

**ILRB**  
**#236**

INTEREST ARBITRATION  
OPINION AND AWARD

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ILLINOIS LABOR  
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In the Matter of Interest Arbitration

between

CITY OF NORTH CHICAGO

and

ILLINOIS FRATERNAL ORDER OF POLICE  
(FOP) LABOR COUNCIL

(ISLRB Case No. S-MA-99-101)

Hearings Held

March 22, 2000

North Chicago City Hall  
1850 Lewis Avenue  
North Chicago, Illinois

Arbitrator

Steven Briggs

Appearances

For the Union:

Becky S. Dragoo,  
Legal Assistant  
Illinois FOP Labor Council  
5600 S. Wolf Road, Suite 120  
Western Springs, Illinois 60558-2265

For the City:

James Baird, Esq.  
Seyfarth Shaw  
55 East Monroe Street, Suite 4200  
Chicago, Illinois 60603

## BACKGROUND

The City of North Chicago (the City) is a Lake County community located in the far northern suburbs of Chicago. It covers approximately 8.5 square miles, and has a population of about 35,000. Located within the City is the Great Lakes Naval Training Station, the Navy's only site for recruit training in the United States.<sup>1</sup> The North Chicago Police Department employs about 49 patrol officers, who are represented for collective bargaining purposes by the Illinois Fraternal Order of Police Labor Council (the Union).

The City and the Union have had a collective bargaining relationship since 1986. Negotiations for their third Agreement (1996-1999) ultimately broke down, and eleven issues were submitted to interest arbitration. Negotiations for the Agreement in dispute here (i.e. 1999-2002) also broke down, but to the parties' credit only two non-economic issues (residency and entire agreement) were advanced to these proceedings.

In addition to the patrol officers' bargaining unit, there are three others in North Chicago: (1) a telecommunications unit, also represented by the Illinois FOP Labor Council; (2) a public works, clerical and water department unit, represented by the Service Employees International Union (SEIU), Local 1; and (3) a firefighters unit represented by the International Association of Fire Fighters (IAFF).

In an October 15, 1999 letter the Union notified Steven Briggs of his selection as the Neutral Arbitrator in these proceedings. After two earlier hearings were postponed,<sup>2</sup> an interest arbitration hearing was ultimately conducted on March 22, 2000. During the hearing the parties' exchanged final offers and, as part of their pre-hearing stipulations, agreed that procedural prerequisites for convening the interest arbitration hearing had been met. The parties also waived their respective rights to assemble a tri-partite interest arbitration panel, thereby mutually granting the Neutral Arbitrator the exclusive authority to hear and decide the two issues in dispute.

The parties exchanged timely post hearing briefs through the Arbitrator on August 7, 2000. On October 7, 2000 they graciously granted a two-week extension to the 60-day time limit for rendering the Opinion and Award.

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<sup>1</sup> About 25,000 military personnel reside at the Station, and recruits stay for a 6-8 week training period. It is located on federal property, which cannot be taxed by the City. Moreover, the City cannot impose sales tax on military personnel who use services at the Station (e.g., the commissary).

<sup>2</sup> A January 4, 2000 hearing was postponed by both parties on December 14, 1999. A February 2, 2000 hearing was postponed by the Union on February 1, 2000.

## RELEVANT STATUTORY PROVISIONS

Section 14(g) of the Act provides in pertinent part:

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

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

Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and the wage rates or amended agreement are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors, as applicable:

- (1) The lawful authority of the employer.
- (2) Stipulations of the parties.
- (3) The interest and welfare of the public and the financial ability of the unit of government to meet those costs.
- (4) Comparison of the wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally:
  - (a) In public employment in comparable communities.
  - (b) In private employment in comparable communities.
- (5) The average consumer prices for goods and services, commonly known as the cost of living.
- (6) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received.
- (7) Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

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

## THE ISSUES

As noted already, the parties have advanced the following two non-economic issues to interest arbitration:

- (1) Residency
- (2) Entire Agreement

## THE EXTERNAL COMPARABLES

### Union Position

The Union acknowledges as comparable the grouping of communities adopted by Arbitrator Perkovich in a 1997 interest arbitration proceeding involving these same parties.<sup>3</sup> That collection of six communities is listed here:

Calumet City  
Chicago Heights  
Lansing  
Burbank  
Maywood  
Zion

Of those jurisdictions, only Zion was not considered by both parties to be comparable to North Chicago. The Union notes that with the exception of Zion and perhaps Maywood, cities in the above list are too far from North Chicago to be considered part of its local labor market. The Union argues that because the residency issue has only recently (i.e., January, 1998) become a mandatory subject of bargaining, the scope of inquiry here should be expanded beyond a mere six communities which may or may not have bargained over residency. The Union asserts as well that at best, the above list provides the Arbitrator with little more than a "split" over the residency issue; and at worst, it does

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<sup>3</sup> City of North Chicago and Illinois Fraternal Order of Police Labor Council, Case No. S-MA-96-62 (Perkovich, 1997).

not accurately reflect the standard in the labor market immediately surrounding the City of North Chicago.

In support of its bid to add local jurisdictions to the comparability pool, the Union also points to the high turnover of North Chicago police officers. It notes that nearly all of those officers who left North Chicago for employment with another police department relocated to jurisdictions within twenty miles of North Chicago. Thus, the Union argues, the Arbitrator should examine residency requirements in those jurisdictions --- all of which are located within the local labor market surrounding North Chicago.

