IN THE MATTER OF ARBITRATION

BETWEEN	**ARBITRATION AWARD:**
City of Centralia	**ILLINOIS STATE LABOR RELATIONS BOARD CASE NO. S-MA-09-076**
	City of Centralia Police Department
AND	
ILLINOIS FRATERNAL ORDER OF POLICE - LABOR COUNCIL	**Before Raymond E. McAlpin, Neutral Arbitrator**

APPEARANCES

For the Union: **Becky Dragoo, Field Supervisor**

For the Employer: **Mark Stedelin, City Attorney**

PROCEEDINGS

The Parties were unable to reach a mutually satisfactory settlement of their negotiations and, therefore, submitted the matter to arbitration pursuant to the Illinois Public Employee Labor Relations Act. The Parties did not request mediation services. The hearing was held in Centralia, Illinois on October 27, 2009. At these hearings the Parties were afforded an opportunity to present oral and written evidence, to examine and cross-

examine witnesses, and to make such arguments as were deemed pertinent. The Parties stipulated that the matter is properly before the Arbitrator. Final briefs were received on January 11, 2010.

ISSUE

EMPLOYER'S FINAL OFFER

Article 26

Section 5 Residency

Employees hired prior to the effective date of this agreement shall establish and maintain their respective primary residences within twenty-six (26) miles from the CENTER of the intersection of Calumet and Poplar.

Employees hired after the effective date of this agreement shall establish and maintain their respective seven (7) miles from the CENTER of the intersection of Calumet and Poplar.

UNION

Article 26

Section 5 Residency

Status quo.

STATUTORY CRITERIA

(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 the 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.

(I) In the case of peace officers, the arbitration decision shall be limited to wages, hours and conditions of employment and shall not include the following: (I) residency requirements; (ii) the type of equipment, other than uniforms, issued or used; (iii) manning; (iv) the total number of employees employed by the department; (v) mutual aid and assistance agreements to other units of government; and (vi) the criterion pursuant to which force, including deadly force, can be used; provided, nothing herein shall preclude an arbitration decision regarding equipment or manning levels if such decision is based on a finding that the equipment or manning considerations in a specific work assignment involve a serious risk to the safety of a peace officer beyond that which is inherent in the normal performance of police duties. Limitation of the terms of the arbitration decision pursuant to this subsection shall not be construed to limit the factors upon which the decision may

be based, as set forth in subsection (h)

EMPLOYER'S POSITION

The following represents the arguments and contentions made on behalf of the Employer:

The changes requested by the Employer affect only new employees, those hired after the effective date of this agreement, therefore, existing employees will not be adversely impacted by the contract change and new employees can make their individual decisions to seek and accept employment with the Employer knowing they will have to reside within the prescribed radius. The Employer acknowledges that current employees have made life-altering decisions wherein they have made serious commitments to a particular residence. The Employer is not seeking to force its current employees to uproot their individual lives.

That same reasoning does not apply to new employees. New employees could not have made decisions with respect to an employer by whom he/she is not employed. New employees will have the ability to consider this aspect before they accept employment.

The Union argues that it made a concession in a prior agreement to secure the 26 mile radius, therefore, the Union would somehow be deprived of the benefits of the prior bargain. This is fallacious in a couple of respects. Members of the Union who made the

concession will continue to enjoy whatever benefits flow from the 26 mile radius. The Union and its members got exactly what they bargained for under the prior contract, that being a 3-year agreement. The Employer would note that there was no evidence at the hearing that this change would reduce the quality of future applicants and thereby reducing the quality of police service and posing a safety threat.

The changes requested by the Employer further the stated policies of the City. The primary trust of the Employer is to grow the community by attracting new businesses and residents while maintaining current residents. The citywide survey was clearly designed to adapt City services to its residents and establish priority to retain residents. The Employer's primary goal is to attract and retain well paid residents. All improvements of City services are primarily for that purpose. Even the attraction of new businesses and industry is meant to serve that purpose. All residents of the City will benefit from such growth. Among the primary beneficiaries will be this bargaining unit. Growth increases the demand for City services including the demand for additional officers. The record shows that members of this unit are exactly the type of well paid residents the Employer desires to attract.

The change proposed by the Employer will meet the political needs of the Employer. This proposed change resulted from a change in the people's representatives and the adverse political consequences of the prior existing party.

