

Relations Act, to resolve an impasse existing between Milwaukee Teachers Education Association, hereinafter referred to as the Union, and the Milwaukee Board of School Directors, hereinafter referred to as the Employer.

Hearings were held on May 18, 20, 25, 26, 27 and June 3, 1994 in Milwaukee, Wisconsin. The Parties did not request mediation services. At this hearing 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 all provisions of the applicable statutes had been complied with and that the matter was properly before the Arbitrator. Briefs were filed in this case and the record was closed on October 17, 1994 subsequent to receiving the final reply briefs.

ISSUE

The following represents the issue at dispute in this matter: Should Part XI (reproduced below), having to do with teachers employed by the Milwaukee Board of School Directors after February 7, 1988 which requires them to maintain their residence in the City of Milwaukee, be removed from the Collective Bargaining Agreement?

PERTINENT CONTRACT PROVISIONS

PART XI

RESIDENCY

All teachers to be newly employed by the Board shall maintain their residence in the City of Milwaukee. However, this provision shall be effective only when all new Board employees, including supervisory and managerial personnel, are required to maintain their residence in the City of Milwaukee. This provision may be challenged by court suit brought by the MPEA.

ASSOCIATION POSITION

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

The Milwaukee Public Schools is the largest district in the state of Wisconsin with the most students, the most teachers and is situated in the largest city in the state. It serves a diverse general student and teacher population. From the 1950s through the early 1970s there was a continuous increase in the number of students. Therefore, many teachers were hired during that period. As the student population started to diminish in

the 1970s, there was a decreasing need for new teachers to enter the system. Even during this period of diminishing need, MPS did hire a significant number of teachers but not to the extent that were hired prior to 1970. By the middle of the 1980s, a number of teachers hired during the 50s through the mid 60s were approaching retirement age. They were encouraged to retire by reason of early retirement supplemental benefits. In addition student population began to rise from the late 1970s through the present. The number of teachers employed, which had been 5500 in 1979, increased to over 6500 by 1994.

In 1965 a lawsuit was filed by a group of parents in federal court charging the Milwaukee Public Schools with being racially segregated. In 1976 Judge John W. Reynolds issued a decision in which he found widespread evidence of intentional and unlawful racial segregation. A final remedial order was issued in 1979. The origin of the residency requirement for teachers was in the broad settlement proposal of a special master appointed by Judge Reynolds. This was not a proposal which was agreed upon in normal collective bargaining or mediation between the Parties. Both sides accepted the proposal, and that proposal became the contract (Part XI) between the Parties. At the time the residency requirement was adopted in 1977, the circumstances present in the school district were entirely different than those existing at the present time. With the widespread operation of the specialty or magnet schools, there was far less influence of

a neighborhood or attendance area schools in the district. The demographics of the student population are sharply different today than they were in the mid 70s. The racial makeup of the student population is substantially different.

As a result of an arbitration decision, the effective date of the residency requirement was established as February 2, 1978. Newly hired teachers are defined in the Collective Bargaining Agreement and practice teachers are given one year to move their residence to the City of Milwaukee after they are hired by the Board.

The current demographics of the teacher bargaining unit are approximately as follows:

Male	28.0%
Female	72.0%
Caucasian	77.0%
African American	18.0%
Hispanic	3.0%
Asian and other minorities	2.0%

Currently the student population is demographically broken down as follows:

African American	58.7%
Caucasian	24.0%
Asian	3.8%
Hispanic	13.0%

While the number of African American teachers has increased substantially since the late 1970s, the percentage of African American teachers in the bargaining unit has remained approximately within the same range.

Milwaukee's teacher residency requirement stands alone in the entire state of Wisconsin and is a rarity among cities in the United States. No other school districts in the state of Wisconsin require teachers to live within the confines of the school district. Even though a number of municipalities require classified employees to live within the geographic boundaries, no school district other than Milwaukee requires certificated teachers to live within the school district of their employment. Milwaukee is the only city that has residency requirements for teachers that were established through the contractual process. Three other cities, Chicago, Philadelphia and Pittsburgh, have teacher residency requirements which were established legislatively. Also, the Association noted that many of the

cities which do not require teachers to be residents of the school district have requirements that other employees be residents of the city.

In recent years the residency requirement has become increasing detrimental to teachers in the district and to the district's ability to recruit and retain the highly qualified teachers it needs to meet the educational challenge facing the Milwaukee Public Schools in the 1990s. At the time of its placement in the contract the residency requirement had no impact on any member of the bargaining unit. After 16 years, approximately 3840 teachers are subject to the residency requirement and 2455 are grandfathered and, therefore, not subject to its requirements. Thus, 40% of the bargaining unit is exempt. As increasing numbers of teachers have become subject to the requirement, the urgency of the removal of this provision has become a higher and higher priority for the teachers of the district. Surveys have shown the increasing dissatisfaction of the Milwaukee teachers with the residency requirement. Despite the extraordinary professional opportunities available in the Milwaukee Public Schools, the residency requirement and the hardship it frequently causes in the lives of teachers have continually resulted in the loss of talented young teachers and the decision of many others not even to apply for employment in the district. The Association noted the University of Wisconsin

at Whitewater survey prepared for the Wisconsin Department of Public Instructions (MTEA Exhibit #44).

The district was unable to show that there was an educational benefit to the district that would justify the hardship it causes to teachers. Forty percent (40%) of the bargaining unit are not subject to the residency requirement. Of that group, 40% have chosen to live within the city. There was no evidence introduced at the hearing that would demonstrate any qualitative difference between those teachers who reside in the city and those who have chosen to live elsewhere. There was testimony at the hearings that would show that there were no studies which contend that the residency of a teacher bore any relationship to the quality of the instruction.

The district appeared to contend that the turnover of young teachers, which is admittedly high, may be attributed to the perceptions of safety by such teachers. This was refuted by the Association. While safety may be a concern in some schools, it is not in the majority of the Milwaukee Public Schools. Likewise, high student mobility, while a problem in the Milwaukee Public Schools, is not an important element causing teachers to leave the system.

The Milwaukee Public Schools has been unable to fill vacancies with fully qualified teachers and has widespread use of

substitute teachers and teachers serving on special temporary permits. There is a statewide shortage of teachers in critical skill areas, such as physical therapy, occupational therapy, exceptional education, speech pathology and bilingual education. The residency requirement makes it more difficult for Milwaukee Public Schools to obtain teachers to fill these critical needs for the students of the school district. There is evidence that substitute teachers have been used to fill a single vacant position for an entire year and for more than one successive school year because the district was unable to hire qualified teachers. The district's own records show extensive use of substitute teachers, for example - during the second semester of the 1992-93 school year, the district paid such teachers in excess of \$500,000. The record contains many examples of the Board utilizing substitute teachers to avoid the residency requirement. This is true of minority teachers and those teachers with special and difficult to recruit skills and certifications. This is particularly shown in the surprisingly low number of applications filed with MPS in which the most significant single factor is the residency requirement. MPS has far fewer applicants per vacancy than any other competing school district.

