RECEIVED
JUL 31 19__
WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

STATE OF WISCONSIN
SOLOMON B. LEVINE, ARBITRATOR

In the Matter of the Interest Arbitrations
between

DANE COUNTY, WISCONSIN, MUNICIPAL EMPLOYEES LOCAL 60, AFSCME, AFL-CIO

and

CITY OF MADISON (Library Professionals)

Case 178
No. 51073 INT/ARB-7310
Decision No. 28233 - A

DANE COUNTY, WISCONSIN, MUNICIPAL EMPLOYEES LOCAL 60, AFSCME, AFL-CIO

and

CITY OF MADISON (Library Paraprofessionals)

Case 177
No 51058 INT/ARB-7308
Decision No. 28226-B

Appearances:

Mr. Jack Bernfeld, Staff Representative, Wisconsin Council 40, AFSCME, AFL-CIO, on behalf of Dane County, Wisconsin Municipal Employees Local 60.

Godfrey & Kahn, S.C., Attorneys at Law, by Mr. Jon E. Anderson, Esq., on behalf of the City of Madison.

On December 28, 1994, the undersigned was appointed by the Wisconsin Employment Relations Commission (WERC) as the arbitrator to issue a final and binding award, pursuant to Sec.111.70(4)(cm)6. and 7. of the Municipal Employment Relations Act, in the above-captioned Case 178. Similarly, on March 13, 1995, the undersigned was appointed by the Commission as the arbitrator to issue a final and binding award, pursuant to Sec. 111.70 (4)(cm) 6. and 7. of the Municipal Employment Relations Act, in the above-captioned Case 177. In the meantime, the parties and WERC agreed to consolidate the two instant cases into a single arbitration hearing and procedure because the issue at impasse to resolve was identical in each case, and the employees in each collective bargaining unit involved in the impasses were represented by the same union and employed side-by-side in the same City agency. An arbitration hearing for the two instant cases was held in Madison, Wisconsin on March 28, 1995, at which time the parties had full opportunity to present oral and written evidence, testimony, and arguments. The following witnesses were sworn to provide testimony at the hearing, including direct and cross-examination:

For the City of Madison	Mr. Paul R. Soglin, Mayor
	Mr. Larry W. O'Brien, Assistant City Attorney, City of Madison
	Mr. Gary A. Lebowich, Labor Relations Manager, City of Madison
For Local 60, AFSCME, AFL-CIO	Ms. Pamela G. Whitting, Children's Librarian, Madison Public Library
	Mr. Joseph R. Durkin, Police Sergeant, City of Madison Police Department

Mr. Terry L. Holmes, General Works
Public Foreman, City of Madison
Motor Equipment Division

Mr. Lionel Spartz, Firefighter/Paramedic, City of Madison Fire Department

Mr. Darold Lowe, Former Staff Representative, Council 40, AFSCME, AFL-CIO

Ms. Kathleen Rideout, Clerk, City of Madison, Engineering Office

Ms. Mary Knapp, Librarian, Adult Services Department, Madison Public Library

Ms. Janet L. Anderson, Librarian, Technical Services Department, Madison Public Library

A verbatim transcript of the proceedings was made. It was received by the arbitrator on May 26, 1995. Both parties filed and exchanged post-hearing initial briefs and reply briefs. With receipt of the last, the record in the matters was closed on June 26, 1995.

The single identical issue at impasse in the two instant cases involves the residency provision to be incorporated in the Agreements for 1994 and 1995 between the City of Madison, hereinafter referred to as the City, and Dane County, Wisconsin Municipal Employees Local 60, AFSCME, AFL-CIO, hereinafter referred to as the Union, on behalf of the two separate employee units of professionals Librarians and paraprofessional Library Assistants. All other stipulations to be incorporated into the 1994-95 Agreements have been agreed upon by the parties. The final offers of the parties are appended to these Awards. The collective bargaining units exclusively represented by the Union include, for the professional Librarians, all regular full-time and regular part-time professional employees in the employ of the City of Madison

Public Library, excluding supervisory, managerial, executive, craft and confidential employees; and, for the paraprofessional Library Assistants, all regular full-time, regular part-time and limited term nonprofessional employees employed at the Madison Public Library, excluding supervisory, managerial and confidential employees. As of early January, 1995, these collective bargaining units included 38 professional Librarians and 67 Library paraprofessionals. (Un. exs. v. I, nos. 8, 9 & 26; City exs. nos. 23 & 24)

The final offers of the parties may be summarized as follows:

> The City proposes to add a provision to the collective bargaining Agreements that would permit permanent employees in the collective bargaining units involved in these cases, after completing a probationary period, to choose a place of primary residence outside the City of Madison. However, those permanent employees who do so would not be eligible for any longevity pay in excess of six (6) percent. A member of either of the collective bargaining units who has been a permanent employee for at least 13 months and who buys a residence in Madison would receive a residence assistance payment of $500.00 payment once every 15 years of continuous employment.
>
> The Union proposes to add a provision to the collective bargaining Agreements which would permit employees to choose their residencies without restriction.