The current policy of allowing Union members to reside 26 miles from the City has several adverse political connotations. It undermines the general policy of attracting well

paid residents to this community, not neighboring communities. It implies the quality of police services is so lacking that a well trained armed police force is afraid to live here. It gives the police force a mercenary-like quality wherein officers are brought in from other communities. It implies that the hard-earned revenues raised by residents are going to benefit neighboring communities. While the final offer of the Employer does not totally rectify the adverse political connotations, it is a step in the right direction.

With respect to the Union's arguments, the proposed residency clause will not endanger members of the Union. The training given to the bargaining unit provides them with the extraordinary means to protect themselves. The Union submitted affidavits of two of its members regarding threats those members have received, but both of them reside outside the 7-mile radius. There was no evidence of threats to members who reside inside the proposed 7-mile radius. Residency is irrelevant to the threat posed to police officers.

The true argument being advance by the Union is to never give anything without getting something. It is the Union's de facto definition of good faith bargaining. The offer of the Employer does include a quid pro quo. The Employer's policy would dictate an even stricter residency policy, however, the Employer's final offer concedes that requiring current employees to move would be patently unfair. There is in fact a quid pro quo.

The Employer proposes that the Arbitrator adopt its final offer as his determination of the issue presented for arbitration.

UNION POSITION

The following represents the arguments and contentions made on behalf of the Union:

There has been more than a decade of residency arbitration decisions in Illinois. The Union provided a number of citations since the 1997 passage of Public Act 90-202, most of which would favor the Union's position in this matter.

In this matter it is the Employer that bears the burden of proof. During the 2005 negotiations the City sought to hold the line on salary increases and to settle a 3-year contract for a total wage package of 7%. Since this was a considerably less than average wage package, the Union sought and obtained an expansion of the residency limitation from 12 to 26 miles. The Union paid for the privilege of expanding the residency requirements. The record shows that the Parties have shown their willingness to continually expand the radius in exchange for a quid pro quo. There is a negotiated status quo in this matter. The Parties voluntarily agreed to the system that is in effect now. The moving Party must demonstrate that the negotiated system does not work.

There is not one shred of evidence submitted to establish the 20-year march toward relaxing residency has not worked in Centralia. If the City was so concerned about the residency expansion, it would have sought another benefit to exchange for the lesser

economic package proposed in 2005, yet it did not. The only reason that the City could produce was the change in elected officials. These elected officials apparently believe that police officers should live within a much more limited residency area. The Union does not fault politicians for wanting their officers to reside closer or even in the city, but their wishes and policy ideals are not on trial in these proceedings.

In addition to the above, the existing system has not created an operational hardship for the Employer or equitable due process problems for the Union. There was no evidence provided by the City to show otherwise. There was no evidence that response times were operationally unacceptable or that current residency requirements created a public safety risk. Police officers are not charged with providing public safety service 24 hours a day. There was no proof of an operational hardship because it simply does not exist.

There was no evidence provided that hiring and turnover were adversely affected by this residency requirement. In fact the City is able to draw from a 30-mile radius around Centralia for new employees.

If the new two-tiered system is adopted, there certainly will be an equity issue. Unions have long resisted two-tier systems of compensation. There is no compelling reason for one group of police officers to abide by one residency requirement and another group being subjected to a more restrictive requirement. The City's proposal condemns the bargaining unit to divisive negotiations. What will new hires have to give up in order to obtain the same residency rights. The Union would note that it has resisted attempts at the

bargaining table without an exchange for other non-economic issues in spite of the fact that it had only recently "paid" for an expansion of residency in the last round of negotiations.

Examining comparables is often a key element for considering changes in the collective bargain. While most surrounding jurisdictions have negotiated for residency requirements far less liberal than Centralia, a fair number of those communities are located in the immediate St. Louis Metropolitan Area. Jurisdictions more geographically proximate to Centralia have further relaxed requirements. The Union provided numerous examples.

There is no evidence before the Arbitrator to justify a change in the residency requirements through interest arbitration. The simple fact is that this is a politically expedient issue and allows elected officials to play to the emotions of the populous.

In addition to the above, many arbitrators have considered harassment of police officers in their decisions. In order to set aside the current residency requirements in the face of unwanted intrusions into the personal lives of the members of the Department and their families, the City must present a well-documented need and Centralia has not done so.

The status quo is the most reasonable conclusion in this matter. The current system works. The Employer merely wishes to change to comport with the political views of a new administration. This desire does not justify setting aside 20 years of bilateral negotiations.

That result should be the maintenance of the status quo.