Not only does MPS have difficulty in recruiting new teachers, it has an exceptional high turnover of newly hired teachers, almost 20% in just two years. While the Board's

documents indicate that of 533 teachers who left MPS between February, 1991 and November, 1993, only 30 left because of residency. The Association doubts the validity of this document since the Board made no follow-up effort to determine the reason a teacher actually left the district. The largest categories were 90 teachers left for other work, 256 for personal reasons, and 142 had relocated. Many of these teachers may, in fact, have left because of the residency requirement.

The residency requirement has had an inverse impact upon all MPS teachers, those subject to the requirement and those not subject to the requirement because they have been grandfathered. The clause is viewed by teachers generally with resentment and is the cause of poor morale throughout the bargaining unit. The Association presented significant amount of testimony from teachers who are not currently subject to the requirement of residency and those who are.

The Association also provided the results of a survey conducted in cooperation with the Wisconsin Education Association Council. Surveys were sent to approximately 9900 members of the WEAC who teach in suburban schools in Milwaukee, Racine, Waukesha and Ozaukee Counties--2647 responses were received; 452 of the respondents indicated that they had at some point been employed by the Milwaukee Public Schools either as a sub or a regular teacher; 1060 indicated the residency

requirement had an impact on their decision to work in suburban districts. Each of those was telephoned to determine the impact of the residency requirement on his/her decision. The clear result from this survey was that the residency requirement has had an enormous impact in curtailing the available pool of qualified talented teachers seeking employment in the Milwaukee Public Schools. The Association provided a number of the respondents to personally testify at the hearing as a representative sample of those indicated above. It is clear from their testimony that talented teachers were motivated to seek less attractive employment in other school districts rather than be subject to the residency requirement.

The Association has shown that there is a high cost to Milwaukee Public Schools for enforcing the residency requirement. This cost is shown by the turnover of teachers, the low morale of the current work force, and the unwillingness of many talented teachers to even apply at MPS because of the requirements. The district was unable to show any educational benefit to the students resulting from the maintenance of the residency requirement in the contract. There was no showing by the administration or even an attempt to make any quantifiable study to determine a correlation between the quality of teachers' performance and the place of their residency. Even the administration's director of staffing acknowledged that there is no correlation between the place of residence and the commitment

of teachers to their students. The Association asked an acknowledged expert, Professor John McDonnell of Beloit College, to study the question. His conclusions were that residency simply is not a factor in effective teaching.

An argument frequently cited by those in favor of a residency requirement is that without a residency requirement the economy of a municipality would be seriously disrupted. The Association would note that in the United States only Milwaukee, Chicago, Pittsburgh and Philadelphia have such requirements. Throughout the rest of the country dynamic and vibrant economies flourish without a teacher residency requirement. The Association sought the counsel of two of the best urban economists available to objectively evaluate the economic impact of the removal of the residency requirement. Professor Peter Eisinger and Andrew Reschovsky, who are both professors at the University of Wisconsin-Madison, were contacted and agreed to perform a study of the economic impact although these two individuals were working on an independent basis and not in conjunction with the University of Wisconsin. Their study was conducted from January, 1994 through March, 1994. The results of their study speak for themselves. However, the Association would like to point to several conclusions. Among those were: Of the teachers who were obligated to live in the city, a large proportion were quite negative about the residency requirement; 45% said they would live elsewhere if they were not required to

live in the city; 31% said they thought of resigning because of the residency requirement. These feelings were similar across all demographic breakouts. In analyzing the results to determine the impact of eliminating the residency requirement, the study authors used a worst case scenario which focused on all of those who indicated they were likely to move from the city and would actually move and analyzed the economic and financial impact on that basis. Their conclusions were that the impact on the economy of the city and the district would be minimal if the requirement was removed. While the results of the study were based on the worst case scenario, i.e. those who were likely, very likely and somewhat likely to move. The Association noted this is a huge over-estimate of those who would actually move if the residency requirement were removed.

The survey also contains a detailed analysis of census data to predict out-migration from the city of Milwaukee. While the data available to professors was not in a form that they would have preferred, the data was analyzed in such a way as to greatly reduce the bias of having a countywide sample by measuring actual moving patterns of individuals with similar socio-economic characteristics. The data correlates well to the survey results which showed a range of between 200 and 2200 teachers likely to move with the probable movers at the lower end of the range. Likewise, impact on enrollment in the MPS system is minimal with the losses over a five-year period. This is particularly true of

a district with a student population of approximately 100,000 students. Their analysis showed that in all areas the impact on the area would be minimal or non-existent.

The Board also hired a consultant to prepare an economic report. Mr. Friedman concluded that approximately 60% of those not subject to the residency requirement would move from the city over a ten-year period. The results would be significant losses in consumer spending and property value for commercial property. The Association would note that the basic premise of the study is suspect, that all non-teaching employees would have the residency requirement removed in the school system, and after four years that the residency requirement would be removed from all city employees. Both of these assumptions are questionable. City employees generally have had a residency requirement in existence for over 70 years and the classified employees of MPS have had a residency requirement consistently in excess of 54 years. Throughout the United States and in the state of Wisconsin it is common for municipal employees and classified district school employees to have as residency requirement. Residency requirements for teachers is very unusual. In addition, Milwaukee by far has the largest percentage of its population residing in the city as opposed to the greater metropolitan area than other cities selected.

Much of the Board's argument stems from the Friedman study. The projections of the Assessor's Office and the analysis from the Department of City Development and the City Budget Office were all based on the figures and estimates contained in the Friedman report. Mr. Friedman never spoke to teachers or studied out-migration patterns as was done in the Association's study. There are a number of questionable assumptions which were used in analyzing the data. These questionable assumptions were testified to in detail by Professor Eisinger. Likewise, there are significant errors in the Friedman consumer spending report.

Martin Goldstein, assessment analysis manager of the Milwaukee Assessor's Office, utilizing the Friedman study as his basis for out-migration, made a number of erroneous assumptions. He projected a ten-year cumulative loss of \$166 million and stated the equalized evaluation of residential property in the city of Milwaukee was approximately \$14 billion. Mr. Goldstein's analysis is based on seriously questionable assumptions, such as the rush to sell, the lack of willing buyers, and an immediate 10% discount from the current fair market value. These assumptions simply fly in the face of common experience. Mr. Goldstein then further predicted a domino effect where lower housing prices would push down through the market resulting in boarded up residences at the bottom of the pyramid. While the Association's expert admitted to some loss, the question is: Was that loss going to be of any real significance in a

residential real estate market as large as Milwaukee? The conclusion was that it would not. The Milwaukee housing market is strong and the market is strongest precisely in the areas where teachers tend to reside within the city. Professor Reschovsky also disputed the boarded up housing prediction by Mr. Goldstein. Abandonment of property is not a sign that a city is going down hill since most board-ups are old and have a very low market value. The estimate is that typical board-up has a value of \$20,000, again a minimal impact on the Milwaukee real estate market.