The parties stipulate that all other provisions of the 1994-1995 Agreements have been agreed to.

Until the 1994-1995 Agreements take effect, the employees in the instant collective bargaining units remain subject to the residency requirements stated in Secs. 3.27 and 3.35 of the City of Madison General Ordinances. (Un. ex. v. I, no. 25; City exs. nos. 25 & 26)

Failure to observe these ordinances would mean dismissal from employment. When one or the other of the final offers of the parties is incorporated into the 1994-1995 Agreements, it would supersede the City ordinances in accordance with provisions in the Agreements.

At about the same time but separately from the instant cases, a third collective bargaining unit, covering city clerical and still other city employees also represented by Dane County, Wisconsin, Municipal Employees Union Local 60, and the City of Madison entered into final and binding interest arbitration over the identical issue. (Tr. p. 122) Also, in 1994 the nurses' union and the City of Madison proceeded to interest mediation/arbitration involving the very same issue. (Tr. p. 122 and Un. ex. v. I, no. 69)

Background

There is a long history leading up to the impasses in the instant cases. Briefly, it begins with the adoption of ordinances by the City of Madison in 1956, or earlier, requiring that all City employees have their primary residences within the city. (Un. ex. v. I, no.25 ; City ex. nos. 25 & 26.) Only in highly unusual circumstances such as a temporary hardship would employees be allowed to live outside the city. The Mayor alone has had authority to grant such permission. He has done so rarely. However, following a series of collective bargains, grievance arbitrations, and litigations in the 1970's and 1980's, required residency was not applied in the case of certain unionized City employees, beginning first in 1983 with exempting (or, more exactly, "grandfathering") some former private-sector employees of the City-owned transit bus lines, followed by removing the requirement by court order in 1986 for City firefighters and in 1988 for City police officers. By the early 1980's also, the collective bargaining units covering the professional librarians and library paraprofessionals had been

officially certified by the WERC and began to bargain collectively with the City.

Then, in 1988, through collective bargaining all employees of the city-owned transit system obtained the same right as the firefighters and police officers to reside outside the City. In 1993, under the provisions for interest arbitration of Statute 111.70, the requirement was ended by Arbitrator James L. Stern in the case of City public works (street department) employees. The sole issue in that case was whether or not City employees would have the right to have their primary residences outside the City. Unlike the instant cases, there were no *conditions stated in either the final offer of the City or of the Union regarding residency outside* the city. The Union said yes; the City, no. The City proposed that no provision on residency be added to the pending agreement but left the matter to the existing City ordinances.

In the negotiations for the 1988 and subsequent collective bargaining agreements of the two instant cases, the Union proposed each time that the residency requirement be dropped, but these proposals were withdrawn in face of City refusal to change its position of leaving the matter to the City ordinances. For the negotiations of the 1994-95 Agreements, however, when the Union again made proposals to eliminate the residency requirement without restriction, this time the City responded with the final offer, stated above, of allowing residency outside the city subject to a limitation of 6% on longevity pay and encouraging residency within the city by providing $500.00 for a home purchase once every 15 years of continuous employment. The parties became deadlocked in a dispute over this difference in their final offers. Therefore, following the established WERC procedures for mediation under Sec.111.70 Wisconsin Statutes, the instant cases were certified on November 11 and 18, 1994, respectively, to be at an impasse, thus requiring final and binding arbitration of their final offers.

Positions of the Parties

The contentions of the parties may be summarized as follows :

The Union's position begins with the observation that the City of Madison Library is a "system", with a number of branches scattered throughout the city, some close to the surrounding communities; and that it also serves the region of south central and southwest Wisconsin and is not confined in its operations to the City of Madison alone. Further, the Union notes, as Wisconsin's second largest city, the City's population, now almost 200,000, has doubled over the past 45 years. The Union also points out that the City enjoys the lowest unemployment rate in the U.S.A., ranks second in per capita value of property among the State's 10 largest cities (third among Dane County communities), and has a top investment rating. Conditions such as these, the Union reasons, contribute to tight housing availability in the City, as seen in the rise by 405% of the median value of a single family home since 1970 (65% between 1984 and 1994). According to the Union, these facts argue for a need to permit City employees to reside outside the City, especially since their wage increases of 45% over the past decade have not kept up with the "explosion" in property values. (Un. br. pp. 4-5)