DISCUSSION AND OPINION

The role of an Arbitrator in interest arbitration is substantially different from that in a grievance arbitration. Interest arbitration is a substitute for a test of economic power between the Parties. The Illinois legislature determined that it would be in the best interest of the citizens of the State of Illinois to substitute compulsory interest arbitration for a potential strike involving security officers. In an interest arbitration, the Arbitrator must determine not what the Parties would have agreed to, but what they should have agreed to, and, therefore, it falls to the Arbitrator to determine what is fair and equitable in this circumstance. The statute provides that the Arbitrator must pick in each area of disagreement the last best offer of one side over the other. The Arbitrator must find for each open issue which side has the most equitable position. We use the term "most equitable" because in some, if not all, of last best offer interest arbitrations, equity does not lie exclusively with one side or the other. The Arbitrator is precluded from fashioning a remedy of his choosing. He must by statute choose that which he finds most equitable under all of the circumstances of the case. The Arbitrator must base his decision on the combination of 8 factors contained within the Illinois revised statute (and reproduced above). It is these factors that will drive the Arbitrator's decision in this matter.

The Arbitrator has more latitude when dealing with "non-economic" proposals.

The Arbitrator has found over the years that the line between economic and non-economic is very blurred. An effective argument can be made that most of these "non-economic" proposals can and do have economic consequences. In addition, interest arbitration is set up to encourage voluntary settlement. This Arbitrator has concluded that in the absence of the most extraordinary circumstances it is the Parties that should determine their respective proposals either of which would then be included in the Agreement.

The Arbitrator would, however, say to the Parties that interest arbitration is an essentially conservative process. The Arbitrator is bound by the criteria placed upon him by the State of Illinois and the Parties respective positions. The criteria for change, as noted in the above paragraphs, are difficult to achieve. Quantum leaps in interest arbitration are, therefore, difficult to attain. The Collective Bargaining/Interest Arbitration process in the public sector is generally one of small steps over a period of time to achieve an overall goal except under the most extraordinary circumstances.

Prior to analyzing the open issue, the Arbitrator would like to briefly mention the concept of status quo in interest arbitration. When one side or another wishes to deviate from the status quo of the collective bargaining agreement, the proponent of that change must fully justify its position, provide strong reasons, and a proven need. It is an extra burden of proof placed on those who wish to significantly change the collective bargaining relationship. In the absence of such showing, the party desiring the change must show that there is a quid pro quo or that other groups comparable to the group in question were able

to achieve this provision without the quid pro quo. In addition to the above, the Party requesting change must prove that there is a need for the change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo, as noted above. In addition to the statutory criteria, it is this concept of status quo that will also guide this Arbitrator when analyzing the respective positions.

This arbitration involves a 7-mile or 26-mile residency radius that would apply to employees hired after the date of this decision. The decision to have a 26-mile radius for the police officers was that of the City and in exchange for that extended residency radius, the City received a significant economic benefit. The fact that other employees of the City are required to utilize a smaller residency area, a "me, too" situation, is a decision that was created by the City and now it is attempting to use that against police officers.

In addition to the above, the City is proposing a two-tier system where at least currently the vast majority of the Police Department would have the most more-relaxed residency area and only new employees would be obligated to utilize the much smaller residency area. This may not cause any problems initially, but this Arbitrator has had personal experience with an extremely large bargaining unit in a major city wherein it had a two-tier residency system and eventually and down the road this makes for a very divisive situation, particularly when those required to utilize the much smaller residency area become the majority or close to the majority in the bargaining unit. Collective bargaining in the public sector is difficult enough without adding this emotional item to the

mix.

Because it is the Employer that wants to deviate from the status quo, as noted above, that Party must prove that there is a need for change and that the proposed language meets the identified need without posing an undue hardship on the other Party or has provided a quid pro quo. There is no quid pro quo in this matter nor does the record show that there was any attempt at a quid pro quo. The Employer bears the burden of proof, and it is an extra burden of proof because of the significant change in the collective bargaining relationship. The Employer has not established a need for the change except for the political desires of the City. Political desires are understandable, however, they do not help the City prove that this change should be approved by this Arbitrator. The current system shows no adverse effects except perhaps a very limited economic impact. There is no showing that the citizens view the Officers as mercenary. On the whole the comparables favor the Union's position and the City's position is not justified. Therefore, the Arbitrator will uphold the status quo for the term of this Collective Bargaining Agreement.

AWARD

Under the authority vested in the Arbitration Panel by Section XIV of the Illinois Public Employees Labor Relations Act the Arbitrator finds that the proposal which most nearly complies with Sub-Section XIV(h) is the Union's position.

Dated at Chicago, Illinois this 19th Day of January, 2010

Raymond E. McAlpin, Arbitrator