

**ILRB**  
**# 191**

In the Matter of the Interest Arbitration Between

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JUN 17 1999

Illinois State Lab Rel. Bd.  
SPRINGFIELD, ILLINOIS

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Village of University Park

-- and --

I.A.F.F. Local No. 3661

FMCS Case No. 99-04498-A

ISLLRB Case No. S-MA-99-123  
\_\_\_\_\_

AWARD AND  
OPINION

Before Matthew W. Finkin, Arbitrator.

The following is an interest arbitration conducted pursuant to Section 14 of the Illinois Public Labor Relations Act, 5 ILCS 315/1-315/20 (1999 Supp.) ["Act"] and Section 1230.80(b)(4) of the Illinois State & Local Labor Relations Boards' Impasse Resolution Rules. The hearing was conducted by the undersigned, by agreement of the parties the sole arbitrator in the case. The hearing was held in University Park, Illinois, on March 18, 1999. The Village was represented by Ancel, Glink, Diamond, Cope & Bush, P.C., by Timothy Guare, Esq. The Union was represented by Cornfield and Feldman, by J. Dale Berry, Esq. The record was fully developed. Written briefs of the parties were exchanged under date of June 3, 1999. Both parties were thoroughly and very ably represented.

***The Statutory Requirements***

Section 14 of the Act sets out the procedural requirements and substantive standards governing an impasse/interest arbitration for a unit of firefighters, as here, in municipalities of a population of under 1,000,000. It is not contested that the Village of University Park is governed

by this provision; nor is it contested that all procedural requirements have been complied with.

Of specific relevance here are the pertinent parts of section 14(g) and (h) set out below:

(g) . . . 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).

(h) 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 wage rates or other conditions of employment under the proposed new 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 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.

In 1997, the Act was amended to include "residency requirements" for firefighters in municipalities of under 1,000,000 population as encompassed by the "wages, hours, and conditions of employment" subject to the interest arbitration provision of § 315/14. *Id.*, subsection (i) as amended by Public Act 90-385 (1997).

### *The Issue*

The parties have submitted their respective last offers of settlement to binding interest arbitration on only one issue, a residence requirement. The respective last offers are:

#### *Village*

Within one (1) year of hiring or execution of this Agreement, whichever is later, each employee shall be required to live within the Village limits as a term of his/her continued employment.

#### *Union*

Within one (1) year of hiring (for new employees) or upon moving (for incumbent employees), each employee shall be required to maintain an Illinois residence within a municipality or other such political subdivision which lies within or touches upon a 30 mile radius of the Village Hall as a term of his/her continued employment.

### *Stipulations and Agreed-Upon Facts*

Some of the information relevant to the disposition of the instant dispute has been stipulated or agreed on by the parties or is otherwise uncontested.

(1) *Comparable Communities*: The following was entered on the record:

The parties have agreed and stipulated that the following listed communities comprise the appropriate field of comparable communities within the meaning of § 14(h)(4)(A) of the Act for purposes of this arbitration proceeding:

Alsip  
Blue Island  
Chicago Heights  
Chicago Ridge  
Dolton  
Homewood  
Markham  
Matteson  
Midlothian  
Park Forest  
Riverdale  
Worth

The parties acknowledge that their stipulation as to comparable communities is binding for this arbitration only. The parties reserve their rights to formulate positions, and make arguments in support thereof, regarding adoption of, addition to, deletion from rejection of the list above in any other arbitration proceeding.

*(2) Residency Restrictions Obtaining for Firefighters in the Comparable Communities:*

Listed below are the residence rules obtaining in the above communities (in the case of Markham by tentative collective agreement only):

<i>Municipality</i>	<i>Residency Requirement</i>
Alsip	Within Village limits
Blue Island	Within Village limits
Chicago Heights	Within Village limits
Chicago Ridge	None
Dolton	New - Within Village limits (Post 12/1/97 hires) Incumbent - in IL; 22 mile radius from Village limits
Homewood	None
Markham	7-mile radius from Village Hall <sup>1</sup>

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<sup>1</sup> The Union stated on the record that there is a tentative collective bargaining agreement for this unit extending the residence radius to 25 miles. The Village has pointed out that no

Matteson	Within Village limits - (Post 5/1/94 hires)
Midlothian	Within Village limits
Park Forest	None
Riverdale	16-mile radius from Village Public Safety Building
Worth	None

(3) *Fire Department Response History:* Until 1998, the Fire Department of the Village of University Park had one fire station and employed nine full-time firefighters. (In 1990, a second fire station was built, but it was not staffed until 1998.) In 1998, the Village opened the second fire station and increased the full-time complement to twelve. It also relies on sixteen "paid-on-call" firefighters. The Village placed in evidence the record of response to fire and paramedic calls from 1970 through 1997 with projections to 2002. The past decade's record and projections through 2001, the expiration year of the instant collective agreement, is most relevant here.