The City of North Chicago is surrounded by jurisdictions of affluence. The Union acknowledges that using conventional economic data to identify municipalities comparable to North Chicago would result in the exclusion of most of those jurisdictions. However, the Union adds, doing so would ignore the influence of the local labor market. The Union believes that local communities should be considered in these proceedings, especially since the two issues to be resolved are non-economic.

The Union also notes emphatically that in seeking to bring local cities into the comparables pool it is not attempting to overturn the award of Arbitrator Perkovich with regard to comparability. Rather, it seeks to take into account the January, 1998 statutory change which made residency a mandatory subject of bargaining. On the basis of that change, and considering the influence that local communities have on North Chicago, the Union sets forth the following list of twenty cities it believes should be added to the list adopted by Arbitrator Perkovich:

Buffalo Grove  
Deerfield  
Glenview  
Highland Park  
Lake Forest  
Libertyville  
Morton Grove  
Mount Prospect  
Mundelein  
Niles  
Northbrook  
Palatine  
Park Ridge  
Rolling Meadows  
Round Lake Beach  
Skokie  
Vernon Hills  
Wheeling  
Wilmette  
Zion<sup>4</sup>

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<sup>4</sup> As noted, Zion was adopted by Arbitrator Perkovich as well.

The Union notes that the foregoing twenty communities have populations within +/-50% that of North Chicago, are within twenty miles of it, and have a similar number of officers dealing with a similar number of index crimes. Furthermore, the Union argues, since many North Chicago police officers have left the Department to work as police officers in those jurisdictions, the jurisdictions are obviously situated within North Chicago's local labor market.

The Union did not take the above position with regard to the "entire agreement" issue. Rather, it agreed with the City that for the purposes of that issue the external comparability pool should be the same as that adopted by Arbitrator Perkovich. That is, it would exclude the twenty communities the Union believes are in North Chicago's local labor market.<sup>5</sup>

### City Position

The City has accepted as comparables the communities adopted by Arbitrator Perkovich in his April 30, 1997 interest arbitration award. Attorney Baird noted for the record, however, that in doing so the City was not waiving its right to object to the inclusion of such comparables in any future proceedings.

The City also asserts that the Union's "labor market" approach to selecting comparable communities is not supported by any of the statutory factors contained in the Illinois Public Labor Relations Act. The City argues as well that in identifying twenty local communities for comparability purposes the Union failed to set forth a rational explanation as to why those particular jurisdictions were selected and other geographically proximate ones were omitted.

### Discussion

In interest arbitration proceedings before Arbitrator Perkovich, the City and the Union agreed that Calumet City, Chicago Heights, Lansing, Burbank and Maywood are sufficiently similar to North Chicago to be used for external comparability purposes.<sup>6</sup> Perkovich used those jurisdictions as the external comparables in deciding the nine economic and two non-economic issues brought to him for resolution. The City and Union have agreed for the purposes of the present proceedings that those same five cities should be used as the external comparables for the "entire agreement" issue. It is only for

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<sup>5</sup> Tr. 86-87.

<sup>6</sup> They also mutually embraced Harvey as a comparable, but Arbitrator Perkovich did not. According to Perkovich, "... both parties have noted that there has been no collective bargaining agreement for police officers in that jurisdiction for a number of years and in many of the parties' comparability analyses they exclude Harvey." (Perkovich, 1977, p. 3, Note 4).

deciding the residency issue that the Union wishes to add its twenty local communities to the external comparability grouping.

The foregoing circumstances present an interesting dilemma. On the one hand, the parties themselves have identified a group of comparables which has been used by an interest arbitrator to help determine the terms and conditions of employment for North Chicago police officers. It is reasonable to assume that the parties used those same communities as benchmarks against which to compare their proposals on other issues as well. The undersigned Arbitrator is reluctant to disturb that comparability grouping, and the stability that might result from the parties' use of it in future negotiations.

On the other hand, the six-city grouping previously adopted by Arbitrator Perkovich consists largely of jurisdictions too far from North Chicago to be considered part of its local labor market. Calumet City, Chicago Heights and Lansing are all more than fifty miles away; Burbank is more than forty miles from North Chicago; and Maywood is about thirty miles distant. Only Zion, at twelve miles, clearly falls within North Chicago's local labor market. Geographic proximity is a criterion universally recognized as being one of the most useful in defining external comparables for the purposes of interest arbitration. How should that conventional factor be employed here, if at all, given the fact that Arbitrator Perkovich and the parties themselves did not find it useful?

The undersigned Arbitrator has wrestled with the above dilemma, and has concluded that it is not appropriate to adopt a new set of external comparables, to be used in addition to the previously adopted one, for deciding but one issue. That conclusion was reached in full recognition of the fact that residency did not become a mandatory subject of bargaining until January, 1998. That change was significant indeed, but the Arbitrator is not convinced it skewed the bargaining process so drastically in North Chicago that a new and distinct set of external comparables must now be used to help determine whether its police officers should be forced to live within City limits.