Julie Penman is the commissioner of city assessment and testified at the hearing. Her projections were based on a number of invalid premises and are unrealistic both as to her conclusions relating to the mill rate and her asserted reduction in the equalized property value of the city over the next ten years. Among her erroneous assumptions were the assumption that the tax levy would remain constant over the next ten years, and that real estate values would remain constant over the next 10 years. These erroneous assumptions resulted in erroneous conclusions coupled with an analysis by William Anderson, an economist with budget management for the city. Compounding these flaws is the fact that in addition to its questionable assumptions, both individuals relied on the Friedman study for essential facts which were plugged into their mathematical computations.

As noted above, the Board's argument that removal of the teachers' residency requirement will inevitably lead to its elimination as to all other MPS and all city employees is without factual basis and is contrary to historic patterns of teacher vs. non-teacher residence requirements in the city of Milwaukee, the state of Wisconsin and the United States generally. The Board appeared to place considerable stress on its ripple theory. Just because the teachers would be successful in removing the residency requirement does not mean all other units would be also successful. There is no historical basis for the Board's contention. Teachers are not comparable to other groups of city and MPS employees. While the residency requirement has been an urgent issue for the teachers, it has not been a big issue for either the educational assistance or the accountant employees which are also represented by the MTEA. Likewise, there is no parallelism between the teacher negotiations and the city of Milwaukee collective bargaining practice. MTEA collective bargaining has been completely unrelated to influences from city hall. There has been very little interaction with city unions in terms of collective bargaining. In addition it is clear that there are vast differences between teachers and, in particular, police and firefighter bargaining units. Even the Board's own negotiator has indicated that the residency requirement has not been a big issue in other MPS negotiations. The Association noted that the

common council of the city of Milwaukee cannot modify the budget of MPS but simply places the budget on the tax rolls exactly as submitted by the Milwaukee Board of School Directors.

The Board argued that municipal residency requirements have been sustained by the United States Supreme Court and the state of Wisconsin. The MTEA agreed with this analysis. The Board further argued, however, that if the teacher residency requirement were eliminated, the requirement on other bargaining units may be subject to an equal protection challenge. The Association argued that the equal protection argument has been rendered untenable by recent pronouncements of the United States Supreme Court.

The Association also responded to the Board's brief in this matter:

The Board in its brief stated that the fact that the residency clause presently affects approximately 72% of the MTEA bargaining unit was wholly foreseeable in 1977. The Association would note that in 1977 the district had for many years been experiencing a decline in the student population. Districts were closing schools and selling buildings. This has completely changed in the 1990s. The Board also argued that the elimination of the residency clause would constitute a momentous change in the status quo. The elimination of this clause clearly

constitutes a change but the change would be both modest and gradual.

The Board contended that the residency requirement is somehow deeply rooted in the cultural of Milwaukee. While municipal employees in the city of Milwaukee have a residency requirement, the same can be said of many municipalities throughout Wisconsin and the United States. It is equally true that teacher residency requirements are a rarity in the United States and non-existent within the state of Wisconsin with the lone exception being the city of Milwaukee. The Association would again note that the residency requirement was imposed not through traditional collective bargaining but in the unusual circumstances of a settlement package presented by a special master appointed by the United States District Court.

The Board further argued that it had implemented a formal policy of giving permanent appointments only to teachers residing within the city no later than 1932. The Association noted that the facts concerning the history of this "policy" is not completely clear. It was apparently implemented during the depths of an economic depression. In any event it is hardly relevant in the mid-1990s that an informal teacher residency requirement was imposed but never enforced during the 1930s. In any event this policy was eliminated unilaterally by the Board, likely because it was meeting the needs of the district. The

Board stated that there is strong local citizen support for legislative initiatives to require residency. The Association submitted that the record does not demonstrate widespread local citizen support, either historically or at the present time. There is no reliable opinion survey that would indicate widespread support for the requirement. The record does, however, demonstrate widespread resentment among both MPS and suburban teachers. The Board argued that to eliminate the residency requirement would undermine the sense of community that local residency helps induce. The Association contended that the record is bereft of any factual support for the foregoing contention. In fact it is clear that the residency requirement is divisive and has caused severe morale problems among teachers of the district. Teachers who happen to reside in the suburbs were as involved in the lives of their students and of their school as teachers who reside in the city. There was no evidence of any greater sense of community among those teachers residing within the city as opposed to those who happen to live outside the city. The Board alluded to the sharp increase in the percentage of people within Milwaukee living below the poverty level. The Association is aware of the problems facing the city of Milwaukee. Teachers in this district deal with them every day of their lives. These problems have become far more severe during the very period that the residency requirement has existed. The teacher residency requirement does not address their problems of the city in any meaningful way. It is the

wrong remedy for what the Association agrees is a serious problem. The Board contended that when one side or another wishes to deviate from the status quo, the proponent of that change must fully justify its position and provide strong reasons and a proven need. The MTEA accepted this burden and believed it had met it. The residency requirement has unjustifiably caused severe hardship for teachers and it has unduly burdened the district in its efforts to provide the best possible education for the children of the city of Milwaukee. The MTEA has demonstrated a compelling need to delete the residency clause from the teacher contract.

The Board further stated that this clause should remain in the contract because by the year 2000 it will apply to virtually all MPS employees. The Association has shown compelling evidence as to the damage to the lives of teachers caused by this requirement when it applies to approximately 70% of the teachers. If it would apply to 100% of the teachers, the problems will only become worse. Hard feelings will not be avoided if the teacher residency requirement is retained in the contract. The bitter resentment by the teachers will increase.

The Board also contended that very few teachers leave their jobs each year regardless of the reason. The record shows that over 8% of the qualified teachers in the district left within the period February, 1991 through November, 1993 for reasons

unrelated to retirement. The record is clear that the district has a difficult and serious problem in recruiting and retaining teachers and historically chooses from a much smaller pool of available applicants than other districts in the Milwaukee area. The Board further contended that teacher residency requirement is an anecdote for the perception of why teachers do not care about the African American community or the African American children they teach, cited as a Milwaukee Journal article of November 14, 1993. The Board's contention that black educators strongly support residency is simply not true. The vote cited was not representative of the African American teachers in the city of Milwaukee. The Metropolitan Milwaukee Alliance of Black School Educators, which has over 300 members, is an organization largely of administrators and a number of others who are not MPS teachers. Indeed, the president of this organization teaches at MATC which has no residency requirement. Fewer than 1% of the African American MPS teachers voted to support the teacher residency requirement in the survey. The survey conducted by the MTEA showed that 44% of African American teachers say they were likely or somewhat likely to move.

