**

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[REDACTED]

Exhibit B

OF COUNSEL  
DANIEL C. MEENAN, JR.

October 25, 2000

Arbitrator Herbert Berman  
P.O. Box 350  
Deerfield, Illinois 60015

**RE: Town of Cicero and IAFF Local 717  
Interest Arbitration**

Dear Arbitrator Berman:

Please be advised that on October 10, 2000, the Town Board of the Town of Cicero rejected the Supplemental Opinion and Decision issued by you on September 21, 2000 in connection with the above-captioned matter. The reasons for the rejection are set forth in a Resolution adopted by the Town Board, a copy of which I am enclosing with this letter.

We are returning this matter to you for further proceedings as it appears is required under the Illinois Public Labor Relations Act. Kindly contact the parties to schedule the further proceedings.

Very truly yours,

Michael J. Kralovec

MJK:sk  
enclosure  
cc: Terence P. Gillespie, Esq.  
J. Dale Berry, Esq.