To be sure, there are sound reasons to use geographical proximity in selecting external comparables for interest arbitration purposes. Municipal employers compete with each other for human resources, and as illustrated by the North Chicago police experience, employees are willing to "jump ship" for what they perceive to be better employment conditions elsewhere. But there is a limit to how far they will travel to do so. Employee mobility is also limited by what might be called "community roots." Such factors as children in school, relatives in the area, favorite doctors, and a circle of friends tend to quash the desire to move out of the area for, say, a higher income. In other words, the labor supply for nearly all occupational categories except the most specialized and highly paid is limited to a local labor market. There are also geographical limitations on the demand for labor. One cannot generally pick up a local suburban Chicago newspaper and find classified ads for police officer positions in New York, Washington D.C. or Los Angeles. And unless unusual conditions exist, a municipal employer is not willing to pay moving expenses to bring a new police officer and his/her family across the country. For those reasons, a "local labor market" approach is an accepted and intuitively appropriate way to identify external comparables. It is an approach used by the parties themselves

when preparing for negotiations, though they may be thinking in terms of mere "geographic proximity" when they employ it. Thus, a local labor market analysis is one of the "other factors" normally or traditionally taken into account to determine employment conditions through voluntary collective bargaining.

The geographic proximity criterion simply defines the spatial perimeter where local labor supply and demand interact. Within that perimeter employers compete on varying levels for human resources. A Subway sandwich store across the street from a unionized heavy manufacturer cannot compete with it for unskilled employees, as the latter is better equipped economically to attract and retain them. Likewise, North Chicago cannot effectively compete for police officers with every surrounding municipality. There are economic limitations to the level at which it can be a "player," so to speak. That is why the parties themselves and interest arbitrators routinely consider equalized assessed valuation, median family income, sales tax revenue, and other economic factors in selecting a group of externally comparable municipalities. Comparability is not limited to geographic proximity alone. The Arbitrator is therefore not enchanted with the Union's supplemental 20-city grouping --- a pool of communities selected without regard to the traditional comparability factors mentioned above.<sup>7</sup>

Moreover, the Arbitrator is reluctant to adopt a supplemental set of external comparables to be applied selectively and exclusively to one issue. Doing so in these proceedings might inappropriately encourage parties elsewhere to propose different sets of comparables for different issues. To the extent that interest arbitrators allow that to happen, the result might not only fragment the bargaining process, it might also unduly complicate and prolong subsequent interest arbitration proceedings.

In the interest of stability, then, in recognition of Arbitrator Perkovich's prior ruling as to the appropriateness of Calumet City, Chicago Heights, Lansing, Burbank, Maywood and Zion for use as North Chicago's external comparables, and in deference to the parties' own agreement that five of those municipalities are comparable to North Chicago, all six are hereby adopted as the external comparables for these proceedings.

## RESIDENCY

### City Position

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

All full-time employees, including employees covered by collective bargaining agreements, shall as a condition of employment reside within the corporate limits of the City within one (1) year of their date of hire. Sworn personnel in the police department may apply to have this time

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<sup>7</sup> In assembling its suggested 20-city local pool, the Union did consider only those communities with populations +/- 50% that of North Chicago.

extended by an additional six months. *Any sworn personnel currently employed in the police department who are in violation of this ordinance as of [insert date of amendment] will be granted a limited compliance exemption of six (6) months from the date the interest arbitrator rules on, or the parties otherwise agree upon the residency provision to be included in the May 1, 1999-April 30, 2002 City of North Chicago, Illinois and Fraternal Order of Police Labor Council, Lodge #131 Collective Bargaining Agreement.* By "reside," it is meant that an employee is to live within the City where he/she regularly sleeps or stays when off duty. (amended language is italicized).

The City argues that adopting the Union's expanded residency proposal would unequivocally fly in the face of some fifty years of history wherein residency has been required of North Chicago police officers. It notes that every police officer in the Department joined with the understanding that residency was required. The City asserts that the Union should not be able to change that requirement in interest arbitration, having made only one visit to the bargaining table to discuss the issue. Moreover, the City notes, the Union did not at that time offer a *quid pro quo* of sufficient value to warrant an exchange.<sup>8</sup>

The City also believes that since the Union wishes to change the status quo, it must prove that one of the following conditions exists: (1) the old system has not worked as anticipated when originally agreed to; (2) the existing system has created operational hardships for the employer or equitable or due process problems for the union; or (3) the City has resisted bargaining table attempts to address the problem. The City believes that as the proponent of change the Union cannot satisfy a single one of those requirements.<sup>9</sup>

Another sentiment expressed by the City concerns its belief that the residency requirement is fundamental to the rebirth and growth of the community. It argues that when ordinary citizens see that police officers live in the community they serve, the result is a sense of mutual investment in the neighborhood.

The City again points to the interest arbitration proceedings before Arbitrator Perkovich, citing the Union's characterization of compensation at that time as the primary cause of high police turnover in North Chicago. And since the parties recently negotiated substantial wage increases for the current (1999-2002) Agreement, the City argues, that mutually accepted effort might meet its intended goal of reducing turnover among police officers.

Underscoring the intensely political nature of the residency issue in North Chicago, the City notes that a majority of the elected Aldermen and numerous concerned citizens

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<sup>8</sup> The City also cited *City of Kankakee and Illinois Fraternal Order of Police Labor Council*, S-MA-99-137 (LeRoy, 2000), to show that this same Union made several substantial bargaining table offers to another municipal employer in its quest for relaxation of the residency requirement there.