The Board is concerned about "white flight" in Milwaukee, referring to it as if it were a phenomenon that had not been occurring in recent decades. The fact is that there has been "white flight" during the period that the teacher residency clause has been in effect and the requirement has been

ineffectual in preventing its occurrence. The Board stated that 60% of the MPS teachers would be living outside of the city at the end of ten years if the Association is successful. This is the conclusion that was reached in the Friedman study. The Board noted the 58% figure of the Association study indicating those who were very or somewhat likely to move if the requirement were eliminated. This ignores the careful analysis done by Professors Eisinger and Reschovsky which led them to conclude that the 58% figure was unrealistically high. The range of likely movers is between 5.1% and 58% with the realistic appraisal at the low end of that range.

In summary, it was submitted that the teacher residency requirement has seriously undermined the district's ability to meet the needs of the students of the city of Milwaukee in the mid-1990s. The hardship imposed upon individual teachers cannot be justified in terms of any educational benefit for the students of the district. It is requested that the Arbitrator after analyzing the respective arguments of the Parties select the proposal of the MTEA and eliminate the residency requirement from the teacher contract.

BOARD POSITION

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

The issue in dispute is a residency clause voluntarily bargained by the Parties 17 years ago. The nature of this clause is much more a matter of public policy and philosophy than the normal dispute over salaries and fringe benefits. These factors place a high burden of proof on the MTEA in its effort to delete the clause in its entirety.

At the time of its inception the clause had no direct effect on any then employed Milwaukee teachers. The reasons were wholly foreseeable in 1977, therefore, it is not surprising to anyone that it directly affects approximately 72% of the members of the Association. The lack of internal/external comparability for the clause is no different than when it was adopted. The only real difference in the intervening 17 years is that all of the employees of MPS have become an even more important part of the city of Milwaukee's dwindling middle class and the increasing number of MPS teachers now affected want to be free of the restriction. The Association is attempting to achieve through interest arbitration what it has not been able to achieve through legislation or voluntary collective bargaining. The Association failed to show any compelling educational need

for change and ignored the internal comparables and likely significant near and long-term adverse effects of such a change on the city of Milwaukee. The Association offered no quid pro quo commensurate with such a momentous change. The deletion of this clause would likely be the death knell of all residency clauses in other MPS and city of Milwaukee labor agreements. If the highest paid union employees do not have to live in the city, it is inevitable that sooner rather than later the internal comparability aspect of interest arbitration will lead to the same result--first for all other MPS Union employees and then all city of Milwaukee Union employees.

The residency requirements were an issue in Milwaukee as early as 1925. In June, 1930 the Milwaukee City Service Commission adopted a rule requiring city employees to reside in Milwaukee. While the rule excepted certain employees, its adoption meant that the vast majority of city employees were not paid unless they could prove they resided in Milwaukee. During 1932 the School Board implemented an informal policy of giving permanent appointments only to teachers or principals living in Milwaukee. The Board was unsure of its authority, however, the common council was not. It considered enacting a mandatory residency requirement applicable to teachers, school officials and other School Board employees in November, 1932.

In the following years the residency requirement took hold not only in the city of Milwaukee, but also in many surrounding localities and Milwaukee County, as well. The state attorney general in 1938 issued an opinion that state law did not necessarily require educators to live in Madison. Cities and school boards could enact local measures requiring teacher residency. Sometime prior to July 27, 1938 the common council enacted an ordinance requiring most civil service employees not only to live in Milwaukee, but also to have resided in Milwaukee for at least one year prior to hire. The Milwaukee School Board considered this issue in 1938 but did not enact any resolution. Some time later the Board enacted a resolution that would require all new classified School Board employees to live within the city of Milwaukee. This resolution was still in effect by 1962. While certain hardship exceptions were granted, they were generally only granted for a short time. At some point the Board suspended enforcement of this longstanding and formal policy regarding teachers. However, other various residency requirements in the Milwaukee area remained generally intact.

Throughout the years there have been numerous court challenges in both federal and state courts to the Milwaukee area residency requirements. These were unsuccessful. In 1976 Judge John Decker found that the residency requirement was unconstitutional because it applied only to the Board's classified employees. However, he also held that despite the

unconstitutional distinction, the existing classified unit collective bargaining agreement residency clauses were valid and enforceable.

During 1976 a School Board member reintroduced the issue of residency. A resolution was adopted instructing the Board's negotiator to commence negotiations with the affected bargaining groups on this matter. The next negotiations began in 1977 with the MTEA. As a result of this negotiation, the MTEA preserved existing seniority rights and class size standards and the Board prevailed on the residency issue through a conditional clause which applied to only new, but not current, teachers. The clause was also conditioned on the residency requirements for administrators, supervisors and non-represented administrators which was ultimately met on February 8, 1978. Therefore, that became the effective date of the residency requirement of the teachers' contract. The Association proposed legislation prohibiting local residency requirements in the 1979, 1980 and 1981 legislative sessions. This was defeated each time. It also proposed elimination during the 1980 negotiations. In each successive negotiation the MTEA has proposed the deletion of this clause. The Board noted that teacher salary increases throughout the 1980s were in the range of 7 to 9% comparing favorably with those for administrators and supervisors who are subject to a residency requirement. The Association continued its efforts in

Madison throughout those years and all efforts have failed to ban local residency requirements.

During the 1990 and 1992 negotiations, the Association again sought the deletion of the residency requirement. The Board made certain counter proposals in several areas and the Association rejected all of these initiatives. There was never a suggestion by the Association that it was disposed to any of the Board's changes in exchange for deletion of the residency requirement. The then Association president stated that the Board should pay the teachers to agree to the deletion of the residency clause. It is likely that the Association's unwillingness to propose quid pro quos for the residency requirement results from the fact that teachers most affected by the seniority provision are not subject to the residency requirement. The 1992-1993 negotiations contained more of the same. This agreement will essentially preserve the status quo unless the Association prevails in this interest arbitration, and yet another bill to prohibit locally bargained residency clauses did prevail in the 1993-1994 legislature.

The records show that the percentage of teachers living in the city of Milwaukee has been significantly affected by the clause - 50% in the 1940s and 72% today. The district's ethnic demography has also dramatically shifted. In 1977 55% of th MPS students were white, today only 24% are white. Sixty percent of

the current MPS students are black, 11% Hispanic, 4% Asian and 1% American Indian. Approximately 5900 minority Milwaukee resident students participate in the Chapter 220 program with 23 suburban school districts. This change in demographics extends to income level as well. Milwaukee's income per student is only 89.6% of the state average. The median household income of MPS teachers in 1989 was \$41,000 compared to \$23,000 for other Milwaukee residents. Only 20% of the city of Milwaukee's population, excluding teachers and government employees, had incomes as high as teachers.