<i>Year</i>	<i>Number of Responses</i>
1990	636
1991	712
1992	826
1993	904
1994	895
1995	987
1996	1107
1997	1083
1998 (projected)	1137
1999 (projected)	1194
2000 (projected)	1263
2001 (projected)	1316

These data reflect the increase in residential property (and so the demand for paramedic services) and the aging of buildings with a concomitant increase in fire calls.

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documentary evidence of this has been submitted. Brief of the Village, p. 16, n.5.

(4) *Statewide Practice*: In its Brief, the Village disputes the propriety at looking at any data bearing upon residency requirements other than the above stipulated communities; but, reserving that question, it placed upon the record the results of a statewide survey conducted by the Illinois Professional Firefighters Association. These data indicate the following of the 204 departments surveyed:

<i>Residence Rule (1999)</i>	<i>% of Departments Surveyed</i>
In town	34%
Within 10 miles	21%
Up to 30 miles	14%
30 or more miles	2%
None (or In State only)	29%

(5) *Negotiated Change in Firefighter Residence Requirements*. The Union attorney, Mr. Berry, placed on the record changes he was personally familiar with negotiated by firefighter bargaining units to relax previous residency rules after the law was changed to render residence a mandatory bargaining subject. These instances are therefore anecdotal; *i.e.* they do not represent systematic evidence.<sup>2</sup> They evidence only that in *some* communities the parties have recently moved away from previously more restrictive rules.

<i>Municipality</i>	<i>Change</i>	<i>To</i>
Forest Park	City Limits	State of Illinois
Franklin Park	Leyden Twnshp	N: State Line W: Rt. 47 S: I-80

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<sup>2</sup> The Village did not object to the admission of this evidence at the hearing. The Village does not appear to contest the accuracy of the Union's assertion regarding Markham; but rather that it has been given no ground to agree or disagree that the fact is as the Union claims.

		E: Lake Michigan
Markham	7 Mile Radius	25 Miles Radius
North Chicago	City Limits	10 Miles Radius
Streamwood	S: Rt. 88	S: Cook, DuPage, Kane (Counties N. of I-290 & 88)
	N: Rt. 22-Rt. 14-R. 176	N: Rt. 176
	W: Rt. 47	W: Rt. 23
	E: Rt. 53	E: Lake Michigan

### *The Context of the Instant Dispute*

University Park is a home-rule municipality with a population of just over 6,200 in the 1990 census. In racial make up, the Village is currently 79% African American, but it is experiencing growth and expects the percentage of white residents to increase. Since 1986, the Village has required police officers to establish residence within a ten-mile radius of the Village Hall. The Village also requires department heads to reside in the Village, but those who resided outside the Village at the time this rule was adopted were required to become domiciled within the Village "when, and if, and at such time" as they next changed their place of domicile. The Village has never adopted such a requirement for firefighters. None of the twelve incumbent full-time firefighters live in the Village and none of those currently on the eligibility list after testing for appointment to the Department reside in the Village. None in either category are African-American. However, four of the department's sixteen "paid on call" (POC) firefighters live in the Village.

Ever since the Village started hiring a professional firefighting (and paramedic) force in 1981, it chose to hire persons who were fully trained and capable of performing on the job from the date of hire. According to the testimony of Michael Grubermann, Village Manager, it would

take approximately two years to train a firefighter/paramedic and, because the bulk of the department's calls are for paramedical service, the Village could not wait that long to get these services fully available.

In preparing for the last round of collective bargaining, the Village Board directed the Manager to produce a bargaining objective on residency for firefighters. Mr. Grubermann recommended a provision to parallel to that of the police, *i.e.* residence within a ten mile radius of the village hall, but the Board rebuffed this proposal -- for reasons to be discussed below -- and opted to press the instant last offer.

According to the testimony of David Litton, Fire Chief of the Village, the Village participates in two systems of mutual aid with surrounding communities. The first is an "automatic aid" agreement. Under this system one fire alarm signals all the participating departments; it is as if all the departments function as a single entity for response purposes. The second and longer-standing agreement is the Mutual Aid Box Alarm (MABA) system. It is triggered when all of one community's resources are taxed such that aid from an adjoining or surrounding community is needed. Under this system, the "box alarm" is not sounded until the situation has been assessed and the judgment made that local resources are inadequate.