<sup>9</sup> In setting forth those three factors, the City referenced *City of Burbank*, S-MA-97-56 (Goldstein, 1998).

believe the City is stronger economically, emotionally and socially when police live in its neighborhoods. Not all Alderman and citizens feel that way, and a political stalemate has resulted. The City believes that it should not be resolved by an arbitrator. Instead, the City argues, the political and negotiation processes should be allowed to work.

The City argues as well that the testimony of Police Chief Elisha Irvin should be discounted. Irvin, who was appointed by and serves at the pleasure of a Mayor who does not favor residency, testified that he believed residency was the "main problem" with respect to turnover. But the Chief also conceded that a number of his officers have left to join the Waukegan Police Department, which also has a residency requirement. Overall, the City argues, the residency requirement has not compromised the Department's operational effectiveness.

And the Union's claim that North Chicago has no amenities should be discounted as well, the City asserts. Shopping for goods and services by North Chicago residents is not constrained to City limits. The City notes as well that here are many restaurants and shopping venues very close to North Chicago's borders.

Moreover, the City asserts, there is not a single piece of hard core evidence to support the Union's claim that police officers' families are subject to physical harm from criminals who may wish to engage in reprisal against officers who may have arrested them in the past. On the contrary, the City claims, there have been very few official reports of off-duty North Chicago police officers or their families being threatened or harassed by residents --- and absolutely none in the last three years.

The City believes as well that the external comparables formerly embraced by the parties themselves (Calumet City, Chicago Heights, Lansing, Burbank and Maywood) support retention of the status quo on the residency issue. The City also argues that the Union's "labor market" approach to adding approximately twenty additional external comparables is not appropriate, as it ignores such traditional factors as population, equalized assessed valuation, and median home value.

On the internal comparability criterion the City also believes its final offer is the more reasonable. It notes that the telecommunicators unit, also represented by the Illinois FOP Labor Council, recently agreed to a residency clause. The SEIU-represented unit of public works, clerical and water department employees did so as well. Moreover, non-union City employees are subject to a residency requirement. Indeed, the City asserts, the only group of employees not required to live within City limits is the IAFF-represented firefighters unit. And that situation is the result of a political fluke, it argues, because when Alderman voted on that issue an Alderman very much in support of residency was out of town. The Alderman who were able to attend the meeting struck down residency for firefighters by only one vote.

The City also asserts that absent compelling reasons, interest arbitrators in Illinois have generally refused to alter the status quo with regard to residency. In taking that position,

however, the City argues that a few recent interest arbitration decisions on the residency issue are either “simply wrong” in one respect or another, or “defy logical analysis.”<sup>10</sup>

The City also emphatically insists that since the Union has not offered any *quid pro quo* in exchange for its residency provision, it should not be awarded that provision “for free” in these proceedings. Doing so, the City opines, would send a message to Illinois protective units that they do not need to bargain about residency before obtaining it from a third party in interest arbitration.

### Union Position

Here is the Union’s final offer on the issue of residency:

- 17.16. Residency: Employees must live within ten (10) miles of Fire Stations #1 or #2, whichever is more. Distance shall be judged by drawing a circle on a map using a radius of ten (10) miles.

The Union believes that a ten-mile radius gives patrol officers a variety of housing opportunities not available in North Chicago, while simultaneously ensuring that they will live within a reasonable response time of the City. It notes that the City has already agreed to an identical provision with its firefighters, and that it makes sense to establish the same parameters for police officers.

The Union also asserts that the City’s *quid-pro-quo* arguments are not applicable, because police officers should not have to trade something of value to exercise the fundamental freedom to choose where to live. In reality, the Union argues, the City is simply trying to hold the residency issue hostage for some unknown price.

Noting that there is currently no residency provision in the collective bargaining agreement, and that there has never been one, the Union does not believe a “breakthrough” analysis is appropriate for the parties’ dispute over residency. The “fifty years of history” the City touts is, in the Union’s opinion, a unilaterally imposed history not the product of arms’ length negotiations. And the Union characterizes as “ironic” the City’s attempt to place on its police officers a burden it did not require its firefighters to assume.

In addition, the Union argues, its proposal comports closely with the norm established across the external comparables.<sup>11</sup> Pointing to Zion, Harvey and Burbank, the Union

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<sup>10</sup> Included in that group are *City of Nashville*, S-MA-97-141 (McAlpin, 1999); *Village of South Holland*, S-MA-98-120 (Goldstein, 1999); and *Town of Cicero*, S-MA-98-230 (Berman, 1999).

<sup>11</sup> Among the Union’s arguments on the residency issue were some related to the twenty geographically proximate jurisdictions it proposed as external comparables. Since the Arbitrator has already rejected that grouping, those arguments are not reviewed in this discussion.

emphasizes recent voluntary agreements to relax or abolish residency requirements. In Maywood, Chicago Heights and Lansing, the Union notes, the police collective bargaining agreements do not contain residency provisions. Without personally attending post-amendment negotiations in those jurisdictions, the Union believes it is impossible to know for sure whether the parties bargained over that issue and why the bargaining did not culminate in a meeting of the minds over residency. The Union surmises that those communities offer sufficient housing opportunities and/or other amenities which lessen the significance of residency requirements there.