From 1980 to 1990, 67,300 more people left the city than moved in. The white population in Milwaukee has decreased to approximately 61%, while the African American population has increased to 30%. In 1990 almost 55% of those under age 18 were non-white, up from less than 15% in 1960. Children living with one parent have gone from 11.6% in 1960 to 40.5% in 1990. Those living below the poverty level have increased from 11.4% to 22.2%. This has occurred at the same time that those people below the poverty level have remained much the same in Milwaukee County and in the metropolitan suburban areas. The Board cited a 1993 Milwaukee Journal editorial regarding the Union's opposition to a residency requirement.

In interest arbitration the proponent of change in the status quo must either show a compelling educational need or

provide a quid pro quo for the change. It is generally accepted that interest arbitration should not be used to change basic working conditions in the absence of compelling reasons. A number of citations were provided by the Board in support of that contention. The proponent of that change must fully justify its position and provide strong reasons and a proven need or show that there is a quid pro quo or that other groups were able to achieve this provision without the quid pro quo. Other arbitrators have stated that substantial change should be made not through arbitration, but the result of bargaining between the Parties. Arbitrators need not agree or approve what has happened in the past but should avoid giving either party what they could not achieve at the bargaining table. Interest arbitration is not the forum to accomplish difficult and substantive changes in the status quo.

It is the Board's position that the MTEA has not provided evidence of a compelling need to delete the residency clause. Residency requirements have been part of the culture of the city of Milwaukee for most of the century. The current teacher clause was voluntarily negotiated 17 years ago. The MTEA has not shown a compelling educational need to eliminate the clause at this time. The MTEA provided the following reasons at the hearing:

1. A substantial percentage of its members want to be free of the residency restriction.

2. Each MTEA witness wants to live somewhere other than the city of Milwaukee.
3. MPS loses some good teachers because of this restriction.
4. MPS, like many Wisconsin districts, has a shortage of teachers certified to provide special education and bilingual services.
5. A great majority of MPS teachers, whether certified for their positions or teaching in accordance with a temporary permit, are dedicated, skilled and effective performing daily miracles in an increasingly demanding urban environment.

Taken together this does not constitute the type of compelling educational need (other than from the perspective of various individual teachers) necessary to justify deletion of a contractual residency requirement in interest arbitration. The need that must be shown by the Association must be especially compelling given the long history of the residency clauses both at MPS and the city of Milwaukee and the unusually sensitive philosophical and public foundations of those clauses and the fact that virtually all other MPS employees are currently subject to residency requirements.

By the year 2000, virtually 100% of the almost 11,000 MPS full-time employees will be subject to the residency

requirements. Only three groups are not subject to these requirements - substitute teachers who work on a day-to-day basis, event-by-event employees such as athletic officials, and part-time hourly work/study students. Arbitrators have found that, where there is established pattern of agreement on an issue, deviations from such patterns, particularly in interest arbitration, can have a negative impact upon employee morale and can be destructive to the collective bargaining process. Again, the Board noted a number of citations in support of its position. If teachers are, again, not subject to the residency requirement, there will be a return to the same discrimination which troubled Judge Decker in 1976.

It is the Board's position that there is no proof that isolated shortages of certificated teachers are caused by the residency requirements. Shortages in the exceptional and bilingual programs are not unique to MPS. The Wisconsin Department of Public Instruction commented in 1991 regarding the critical area of special education teachers nationwide and in Wisconsin. These shortages were attributed to underproduction and attrition of teachers in these areas. The DPI has issued emergency licenses in increasing numbers since 1986-87. Despite these statewide shortages, MPS has been successful in recruiting special education and bilingual teachers. MPS had 1306 authorized positions and only 26 vacancies as of May 24, 1994. Some of these vacancies in addition exist in newly authorized

positions. MPS, therefore, is in general as successful in recruiting teachers in areas identified statewide as having critical shortages as other districts.

The district has successfully attracted and retained teachers in most subject areas. It has received as many as 6 completed applications for every job opening, all submitted after the residency requirement had been explained. When teachers sign their contracts, the residency requirement is highlighted with capital letters and bold print. Although many suburban districts receive more applications per opening than Milwaukee, there are numerous reasons why people apply to work in suburbs unrelated to the residency requirement. These would include class size, general working conditions, overall school environment, and safety issues. The records show that MPS has retained a substantial number of the teachers hired from 1984 to 1994. As a practical matter, very few teachers leave their jobs each year regardless of the reason. Between February, 1991 and November, 1993 only 533 of approximately 6150 left the system. When teachers do leave, they seldom indicate they are leaving because of the residency requirement. Records indicate that reasons voluntarily given by teachers who leave their jobs show that less than 6% of those that leave do so because of the residency requirement. In contrast almost 50% of teachers who leave their jobs do so for personal reasons and over 25% leave due to relocation. Contrary to the MTEA argument, the residency

requirement does not cause the district to lose a substantial number of teachers, because few teachers leave the district and those who normally leave do so for reasons other than the residency requirement. In any event whatever cost is incurred due to teachers leaving due to the residency requirement is more than offset by the numerous advantages to the community which result from it. The records show that the district has relatively few vacancies at any one time and, generally speaking, the few vacancies which occur are quickly filled. These concepts are both contrary to MTEA arguments. Likewise, the instances of vacancy pay are not indicative of available openings at MPS. The vacancy pay is paid to approximately 1.5% of the teaching staff of 6300 individuals. More than half of these are not filling true vacancies.

The district is able to hire highly qualified individuals. Of the 436 teachers hired between August 15, 1993 and May 12, 1994, almost 75% had a substantial amount of formal education beyond the bachelor's degree and/or a history of formal teaching experience. Many have masters degrees and additional formal training beyond the masters level. While many were hired as first-time teachers, close to half had at least one year of prior teaching experience. Many had three or more years of experience, and some had more than ten years. Such qualifications would be respected in any school district in the country. In Milwaukee they compare favorably with the qualifications of the current

teaching force. In 1976, two years prior to the implementation of the residency requirement, approximately 40% of the district's teachers had only bachelor degrees. Today, only about 20% of all teachers do not have education beyond that level. Similarly, while in 1976 only about 30% had any formal education beyond a masters degree, today about 40% have such advanced training.

There is no evidence that the quality of teachers has been adversely affected by the residency requirement either way. The Association's own witness did not find a single correlation between where teachers live and how effective they are as educators. He admitted that residency is a political and economic issue. There is no evidence that residency makes a difference one way or another on the effectiveness of schools. Factors such as the amount of money spent per public school student, the condition of school facilities, the ethnic makeup of the faculty or administration, and class size are all far more significant.