In the event of a structural fire, the department responds automatically, the mutual aid participants are triggered, and off-duty personnel are notified to come back, *e.g.* by pager. Volunteers are also notified but their number has been decreasing. As Chief Litton put it, "We just do not get the level of [volunteer] response that we've had back when I first started . . . ." Regarding off-duty full-time firefighters on call to come in for a structural fire -- *i.e.* eight of the twelve full-time staff -- on average three, four and sometimes five respond to the call-back, but

on occasion all have reported in. Those who live closer to the Village tend to be more dependable for call-backs than others. Chief Litton testified that, on average, the department has had to call back off-duty personnel due to an automatic alarm or box alarm about or better than once a week. However, inasmuch as the active duty personnel of the Village and its co-participants are engaged at the scene, the persons called back replace the duty person on call at the Village's fire stations; they are not necessarily dispatched to the scene of the situation that triggered the alarm. Thus, he agreed that only 10 or 15 of the roughly 65 call backs required the previous year represented situations where the department would have wanted to have all its personnel called back:

A. [Chief Litton] [I]t would help us to comply with the mutual aid system where you tax your resources first before you go outside of the department. It would give us, obviously, more man power on the scene for various things that might be going on, and it would provide coverage for, you know, further calls.

Q. [Mr. Berry] Have you documented any deficiencies on any of these calls in 1998 where you said that additional people should have responded or if they had responded their response would have been more effective?

A. . . . I'm sure there were times when our station was unmanned and we were on calls.

Q. Okay. And would the reason be that automatic aid didn't respond or what?

A. No. It would have been that automatic aid would have responded, and we would have been busy, and we had nobody else coming back to the call; or everybody that came back to the call, you know, was working.

Q. At the scene?

A. At the scene.

Q. You would have dispatched them to the scene?

A. Yes.

Q. Okay. Would you agree that your procedure is that if all of your on-duty people are committed and then people called in, whether they're POCs of full-time people, are then committed to the scene, that that's the point at which you would go to a box alarm and achieve coverage of your station through the outside people moving up?

A. Yes.

In Chief Litton's judgment, an in-town residency rule would mean that off-duty full-time firefighters would be closer to the station and so "the sooner they're in the station to cover or to support additional operations." Even so, Chief Litton acknowledged that off-duty personnel may be unavailable for call-back due to a variety of personal reasons irrespective of whether they lived within the Village limits or not. In any event, a persistent refusal to call-back would be grounds for the imposition of discipline. He also acknowledged that persons called back have to report to the station, get suited up, and then report where assigned, *e.g.* to the fire scene if need be, and that time is consumed in the process. He further acknowledged that, as a rule of thumb, a fire doubles in size every minute.

On cross-examination, Chief Litton acknowledged that the residence proposal emanated from the Village Board and not from his department. He agreed that the issue of faster call-back response could be dealt with by means other than a city-limit residence requirement.

In addition to the witnesses for the Village, the Union adduced the testimony of: Stacey Bukowski, then on the eligibility list for hire as a firefighter/paramedic with the Village. She testified that the absence of a residence requirement was an attraction to her (on economic grounds) and the presence *vel non* of such a rule would be a factor in deciding whether or not to accept an offer; James Muirhead, also on the eligibility list, who testified that he would not move to University Park because he liked living in Crete, eight or so miles from the Village; Frank

Enright, a University Park firefighter/paramedic, who testified that the lack of a residency rule was an attraction to his taking the job and his extreme reluctance to disrupt his family life should he be required to move despite his liking the department and its management and his apparent success as a firefighter/paramedic in the department. He also addressed the situation where all the resources of the department are fully taxed, where all fire personnel, full-time, paid on call, and call-back full-timers, are "on the scene,"

which would normally be a scene that is in our town, we automatically would move up to a box level alarm at that point, which would bring in what is termed as move-up companies to come into our station and reside in our station until our incident is over to ensure that our community is protected. Traditionally the way our operating guidelines are is that if we get called out of town to go into one of our auto aid communities, three out of the four personnel that are on duty respond out of town. At that point we call in our paid-on-call members, and we would put out a page for the full-time staff. Once the paid-on-call members arrive in our station here, we send those paid-on-call members out to the scene in a station vehicle to relieve the full-time duty people so that they can come back in quarters so that they can cover our town.