The Union believes its proposal is in the public interest as well, since numerous North Chicago police officers have left for employment with other local police departments. Thus, the Union asserts, North Chicago has become little more than a training ground for surrounding departments. And the Union asserts that there is no evidence to support the notion that citizens of a particular jurisdiction are safer when their cops are forced to live within its boundaries. The Union notes as well that there has been no valid study predicting a decline in sales or property tax revenues if the cops move out of North Chicago. In fact, the Union points out, the record in these proceedings contains no evidence that North Chicago police officers even own homes. And not one witness testified as to exactly how a ten-mile radius would negatively impact police officer response time in the event of an emergency.

The Union also asserts that the City of North Chicago has little to offer in terms of restaurants, shopping (none), laundry facilities and grocery stores (none). It believes that the burden of changing these community dynamics should not rest on the shoulders of police officers.

Finally, the Union urges, now is the time to relax the residency requirement for police officers in North Chicago. Until such action is taken, these qualified and dedicated public servants will continue to leave for local labor market jurisdictions which either don't require residency or which pay higher wages.

### Discussion

In structuring their respective arguments on the residency issue the parties relied upon but three of the eight criteria set forth in Section 14(h) of the Act: (1) the interest and welfare of the public; (2) external and internal comparability; and (3) other factors normally considered in collective bargaining and third-party dispute resolution procedures. Neither of them cited any of the other five statutory criteria.<sup>12</sup> The Arbitrator also believes that the three criteria identified and employed by the parties themselves are the most relevant. Accordingly, they were used to structure the following analysis.

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<sup>12</sup> They did not discuss (1) the lawful authority of the employer; (2) stipulations between them; (3) the cost-of-living; (4) overall compensation presently received by North Chicago police officers; or (5) changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.

The Public Interest and Welfare. Alderman Larry Hightower testified that his constituents "feel safer with . . . police living in the community."<sup>13</sup> He estimated that given the size of the current patrol officer complement, the residency requirement results in "over 100,000 hours of community presence" when the officers are off-duty. Hightower's point is well taken, though his calculation is unduly inflated by the assumption that off-duty police officers stay in North Chicago from one shift to the next. In any event, no reasonable person could question the assumption that citizens feel safer when police officers live in their neighborhoods. That is not to say that they actually are safer, though. Nothing in the arbitration record confirms a positive statistical relationship between neighborhood safety and police officer residency. But the fact that citizens feel safer is quite probably an element of the public welfare.

The Arbitrator underscores here the fact that off-duty police officers and their families are also members of the public. The "public interest" criterion applies to them just as much as it does to others. Thus, if a residency requirement creates hardships for them, such hardships should be considered. It is clear from the record that being forced to live in North Chicago creates inconvenience for police officers and their families. For example, current Police Chief Elisha Irvin testified that since North Chicago offers few amenities he is forced to go into other jurisdictions for restaurants, drug stores, and shopping. But inconvenience falls short of hardship.

One true reflection of a hardship created by a police officer residency requirement relates to the safety of off-duty police officers and their families. In a very recent interest arbitration decision not yet fully executed by the two party-appointed panelists, for example, the undersigned Arbitrator concluded that off-duty officers and their families had been threatened and harassed by violent criminals the officers had previously arrested. The record in that case contained numerous official police reports about those incidents, and even a department memorandum cautioning officers not only that death threats had been made against three members of the force, but also that the suspects knew where those police officers lived. The Arbitrator found that evidence to be very persuasive. Off-duty police officers and their families should not be made to suffer threats and harassment simply because members of the public feel safer with them in their neighborhoods. In the present case, though, there is little conclusive evidence that off-duty North Chicago patrol officers and their families have been threatened and harassed by violent criminals. Chief Irvin confirmed that over the last three years there have been no official reports of such incidents. Alderman Ernest Fisher, who served as North Chicago's Chief of Police for eleven years, testified that he could not recall a single incident during that time period where a police officer filed a formal complaint about alleged threats or harassment to his/her family.

The record does contain approximately ten letters from North Chicago police officers concerning what they believe is off-duty harassment from citizens in reprisal for earlier incidents when the officers were on duty. All of those letters are either undated, or were apparently written during the first quarter of 2000, in preparation for these proceedings. The Arbitrator has read each of those letters carefully, and has concluded that they fall

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<sup>13</sup> Tr. 173. Hightower's point was supported by the testimony of North Chicago resident Audrey Nixon.

short of proving the residency requirement has created physical danger for off-duty officers and their families. Some of the letters, for example, relate to damaged property (a scratched fender; a cut tire), with no accompanying evidence connecting the incidents to the officers' police department duties. Others refer simply to verbal harassment toward officers while they were off duty. Still others cite the inconvenience of having neighbors seek assistance from off-duty officers at their homes in the middle of the night. The Arbitrator understands why off-duty officers would resent such incidents. Nevertheless, without convincing evidence that the residency requirement has created a dangerous environment for off-duty officers and their families, the incidents cited in the letters do not constitute compelling reason to change it in interest arbitration proceedings.