The MTEA's proposal should be rejected because the Association has not provided a quid pro quo to justify an interest arbitrator changing a 17-year status quo provision of ever-increasing importance. This provision has more value for MPS now than it had in 1977 and is increasing in value each year. When it was bargained into the contract, it was worth nothing because no one was subject to it. The Board, however, considered

the residency requirement an investment in the future that would grow over time. This is akin to the MTEA negotiating 100% contribution to health insurance premiums. When this was first bargained, it was not a significant factor. Twenty years later, however, premium increases have made the 100% premium payment a more valuable tax free benefit to teachers since family coverage premiums today are equivalent to as much as 25% of teachers' salaries. The proposal on residency is not a partial deletion as the MPS sought in the health insurance premium area. The MTEA has not asked that residency requirements be deleted for certain exceptional educational teachers or speech pathologists or some other narrowly defined for a fixed period of time. Instead, the Association has made an all or nothing proposal. During the last mediation effort it was clear that there was no substantive issue on which the MTEA was willing to change in exchange for the residency requirement. Therefore, the district knew that it could not obtain anything in bargaining comparable in current value to the residency requirement.

The interest and welfare of the city of Milwaukee are best served by the residency requirement. The Board provided the testimony of both Superintendent Howard Fuller and Milwaukee Mayor John Norquist. Their testimony shows that the aggregate public interest in retaining the residency requirement far outweighs the benefits to individual teachers of its deletion. The changing character of Milwaukee strongly supports retention

of the residency requirement. Dr. Fuller testified that there is a perception among a large segment of the African American community that some white teachers want to teach their children but do not want to be around them, do not respect them and do not respect the community in which the children live. Political and parental support for the district is important to keep the school district moving forward. When 74.2% of the parents are non-white, MPS must use every means possible to engender support from that segment of the parent group. How African American parents see the school district is of critical importance to the schools. Removing the residency requirement would merely exacerbate the negative feeling within the community and weaken community support for the schools. In addition, Dr. Fuller testified that one of the important elements in teacher/student relationships is the sensitivity to the reality with which the children deal on a day-to-day basis. The further a teacher is removed from that reality, the less sensitive the teacher may become to it. Teachers who live within the community serve as valuable role models for students.

The efforts to create a metropolitan school system have failed. Chapter 220 came out of the failed effort to create the beginnings of a metropolitan school district. The removal of the residency requirement will further diminish the existence of the white middle class in Milwaukee, which leads to a re-segregation of minority students.

The removal of the residency requirement will adversely affect the economy of the city of Milwaukee. Mayor Norquist testified that the residency requirement is an important factor in keeping Milwaukee economically healthy. The removal of the ability to require residency would contribute to the concentration of poverty in the city. The Board noted that teachers median household income in 1989 was \$41,800 compared to \$23,627 for other Milwaukee residents. This impact was also shown by the Friedman study, the results of which show that if the residency requirement were lifted, approximately 60% of MPS teachers or approximately 2200 teacher households would be living outside the city at the end of ten years. If the requirement is lifted for other MPS and city bargaining units, approximately 7400 public employees representing 6800 households would likely move out of the city by the end of the ten-year period. This would eliminate \$52 million in consumer spending within the city limits. In addition there was testimony that at the end of the ten-year period combined city of Milwaukee tax rate would be 97 cents greater than would otherwise be true. The city of Milwaukee budget office testified that there is a direct relationship between property tax rate and job growth within the city limits. For every \$1 change in the city's property tax rate, economic activity will change in the opposite direction by roughly \$325 million, equivalent to approximately 6800 jobs with a disproportionate effect on small business. Mayor Norquist also

testified that city and school district employees who live in the city provide more people who participate in civic, community and neighborhood affairs. These employees know the city and are more likely to participate than other people, have a higher voting percentage and are in general a benefit to the community life of a city. The Board argued that if the MTEA were to prevail, it is likely to lead to the interest arbitration removal of residency clauses from other MPS and city of Milwaukee collective bargaining agreements since interest arbitrators would not have the same internal comparable pool on which to base their decision as they do today. It is common that the MTEA seek the same benefits or concessions negotiated for the teachers. Some proposals are taken verbatim from the teacher bargaining proposals. Too many MPS employees are essentially classified and are members of the city pension fund and hired by the city. It is likely that if they are successful in eliminating the residency requirement, then all other city unions would over time achieve the same result.

The Board also responded to the Association's brief:

The law of interest arbitration requires the MTEA, as the proponent of change, to prove a compelling educational need for a non-economic change. In the absence of such a compelling educational need, the MTEA must demonstrate that it has offered

MPS a commensurate quid pro quo for the change. The MTEA has not met its burden in either regard. The MTEA seeks to tie the shortage of certified teachers in selected areas to the residency requirement but failed to prove that the residency requirement is the cause of the shortages. The MTEA admitted that its members consider the removal of the residency requirement a high priority supported by substantial anecdotal testimony from teachers and former teachers, yet it has not offered any quid pro quo at all, much less a quid pro quo comparable in value to the change it is seeking. Although the experts on both sides disagree on how many teachers are likely to live outside of Milwaukee if the residency requirement is removed, all experts agree that the greater the number who live outside Milwaukee, the greater the negative impact will be on Milwaukee's economy and tax base.

The arbitration process is not the appropriate forum for removing a non-economic provision of the contract which was voluntarily agreed upon by the Parties. Contrary to the MTEA's argument, the residency requirement clause came into the contract as part of a three-year voluntary contract agreed upon by the Parties after a sixteen-day strike by the teachers. Although the compromise proposal had been made by the special master in the Milwaukee School desegregation case, the actual agreement contained subsequent modifications worked out as part of the mediation process with state mediator, Byron Yaffe. There is no evidence to show that the Association attempted to eliminate the

residency proposal during the final hours of mediation or that the Association was somehow forced to accept the residency clause simply because the special master had proposed it. The fact that this provision has been the focus of so much political debate and legislative and judicial activity over the years gives clear indication that its removal through arbitration would be inappropriate in these proceedings. Arbitrators should not decide legislative issues.

MTEA failed to show that the removal of the residency requirement would provide a solution to the problem of teacher shortage in the specialized areas. There was no showing that MPS has had more difficulty in recruiting and retaining qualified teachers than comparable large urban areas without the teacher residency requirement. Shortages in special areas are not unique to MPS. The shortages affect school districts both statewide and nationwide. Other reasons are apparently given for teachers deciding to leave the district, such as student discipline, heavy teaching loads, large class sizes, inadequate support from parents, and inadequate supplies and materials. A study by the Wisconsin Public Policy Forum also indicated that only a small percentage of Wisconsin trained teachers are attracted to or feel prepared to teach in a large urban district like MPS. The Whitewater study also supports the conclusion that removal of the residency requirement would have little effect on Milwaukee's ability to attract more applicants to its teaching jobs. Of the

reasons given in the Whitewater study for persons applying for teaching jobs in Elmbrook, only one was the residency requirement. There were many other reasons given for their application. The largest number of applications, 59, came from individuals teaching in Milwaukee. Only 18.5%, or fewer than 11, cited the residency requirement as the primary reason for seeking a position in Elmbrook. MPS receives as many applications for vacancies as Elmbrook does. Elmbrook receives a higher ratio of vacancies to applications because that district has only 25 vacancies compared to 400 to 500 at MPS. Elmbrook, however, draws from the same pool of people as MPS, because applicants frequently apply to as many districts as possible after they graduate from school. The MTEA has provided no evidence that the rate of teacher turnover is directly related to the residency requirement. Only 30 out of 533 teachers surveyed by MTEA indicated that they left because of the residency requirement. While the Board admitted that the elimination of the residency requirement may affect some teachers' willingness to apply or remain with the district, its removal is by no means a panacea for resolving the complicated problems associated with urban education or for guaranteeing more qualified applicants for the burgeoning numbers of positions in areas such as special education and bilingual education. The individual and anecdotal data cited by the MTEA do not justify the sweeping systemic changes which it proposes.