So there is no particular incident that I could remember that this town has had absolutely nobody sitting in this town to provide any type of protection, and we have a very structured program to ensure that that doesn't happen.

He conceded, however, that the Village has an interest, in terms of recall, in whether he lives in University Park or Homewood; David Klinger, a Village of University Park firefighter/paramedic who lives in Chicago Heights testified that for family reasons he would look elsewhere were the Village to adopt in-town residence requirement; Phyllis Dralle, employed by the department for seven years, testified to her deep family roots in the area and her reluctance to move from Crete where she currently lives where "it's close to the [fire] station. It['s] close to the family," and that she would look for another job if the Village were to require

in-town residence. In addition, letters from persons on the current eligibility list and who objected to the adoption of an in-town residence requirement were admitted into evidence.

### *Positions of the Parties*

*The Union.* The Union argues first, citing arbitral authority, that a party seeking to implement an entirely new term or condition of employment bears the burden of persuasion to show that the prior policy has not worked properly or has created hardships or operational difficulties for the employer and the party opposing change in the status quo has resisted reasonable attempts to negotiate an acceptable resolution. Brief of the Union at 14 (reference omitted). The Union argues accordingly that that burden has not been met. *I.e.* that the motivation for the change does not derive from concerns for public safety; that the Village's last offer will not increase public safety; that other measures have not been availed of. The Union argues secondly that the Village's last offer will not conduce toward the end it was devised to achieve, that is, racial diversity; indeed, it can only narrow the relevant applicant pool. It argues thirdly, and by reference to the statutory criteria, that the data on the comparable pattern of community behavior does not favor the Village's position. Finally, the Union argues that the Village's proposal places too harsh a cost on the incumbent workforce.

*The Village.* First, the Village disputes that it bears any particular burden of persuasion. It acknowledges the principle (and the authorities in support of it) relied upon by the Union, but claims that here *both* parties are seeking to change the status quo and, in such a case, neither party bears a special burden. Moreover, it argues that the principle relied upon applies to changes in a previously negotiated *status quo* whereas here there was no prior mutual collective understanding. In such a case, evidence from comparable communities is especially relevant

(Brief of the Village at 23) and these support the Village's position: *I.e.*, 8 of the 12 comparable municipalities have residency requirements, 6 within the municipal boundary, and none provide a 30-mile radius.

Second, the Village tracks the criteria set out in § 14(h) of the Illinois Act. On subsection (3), the welfare of the public, the Village sets out the purposes it asserts to be served by its residence requirement:

A greater degree of balanced ethnic diversity in the Village; ensuring that Village employees contribute to the Village's local economy (*i.e.*, countering the perception that "the Village taxpayers are good enough to provide a paycheck for firefighters, but they aren't good enough for firefighters to live next to"); increased public confidence in firefighters as members of the community; firefighters' quick access to their jobs in the event of civil unrest, catastrophe or natural disaster; and enhanced performance by virtue of the firefighters' greater familiarity with the Village, its streets and its structures.

Brief of the Village at 10 (citations to the transcript of record omitted). It argues accordingly that arbitral authority "overwhelmingly favor[s], and require[s] the arbitrator's adoption" of the Village's proposal. *Id.* at 8, citing *Village of Maywood*, ISLRB Case No. S-MA-92-102 (Wolff, 1993) [*Maywood I*] and *Village of Maywood*, ISLRB Case No. S-MA-95-167 (Malin, 1996) [*Maywood II*]. Thus, the Village argues that public safety requires the residence requirement it seeks. Indeed, the very unified response agreements argued to by the Union evidence, to the Village, that, once triggered, they leave the remainder of the community areas unprotected. *Id.* at 25. And that there is a correlation between the frequency of off-duty recall and the distance those recalled live from the Village. *Id.* (citing Chief Litton's testimony).

Third, it argues that the Union's proposal is unreasonable insofar as it "could effectively triple the existing *de facto* residence area radius." *Id.* at 29. On that, it makes a rhetorically powerful argument:

The Union has offered no evidence that a *broadened* residency requirement will enhance Village Fire Department services in any way. The possibility that there may be fewer applicants for positions with the Fire Department, without more, says nothing about the quality of services actually provided by the successful applicants. There can be no doubt that living up to 30 miles away will more than triple emergency response times for off-duty firefighters, thereby posing additional risk to taxpayers' life and property in emergency situations. Also, the Union's proposed 30-mile radius does nothing to increase public confidence in emergency service personnel by making them familiar as neighbors, or by enhancing the firefighters' local knowledge of the streets and structures of their own Village. Finally, the Village's interest in having its emergency response employees support and be part of the Village's economic climate is outright defied by the Union's proposal. Adoption of the Union's proposed residence requirement will only fortify the Village citizenry's growing distrust toward the firefighters and their perceived willingness to take the Village's tax dollars, while refusing to be part of the community that provides their paychecks.