The public also has a vested interest in the operational efficiency of its police department. Former Police Chief Fisher testified that residency enhances the department's ability to serve and protect. He cited as an example the speedy response he was able to orchestrate to monitor and control a riot at the Great Lakes Naval Training Center. Fisher also opined that when off-duty police officers reside in their employer's community, they are better able to obtain tips and information from fellow residents. In contrast to Fisher's testimony, current Police Chief Irvin testified that relaxation of the residency requirement would have no negative impact on departmental operations. Both Fisher and Irvin have a great deal of experience running police departments, and the Arbitrator places great weight on their informed opinions about the various efficiencies involved. The opinions of private citizens with no police management experience are not nearly so persuasive. Here, though, the opinions of Irvin and Fisher about the relationship between residency and departmental effectiveness are diametrically opposed. Both men were credible witnesses. The record is therefore somewhat inconclusive as to whether adoption of the Union's final offer on the residency issue would have a negative impact upon departmental operations.

Chief Irvin also testified that the residency requirement in North Chicago is responsible for the department's low applicant rate and high turnover. It is not clear from the record whether the applicant rate is any lower in North Chicago than it is anywhere else. But the parties do agree that the police officer turnover rate in North Chicago is much higher than it should be. During interest arbitration proceedings before Arbitrator Perkovich in 1997 the Union took the position that low wages were responsible for the high turnover rate.<sup>14</sup> Perkovich ruled for the City on the wage issue, adopting a 2% increase for each year of the 1996-1999 Agreement. The Union had sought annual increases of 8%, 6% and 4%, respectively. At the outset of its posthearing brief in the present dispute, the Union opined that the wage increase won by the City from Arbitrator Perkovich "cost the city fifteen more cops . . ."<sup>15</sup> The City apparently agreed, for under the current 1999-2002 Agreement North Chicago police officers are entitled to increases averaging approximately 9% the first year, an additional 9% the second year, and 4% the third year. In comparison to increases for that same time period across the external comparables,

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<sup>14</sup> While residency was not mentioned, it must be remembered that it did not become a mandatory subject of bargaining until January, 1998. That fact may explain why the Union focused on wages in those proceedings.

<sup>15</sup> Union post hearing brief, p. 1.

those increases are very large. It is possible that they will diminish the rate at which North Chicago police officers have been leaving for protective service jobs elsewhere. It is simply too early to tell.<sup>16</sup> It is also too early to determine whether relaxation of the residency rule will also be necessary to stem the tide of police officers leaving the City's employ.<sup>17</sup>

The evidence with regard to the public interest and welfare does not point convincingly to the selection either party's final offer. Overall, though, and for the reasons specified in the foregoing discussion, the Arbitrator concludes that it slightly favors retention of the status quo on the residency issue.

The External and Internal Comparables. The evidence relating to this statutory criterion is also mixed. For example, as of the date of the arbitration hearing, three of the six external jurisdictions (Chicago Heights, Lansing, and Maywood) had residency requirements imposed unilaterally by management. The residency requirement in Calumet City is pending before a tripartite arbitration panel; the one in Chicago Heights is apparently in interest arbitration as well. The remaining two jurisdictions (Burbank and Zion) have no residency requirements. The Arbitrator therefore concludes that the external comparables do not fully resoundingly the adoption of either party's final offer.

Consideration of the internal comparables slightly favors adoption of the City's final offer. Two of its four bargaining units (telecommunicators and public works) have voluntarily accepted the residency requirement at the bargaining table. The City's non-unionized employees are subject to it as well.<sup>18</sup> Only the IAFF-represented firefighters unit successfully eliminated the residency requirement during negotiations. That victory was won by a very slim margin. It was also the apparent result of hard-fought political maneuvering. But the fact remains that the IAFF successfully negotiated a relaxed residency provision for North Chicago firefighters. The City argues that the IAFF victory was a fluke, and that four out of seven Aldermen favor the residency requirement. The Arbitrator concludes from all of those circumstances that the majority of North Chicago employees are still subject to a residency rule. I conclude as well that the liberalized residency provision in the firefighters' contract does not prove that the City has been willing to give up the residency requirement for some employee groups but not for others. In any event, the internal comparability evidence is mixed. It was therefore not a major influence in the Arbitrator's decision on the residency issue.

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<sup>16</sup> The Union submitted copies of several police officers' resignation letters, many of which cited residency as the primary reason. The Arbitrator notes, however, that all of those resignations predate the complete implementation of the 1999-2002 negotiated wage increases. It is therefore impossible to tell if receipt of those increases might have provided sufficient incentive for the officers to remain in the City's employ.

<sup>17</sup> The City argued that its residency rule is not responsible for police officer turnover, because many North Chicago police officers have left for protective service positions in jurisdictions which also have residency requirements. The Arbitrator does not find that argument to be persuasive, since being forced to live in a given municipality might be objectionable or not, depending on its attributes.

<sup>18</sup> Non-employees such as vendors and librarians are exempt.

Other Factors. As noted by countless interest arbitrators across many states over the years, interest arbitration should be a last resort when good faith, give-and-take negotiations have broken down. In the present case, the parties have discussed the residency issue at the bargaining table only recently. It was not until after January, 1998 that the Union could legally bring it to collective negotiations for resolution. Furthermore, there is no evidence that during those negotiations the Union offered the City anything in exchange for relaxation of the residency rule. There is also no evidence that the City's position on the matter was intractable. It claims that during the most recent round of negotiations it was willing to consider any offer the Union might have made concerning residency --- especially if it included a *quid pro quo*. There is no evidence in the record to the contrary. The Arbitrator therefore concludes that the parties have not really given the collective bargaining process a chance to work with regard to the residency issue. Accordingly, it does not seem appropriate at this time to adopt the Union's bid to change the status quo for North Chicago police officers.