The MPS noted that the internal comparables support its position. Arbitrators have found that in determining non-economic issues, internal comparability is more important than external comparability. Again, citations in support of its argument were provided. MTEA argued that since certificated teachers in other districts are not required to be residents of that district, therefore, MPS teachers should not be subject to the residency requirements. This ignores the internal comparables cited by the Board. The MTEA does not offer any rationale for its desired privileged status within the Milwaukee Public School System. Certainly the same hardships apply to other employee groups as apply to teachers. The comparison to external groups should not overcome the great weight which arbitrators generally give to internal comparables on non-economic issues.

It is the Board's position that removing the residency requirement will have a negative social and economic impact on both MPS and the city. Professor Eisinger admitted in cross-examination that residency requirements for public sector employees throughout the nation rose significantly in the late 1960s and 1970s. Nearly two-thirds of all cities over 250,000 had such laws. Some enacted requirements to stem population loss as a way of improving economic conditions and as a means of preventing "white flight" from the cities. Professor Eisinger testified that the middle class provides a leadership stratum and

tax base. One of the characteristics of a successful city is a middle class type population. Removing this requirement for teachers and potentially for other MPS employees would merely add to the exodus of the middle class from Milwaukee. The Association cannot seriously argue that only 5.1% or 196 of the teachers currently subject to the requirement would leave Milwaukee if it were removed. Common sense dictates that the Association would not have gone through the expense of preparing for and participating in this arbitration if only 196 teachers would benefit from the outcome. A much more realistic estimate of the number of teachers who would leave is the 58% who indicated in the Eisinger study that they are very or somewhat likely to leave the city in the next couple of years or so, particularly considering that 60% of the grandparented teachers live outside the city. The public policy forum survey showed that in the late 1980s, 69% of teachers found that residency is a key issue and were very upset about it. At least 70% of the teachers indicated in internal MTEA surveys that they want the residency requirement removed. It is reasonable to conclude that the great majority of teachers now required to live in the city have given intense thought to whether they would move, where they would move, how much they might get for their homes, what the cost of a new home would be, etc. if the MTEA prevails in this arbitration. Likewise, the conclusions of Professor Eisinger regarding the impacts of removing the residency requirement are similarly flawed. There is a reasonable explanation for the

differences noted for those who are likely to move from the city and those who are likely to stay. In all cases, those who are likely to move are younger than those who are likely to stay. Nothing in the Eisinger survey or its interpretation takes account of how the responses of the likely movers will become much more like those of the likely stayers as they age.

The MTEA has not met its burden of showing either a compelling educational need for a change in the residency requirement or providing a quid pro quo commensurate with the change it seeks. The final offer of MPS is the more reasonable of the two offers before the Arbitrator and, therefore, the Board asked that the residency requirement be upheld in the current contract.

DISCUSSION AND OPINION

While this Arbitrator generally feels excessively constrained by the requirements of the statute under which this arbitration occurs, he feels particularly constrained in this case since the only option is to choose one side's position or the other's without any ability to find common ground. That this dispute is extremely important to both sides was evidenced by the countless hours spent preparing their presentations, the significant amounts of money spent on economic studies in support of their respective positions, and the demeanor of the witnesses who testified for each side with evident sincerity, conviction and even passion. The Arbitrator will then proceed to the decision in this case based on the criteria and requirements of the Municipal Employment Relations Act.

The only way for this Arbitrator to make sense of the huge volume of evidence presented in this case is to make a series of findings and conclusions, and those will follow.

FINDINGS AND CONCLUSIONS

1. The origin of Part XI, while not a determinative factor, is important to the understanding of this clause. Part XI occurred as part of a recommendation by a special master

appointed by a federal judge who was hearing a discrimination law suit involving Milwaukee Public Schools. The background of this clause is somewhat unusual in that it was suggested by an outside party, but essentially it was included as part of a voluntary settlement occurring in 1977.

2. The external comparables favor the Union's position in this case. No other cities in Wisconsin have a residency requirement for teachers, although the Arbitrator notes that Milwaukee is unique in Wisconsin as a major metropolitan area. Only three major cities in the United States have this requirement for teachers--Chicago, Philadelphia and Pittsburgh--and in each of those cities, the requirement was not the result of the collective bargaining process.

3. The internal comparables favor the Board's position in that all public sector employees in the city of Milwaukee must be residents of the city except for three minor exceptions among public school employees. There is a long history of residency requirement in Milwaukee and they appear to be a matter of public policy. There also is a similar requirement among non-teaching public employees in many other major cities in addition to the three listed above.

4. The Association has consistently tried to overturn this provision since 1978 through the collective bargaining process, judicial and legislative efforts. All of these attempts have been unsuccessful.

5. The Association claimed that the system cannot hire good teachers due to the residency requirement, and that Milwaukee Public Schools receive a significantly low number of applications for each opening particularly in the critical specialty areas. In addition, the system loses good teachers and substitutes are widely used within the system.

The fact is that the Milwaukee Public Schools do lose some good teachers as a result of the residency requirement. It is difficult from the evidence presented to make an exact determination. Teachers in critical specialties are difficult to recruit with or without the residency requirement. The Arbitrator notes that the record does not contain any showing that the Association at any time asked for exceptions for teachers in critical specialties. The turnover figures are approximately 8% for the period February, 1991 through November, 1993. This is not an overwhelming number. The data indicates to this Arbitrator that Milwaukee Public Schools are generally meeting their staffing requirements. The long term open positions are

not overwhelming the system's ability to recruit and the exact reasons for leaving are not clear based on the data provided. The record shows that while the residency requirement is an impediment to the recruiting process MPS is generally meeting its staffing needs. Therefore, MTEA has not shown a compelling need.