*Id.* at 26-27 (citation to transcript of record omitted) (*italics added*).

Fourth, the Village disputes the weight to be accorded the preference of incumbent firefighters/paramedics as well as those on the eligible list against an in-town residence requirement. These are, the Village argues, expressions of "*wants*" not "*needs*," whereas the City's proposal addresses legitimate public *needs*. *Id.* at 30-31. And even the legitimate wants expressed -- affordable housing and good schools -- are satisfied within the Village limits. *Id.* at 32-35.

Finally, the Village suggests that as residence is not an "economic issue" under the Act, it is not subject to the "best last offer" rule governing the arbitrator under the Act. It therefore suggests that the undersigned might adopt the Village's proposal, but "grandfather" incumbent employees until they should move during employment which, the Arbitrator notes, is the same requirement that governs the Village's department heads. *Id.* at 36-38.

### *Analysis*

Only three of the statutory criteria are applicable to the resolution of the instant dispute: subsection (3) on the interests and welfare of the public; subsection (4) on comparable conditions elsewhere; and, subsection (8) on such other factors normally and traditionally considered in the resolution of such disputes. Before proceeding to them, attention must first be given to the dispute over the applicability of the principle, relied upon by the Union and contested by the Village, concerning the burden of persuasion. The weight of arbitral authority recognized by both parties is that the proponent of change bears the burden of persuasion on the need for the change. The Village contests the application of the principle here, but neither of its arguments is persuasive. First, it argues that the principle is inapplicable because both parties are proposing to change the *status quo*; but, the Union's proposal -- actually a counter-proposal -- is in response to the Village's demand. By the Village's lights, if the Union stood on the *status quo*, the Village would bear the burden of persuasion; but, because the Union has made a partial concession, the Village bears no such burden. That does not make sense. Second, the burden is assumed because of the long-standing nature of the prior policy and the expectations concomitantly founded on it. If a party that wishes to change a prior provision of a collective agreement bears the burden of persuading the arbitrator of the need for the change, in a provision it had negotiated, it follows *a fortiori* that it bears the burden of persuasion on why it should change a provision it had unilaterally adopted. This approach is fully supported in the authority the Village cites as controlling precedent. Both arbitrators in *City of Markham I* and *City of Markham II* applied this principle. In *City of Markham I*, the City required all City employees to reside within the City, but had agreed to grandfather firefighters employed prior to August 15,

1975. The Union proposed to expand the residence limit to the fire "service area," including certain contiguous communities. The Arbitrator found that the Union had failed to make a case for changing a requirement that had been in place for 18 years. In subsequent negotiations, the Union sought to expand the residence zone to a 20-mile radius of the City. The Arbitrator in *City of Markham II* again placed the burden of persuasion on the proponent of the change and found nothing to warrant the Union's position. Here the Village is seeking radically to alter its own long-standing policy of having no residence rule at all. Consistent with *City of Markham I and II*, it bears the burden of persuasion.

On the merits, it is uncontested that the Village Board's motivation for its proposal did not stem from any concern about public safety: The Department did not propose any change in the status quo and, when ordered to come up with a recommendation, it proposed to apply to firefighter/paramedics the same rule applicable to police (and which, from what appears, would not inconvenience incumbent members of the Department), which recommendation was rejected by the Village Board. The argument to safety is thus a *post hoc* rationalization for a decision made on other grounds. Nevertheless, the Village's position must be considered under subsection (3); but, obviously, the weight to be given the argument is weakened by the fact that neither the Department nor the Board advanced the safety claim as a weighty concern at the time the instant bargaining proposal was put forward.

The only public safety ground supported in the record is the potential for faster recall of off-duty full-time personnel in emergencies, which, indeed, both parties recognize. But this potential is significantly mitigated by the fact that no emergency has ever materialized whereby the Village was left unprotected, which both parties also recognize, due to the joint emergency

response systems in place; by the fact that most recalled personnel are usually called in to man facilities awaiting potential calls; by the fact that, as Chief Litton testified, the Department may not need or want (for financial reasons) all call-backs actually to be honored; by the fact that the City has increased its full-time firefighting force by a third in 1998; by the fact that a persistent failure to respond to a recall would be grounds for discipline; and by the fact that, as the department conceded, faster call back could be achieved by means other than an in-town residence rule.