It is important to acknowledge that the status quo on the residency issue in North Chicago was not negotiated. Its fifty-year history is the result of management fiat, not mutual agreement between the Union and the City. Nevertheless, since the Union is the moving party seeking change, the Arbitrator looks to the Union to provide convincing reasons to do so. The safety of officers' families might well qualify as one of those reasons. But as already noted, the record contains insufficient evidence to prove that the residency requirement has endangered the safety of off-duty North Chicago police officers and their families.

Operational efficiency might be another convincing reason to alter the residency requirement. For example, a direct link between the existing residency requirement and the high police officer turnover in North Chicago might justify relaxing it in interest arbitration. As discussed earlier, though, no such link has been established in these proceedings. And if the turnover rate does not decline once all of the previously negotiated wage increases have been implemented, the parties are certainly free to relax the residency requirement voluntarily, by mutual agreement, any time they wish.

Overall, the Arbitrator believes it would not serve the collective bargaining process to grant the Union's final offer on the residency issue. The parties have demonstrated that they can hammer out tough issues at the bargaining table. They have both expressed what appears to be genuine concern for the public interest and welfare. The City has articulated its willingness to negotiate in good faith on the residency issue in the future, and there is no indication that it did not do so during the last round of bargaining. The Arbitrator therefore favors retention of the status quo on the residency issue.

## ENTIRE AGREEMENT

### Current Provision

The current "Entire Agreement" provision in the parties' collective bargaining agreement appears as Article XXIII. It is quoted in its entirety below:

This Agreement constitutes the complete and entire agreement between the parties, and concludes collective bargaining between the parties for its term. This Agreement supersedes and cancels all prior practices and agreements, whether written or oral, unless expressly stated in the Agreement.

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or ordinance from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Lodge, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter, whether or not referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. The Lodge specifically waives any right it might have to impact or effects bargaining for the life of this Agreement.

### Union Position

The Union's final offer on this issue deletes the last paragraph of the current Entire Agreement provision, and deletes a portion of the first paragraph as well. It also adds a phrase and a sentence to the first paragraph. The final offer is quoted below, with the deleted portions of the current provision shown as strikethrough text and the added portions italicized:

This Agreement constitutes the complete and entire agreement between the parties *during their negotiations*, ~~and concludes collective bargaining between the parties for its term.~~ This Agreement supersedes and cancels all prior practices and agreements, whether written or oral, unless expressly stated in the Agreement. *Subject to the provisions of Sections 4 and 7 of the Illinois Public Labor Relations Act, this concludes collective*

*bargaining between the parties over those matters, which were subjects of bargaining during the negotiations leading to this Agreement.*

~~The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or ordinance from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the City and the Lodge, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter, whether or not referred to or covered in this Agreement, even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement. The Lodge specifically waives any right it might have to impact or effects bargaining for the life of this Agreement.~~

The Union notes that in spite of the effects/impact bargaining waiver in the last sentence of the current Entire Agreement clause, North Chicago police officers have the statutory right to engage in such bargaining. It cites the following Section of the Act in support of that argument:

Section 4. Management Rights

Employers shall not be required to bargain over matters of inherent managerial policy, which shall include such areas of discretion or policy as the functions of the employer, standards of services, its overall budget, the organizational structure and selection of new employees, examination techniques and direction of employees. Employers, however, shall be required to bargain collectively with regard to policy matters directly affecting wages, hours and terms and conditions of employment as well as the impact thereon upon request by employee representatives.<sup>19</sup>

The Union also points to a decision of the Fourth District Appellate Court addressing proposals that purport to waive statutory bargaining rights. In that decision, the Court stated:

We agree with the Board's determination the Act, when read in its totality, sets forth a right to midterm bargaining. Further, we agree the reasoning in the Deerfield case is persuasive. Thus, an attempt to waive matters not known or foreseeable at the time of contract negotiations would be a

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<sup>19</sup> 5 ILCS 315/4.

waiver of a statutory right which would be a permissive subject of bargaining only.<sup>20</sup>

In view of the authorities cited, the Union asserts that broad zipper clauses purporting to waive statutory rights to mid-term bargaining about matters not the subject of negotiations are permissive subjects of bargaining. The Union also acknowledges that it could have sought a General Counsel's opinion about that issue from the Illinois State Labor Relations Board, but chose instead to bring it to interest arbitration for resolution.

The Union understands that the City insists on the right to make changes mid-contract. It does not seek to eliminate those rights; rather, it simply wishes to confirm its own limited right to negotiate mid-term. The Union notes as well that its final offer expressly waives the right to impact bargain over "those matters which were subjects of bargaining during the negotiations leading to this Agreement." It believes that narrow waiver is consistent with the Act and with case law, and that it affords the City protection against perpetual bargaining with a union seeking a better deal.