6. Both sides agree that there are no educational differences between those grandfathered teachers who live in Milwaukee and those who do not live in Milwaukee. The Association's expert witness testified that there has been no study in the literature that would indicate place of residence has made a difference either positively or negatively in classroom conduct. The Association has argued that teachers no matter where they live are still involved and interested in the educational attainments of their students. From the evidence received at the various hearings, it is this Arbitrator's opinion that this is the case. The teachers that testified are an extremely committed group and are very interested in the educational attainments of their students even when teaching under somewhat difficult circumstances. Again no compelling need was demonstrated.
7. The Board argued that safety was an issue in some of the teacher turnover. The Association countered that argument by saying that safety is not at issue in the overwhelming

majority of MPS schools. Again, the Arbitrator finds that there is really no hard evidence as to the exact reason for turnover within the teaching core of the Milwaukee Public Schools. There is certainly much anecdotal evidence present much of which points to problems associated with the residency requirement. However, as noted in point 5 the Board is generally meeting its staffing requirements.

8. The Association argued that a split unit results in poor morale. It is true that some teachers are bound by the residency requirement and some are not by virtue of their being hired prior to 1978. This can result in poor morale among the bargaining unit. The Board points out that by the year 2000, virtually 100% of the teachers will be subject to the residency requirement assuming the Association does not win this arbitration case. This is an argument which must be taken into account when the Arbitrator makes his decision.

9. Both sides made economic arguments. There was much discussion about how many teachers would actually move. There were estimates as low as 5% and as high as 60%. The Arbitrator finds that the likely range of teacher movement out of the city of Milwaukee, should the Association prevail, would be somewhere between the 30% to 50% range. A significant number of teachers have evidenced

dissatisfaction with the residency requirement. This is a high priority issue for the teachers. The Arbitrator believes that it is not a high priority issue in the abstract. It is a high priority issue because teachers wish to leave and move their residence from the city of Milwaukee. In addition new teachers would not be subject to this requirement and, therefore, some of them presumably would not choose to move into the city of Milwaukee.

The Board argued that there would be a domino effect among other bargaining units should the Association prevail in this matter. After reviewing the situation and listening to the various Board witnesses, it is likely that other MPS bargaining units would insist on a "me, too" agreement regarding residency. With respect to the city of Milwaukee bargaining units, there are significant differences; for example, Department of Public Works, Police and Fire employees must be available on quick response to disaster situations. Their residency requirements have a much longer history, both legislatively and in collective bargaining. The external comparables would certainly favor the city's retention of these residency requirement provisions and, while there would perhaps be some agitation towards eliminating this provision, it is this Arbitrator's opinion that the remainder of the city bargaining units are really separate from the MPS bargaining units and it is unlikely

that those unions would be successful in removing the residency provision.

Regarding the economic impact of the removal of the residency clause, the Arbitrator finds that the study prepared by the Board is significantly overstated. The predictions of dire economic consequences to the city are based on faulty presumptions and, therefore, the predictions are simply not true. On the other hand, the Arbitrator feels that the study conducted by the two University of Wisconsin professors, while certainly more carefully prepared and with a somewhat better set of assumptions, is unduly optimistic in relating the economic consequences. The facts are that the city of Milwaukee would suffer some indeterminable economic impact should the teachers be successful in this arbitration case. That impact would multiply if other bargaining units were successful in joining this movement. However, the Arbitrator has found above that, while this removal would be likely for MPS bargaining units, it would not be likely for other city bargaining units and, therefore, the impact would be lessened and would be more likely spread over a significant period of time after an initial flurry of real estate activity. In a market as large as Milwaukee, the movement of a few thousand households can be easily absorbed. Therefore, the Arbitrator finds that the economic

arguments brought forward by the Board are persuasive but not determinative in this case.

10. A number of cultural arguments were raised. The Board stated that there have been many cultural changes in Milwaukee and the Milwaukee Public Schools and that residency best serves the needs of the students, particularly those from deprived and/or minority circumstances. This argument is difficult to counter. The Association stated that residency is not a cultural requirement. Many other cities, both in Wisconsin and in the United States, do not have residency requirements. In fact, residency requirements are rare for teachers. Again, the Arbitrator would cite that there is no showing that the educational mission itself suffers because a teacher lives in one community or the other. However, the community as a whole does suffer in a way that is difficult to measure.

DECISION

The Milwaukee Public Schools have argued that arbitration is not the appropriate way to settle this dispute, but after 17 years of collective bargaining, legislative and judicial efforts, it may be the only way to settle this dispute. The Association argued that it has met compelling needs/reasons test. The Board counters that there has been no quid pro quo nor even an offer of any quid pro quo, comparable or not.¹ The Board contended that there is no compelling educational need that was shown in this hearing. The Association stated that there will be even more damage to the teacher unit when the residency applies to 100% of the teachers. The internal comparables strongly favor the Board's position. The external comparables strongly favor the Association's position. Therefore, in this Arbitrator's opinion, we are left with the only other statutory factor that seems to apply--the interest and welfare of the public.

While the economic impact on the community would be limited and certainly less than predicted by the Board, the Arbitrator finds that it is the sociological impact on the community that would be significant if the requirement were removed. It is likely that a substantial portion of those teachers who are now subject to the requirement would move from the city probably

1. The Arbitrator notes that MPS seems overly preoccupied with the quid pro quo concept.

during the first five years after the requirement was eliminated from the contract. These teachers are among the best and brightest of our society. They make significant additions to their communities. They tend to be involved as leaders within their communities. They are a group which is organized for positive change... Milwaukee would be a poorer place without these teachers as residents. While the economic impact would be in the moderate range, the cultural impact would be significant. So significant as to override the individual hardship on teachers. Milwaukee is the key community in Wisconsin. If Milwaukee does not work then the consequences for the area and state will be dire. Therefore, an award will issue accordingly.

Before the award is made in this matter, this Arbitrator would like to speak directly to the Association and to the Milwaukee Board of School Directors. The results of this case should, hopefully, not be viewed in terms of win or lose. As noted above, the Arbitrator is severely constrained by the requirements of the statute. This issue will not go away. It is already a top priority for teachers in this unit and will become an even more difficult flash point as a larger and larger percentage of the bargaining unit becomes impacted by this provision. It behooves both sides to meet and confer voluntarily to make a sincere effort to find a creative solution to this dilemma. It is difficult not to be touched by the heartfelt testimony of many of the Milwaukee Public School teachers and

teachers from other communities who testified during our long series of hearings. There must be some way to accommodate their needs and the needs of the system and Milwaukee at the same time. If the Parties put as much effort into reaching a creative alternative to this dilemma as they did in preparing for and presenting their cases in this matter, surely a resolution can be found.

AWARD

On the basis of the foregoing and the record as a whole, and after full consideration of each of the statutory criteria, the undersigned has concluded that the final offer of the Milwaukee Board of School Directors is the more reasonable proposal before the Arbitrator and directs that it, along with the stipulations reached in bargaining and the prior agreement as amended, constitutes the current agreement between the Parties.

Signed at Oconomowoc, Wisconsin this 25th day November, 1994.


Raymond E. McAlpin, Arbitrator