Thus, the City's argument, if artful, is unpersuasive: The City's assertion that the Union's proposal would "broaden" -- or "triple" -- the potential emergency response time is not correct when measured, as the arbitrator must, against the legal *status quo*. The current rule imposes no residence limitation at all. The Union's position is to acknowledge and to adopt for the first time a limit on where firefighters/paramedics may reside; and it is proposed in the absence of any discernable threat to public safety posed by the Village's current rule.

The second ground under the head of public safety argues to the greater familiarity of resident firefighters with Village streets and structures. Suffice it to say, there is no evidence on the record to suggest that the incumbent force, none of whom live in the Village, suffer or have given inadequate service in that regard because of their lack of residence in the Village.

Analysis thus turns to subsection (4). But here the data are simply indeterminate. The City puts the question of comparability to the Union's proposed 30-mile limit and answers that only four comparable departments out of twelve have that or a greater limit. But the Union puts the question in terms of the Village's proposal. Put this way, six of twelve comparable communities impose in-town residence; *i.e.* half do and half do not. So, too, if the "bigger picture" is

examined, 34% of Illinois fire departments require in-town residence, while 31% permit 30 or more mile residence radii. In sum, these data support neither position.

Accordingly, analysis next turns to the non-public safety considerations argued to by the Village. First and foremost is the achievement of a racially diverse fire department in a strongly African-American community. The Union has made several arguments to the complex interrelationship of factors that go into an applicant's choosing one or another fire department; but the evidence it relies on -- and which the Village contests -- need not be assessed. The simple fact is that no connection has been established on the record to evidence how *this* change, the Village's proposal, will conduce toward *that* result. It is counter-intuitive that a *narrowing* of the applicant pool, by eliminating those who would not wish to move, including the elimination of potential African-American applicants, will *increase* the number of qualified African-American applicants. The Village's argument is rather the converse: that a residence requirement is likely to "weed out" those who do not wish to become part of a "culturally diverse community," Brief of the Village at 12, and who, presumably, would not be African-American. But this says nothing at all as to why such a limit would increase the prospect of African-American applicants.

The remainder of the Village's arguments are to imponderables. *I.e.* the desire to have firefighters manifest good citizenship to counter the perception that the residents aren't "good enough to live next to," to increase "public confidence" and marginally to contribute (given the number involved) to the local economy. These the Village terms "needs." But the firefighters' desire to have freedom of choice as to residence, to stay close to family and schools, it terms "wants." What distinguishes a valid social "need" from a selfish individual "want" seems to be

in the eye of the beholder. Suffice it to say, the Arbitrator is given no scale on which to weigh these altogether defensible respective desiderata, at least none on which the balance shifts away from the long-standing *status quo*.

Finally, for two reasons the undersigned declines to accept the Village's suggested alternative. First, it presents a question of law on which there is neither agreement of the Union, that I have authority to award as the Village suggests, nor any warrant in judicial authority. Second, to proceed upon this proposal now is to erode the system of collective bargaining erected by the Act. The system of impasse arbitration is premised on the belief that, inasmuch as the Arbitrator must select one or the other proposal -- even to choose between two unreasonable proposals on the ground that one is less unreasonable than the other in statutory terms -- the parties are more likely to iron out their differences at the bargaining table. *See generally*, Harry Edwards, R. Theodore Clark and Charles Craver, *LABOR RELATIONS IN THE PUBLIC SECTOR* 769 (4th ed. 1991) (surveying the scholarly literature on point). The Village could have presented what it now suggests (or some other narrowly crafted proposal) to the Union during bargaining. It did not do so and cannot now present it in this forum.

#### *Award*

Based on consideration of the factors set out in section 14(h) in light of all the evidence and arguments before me, I award as follows:

The Union's final offer is awarded. The relevant provision of the parties' collective bargaining agreement will contain the following Residency Requirement:

Within one (1) year of hiring (for new employees) or upon moving (for incumbent employees), each employee shall be required to maintain an Illinois residence within a municipality or other such

political subdivision which lies within or touches upon a 30 mile radius of the Village Hall as a term of his/her continued employment.



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Matthew W. Finkin  
Arbitrator

16 June 1999

Date