The Union argues that its final offer simply underscores a bargaining right the Illinois Legislature has already mandated. That is, if the City exercises its management rights in a way which directly impacts the wages, hours or terms and conditions of employment for North Chicago police officers, they will have the right to bargain over that impact.

#### City Position

The City's final offer on the Entire Agreement issue retains the bulk of the current contract language. It deletes what the City believes is language that would encompass subjects not "within the knowledge or contemplations of either or both of the parties at the time they negotiated or signed (the) Agreement." The City's final offer is set forth below:

This Agreement constitutes the complete and entire agreement between the parties, and concludes collective bargaining between the parties for its term. This Agreement supersedes and cancels all prior practices and agreements, whether written or oral, unless expressly stated in the Agreement.

The parties acknowledge that during the negotiations which resulted in this Agreement each had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law or ordinance from the area of collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise

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<sup>20</sup> 278 Ill.App.3d 814, 663 N.E.2d 1067, 1076 (4<sup>th</sup> Dist. 1996). Quoted verbatim from Union's post hearing brief.

of that right and opportunity are set forth in this Agreement. Therefore, the City and the Lodge, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter, whether or not referred to or covered in this Agreement, ~~even though such subjects or matters may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.~~ The Lodge specifically waives any right it might have to impact or effects bargaining for the life of this Agreement.

The City cites in support of its final offer the 1992 Opinion of ISLRB General Counsel Zimmerman, wherein she referenced a National Labor Relations Board decision involving *Union Hospital Association*.<sup>21</sup> In that Opinion, the City argues, Ms. Zimmerman found that since an employer's zipper clause proposal related to wages, hours and other terms and conditions of employment, it was a mandatory subject of bargaining. The City's proposal here, it asserts, mirrors the one Zimmerman considered, in that (1) both state that the agreement supersedes all prior agreements unless expressly stated otherwise; (2) both confirm that the agreement is the complete and entire agreement between the parties; and (3) both provisions waive the parties' right to bargain on any subject matter covered in the agreement.

The City also notes from Ms. Zimmerman's Opinion the possibility that a zipper clause could be so broadly written as to render it a permissive subject of bargaining because it might be construed to waive mid-term bargaining over subjects the parties did not contemplate or discuss at the bargaining table. For that reason, the City is offering to remove from the current Entire Agreement provision the language covering such subjects.

The City argues as well that the Union has not provided any compelling reason to change the current Entire Agreement provision, and that it has the burden of doing so. There is no evidence that the current language has created operational hardships for the Union, or that it has fostered equitable or due process problems for employees.

Turning to the external comparables, the City asserts that they support adoption of its final offer on the Entire Agreement issue. It also argues that if the Arbitrator chooses to reject the status quo on this non-economic issue he should consider adopting the language recently negotiated by the City and this same Union on behalf of the telecommunicators unit.

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<sup>21</sup> *City of Ottawa*, 8 PERI ¶2028 (Zimmerman, Gen. Coun., 1992), citing *Union Hospital Association*, NLRG Gen. Coun. Ad. Mem., No. 8-CA-12495 (1979).

## Discussion

Both parties seek to change the status quo on this non-economic issue, and both of their final offers seemingly stem from a desire to narrow the current Entire Agreement clause. Both final offers reflect concern that the clause as it now reads is too broad in scope, thereby possibly rendering it a permissive subject of bargaining. While the parties agree in principle, though, they disagree as to how the Entire Agreement clause should be modified.

Having studied both parties' offers and their stated reasons for advancing them, the Arbitrator does not believe any change to the negotiated status quo should be made in these proceedings. First and foremost, the current Entire Agreement clause is the result of face-to-face negotiations between the parties themselves. With the exception of that issue and residency, the parties have successfully negotiated a host of issues now included in the 1999-2002 Agreement they have already implemented. That accomplishment, and the fact that both parties ostensibly want to amend the Entire Agreement clause for the same reason, leads the Arbitrator to the conclusion that they are well-equipped to negotiate such an amendment on their own.

Second, the record contains no indication that the Entire Agreement clause has in the past presented problems so compelling that it should be amended by a third party. The Arbitrator sees no reason to fix in these proceedings something that has shown no signs of being broken.

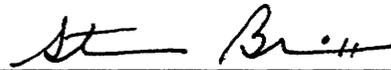
Third, if the parties have some future dispute about whether the breadth of the Entire Agreement clause makes it a permissive subject of bargaining, the Illinois State Labor Relations Board stands at the ready to resolve it. In their respective arguments here both parties cited the Act the Board administers, or Opinions of the Board's General Counsel. Therefore, it seems reasonable to conclude that any future dispute they may have about their obligation to negotiate mid-contract over the impact or effects of developments not contemplated at the bargaining table would be best resolved by the Board itself.

## AWARD

After careful study of the record in its entirety, and in full consideration of the applicable statutory criteria, whether specifically discussed herein or not, the Arbitrator has reached the following decisions.

1. On the non-economic issue of residency, the Union's final offer is rejected and the status quo shall remain unchanged. That is, no residency provision shall be included in the parties' 1999-2002 Agreement.
2. Neither of the parties' final offers is adopted on the non-economic "entire agreement" issue. The negotiated status quo shall remain unchanged.

Signed by me at Chicago, Illinois this 17<sup>th</sup> day of October, 2000.



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Steven Briggs