A main contention of the Union is that the City's residency ordinances, in effect since at least 1956, no longer apply to employees represented in major City of Madison bargaining units, namely, police officers, firefighters, transit and public works employees. These exemptions, the Union points out, account for more than 50% of all represented City employees and, further, in being exempt from the residency requirement, they are not subject to any reduction in pay or benefit if they reside outside the city. It is only fair, the union concludes, to allow the employees in the library units to have the same right. The City's final offer in each

case, the Union states, is "a unique, non-uniform, confusing and punitive policy that is designed to defeat any choice of residence." (Un. br. p.6) In support of its own position, the Union refers to a recent interest arbitration award regarding La Crosse, Wisconsin by Arbitrator David Johnson, who ruled that a controlling factor in making a decision in the application of a city-wide residency rule is the need to attain internal uniformity. (Union reply br. pp.7-8) Exemption from required residency, says the Union, would achieve this better in the case of Madison, now that a majority of represented employees have that benefit. The City's offers, the Union maintains, would treat the members of the instant collective bargaining units not uniformly with but differently from the represented majority in the City of Madison.

The Union points to the fact that, in the 10 bargaining units in the City of Madison within the scope of the Municipal Employment Relations Act, a majority of the employees are already free to reside where they wish without any conditions attached. Furthermore, the Union notes that in planning for the new Monona Terrace Convention Center the City has already agreed with the State of Wisconsin and Dane County to waive the residency requirement for Center employees even though they will be employed by the City of Madison. Similarly, the Union points out, the City does not require City residency of employees of companies that it hires as contractors and, in the case of police officer supervisors, who are unrepresented, the requirement may be waived under certain circumstances. For its position on these matters, the Union particularly relies on the 1993 interest arbitration award by Arbitrator James Stern in a case involving the City and Local 236 of the Laborer's International Union of North America over the sole issue of the residency requirement, already noted above. According to the Union, "the City's policy on residency is so fractured as to be virtually meaningless." (Un. br. p. 9)

The Union further holds that the City's proposal to limit longevity pay for non-resident employees is discriminatory. The longevity pay provision, the Union recounts, is a long-standing benefit, predating unionization, which applies to all represented employees in the City and County and gradually increases basic pay rates by up to 11% after 20 years of continuous employment (it rises from 6% to 8% after 14 years). (Un. ex., v.I no.20) Thus, the Union contends, a non-resident employee with 14 or more years of continuous employment stands to lose from 2% to 5% of annual pay and perhaps thousands of dollars in earnings over the years. Almost half of all library employees, the Union reckons, already have served long enough to fall into such a category if they moved out of Madison and if the City's final offer is placed into effect. (Un. br. p. 10) The assistance of $500.00 every 15 years to purchase a house in Madison, the Union calculates, can hardly make up for the loss in longevity pay likely to happen. The City proposal, the Union emphasizes, "has the effect of penalizing the most senior, dedicated and committed career employees." (Un. br. p. 11)

Turning to "external" comparisons, the Union finds that no other Wisconsin communities impose any wage or benefit cuts for non-residency. Also, among the nine other largest Wisconsin cities, the Union lists four as requiring residency, two with a requirement to live within the county, and three without any residency requirement at all (Un. ex. v. I, no. 46) As for other represented library employees in the State, it finds, three municipal employers have no requirement, three require residence within the county, and two within the city. According to the Union, Dane County has no residency requirements for any of its employees other than certain sheriff department employees who are governed by state law. In the communities within Dane County other than Madison, the Union finds that only Waunakee has a requirement for its

employees to live within community limits, none has such a requirement for non-protective service employees while still others have requirements based on geographic distance (Un. ex. v. I no. 47) Thus, the Union concludes that external comparisons do not support the City's final offer.

In anticipation of the City's argument, the Union claims that it has actually provided a quid pro quo for its final offer and, even if it did not, it was not necessary to do so. Quoting Arbitrator Stern's award cited above, the Union found that the unions of police, fire, transit and public works employees " made no concession to achieve exemption from the rule"; and, except for the public works employees, elimination of the residency requirement was "the product of voluntary negotiated settlements." (Un. br. p. 13; Tr. p. 78) In the case of the two instant collective bargaining units, the Union maintains that as the result of pursuing the residency issue to interest arbitration the unit employees will actually receive less in wage increases than they would have had there been a settlement because of the timing of the wage increases agreed to -- a quid pro quo, in its estimation. (Un. br. pp. 12-13)

In its view, the Union considers the City 's final offers as inconsistent. The Union claims that in the case of represented police officers the City offered 1% more in wage increase to resident employees rather than non-residents -- an offer which was rejected, but that was more favorable than the cut in longevity pay of as much as 5% proposed in the instant cases. The Union also reported that the City asked for restoration of the residency requirement from the other unions; but ,when all such proposals were rejected by the unions, the City dropped them rather than negotiate to impasse. (Un br. p. 15)

The Union argues that a residency requirement in itself may be detrimental to employees

and their families because of hardships created in such areas as schooling, child care, family and neighborhood ties. It holds further that not only did the City fail to justify why non-resident senior employees should lose pay, but also it offered no evidence to support the reasons generally alleged for having a residency requirement. Thus, the Union claims that the City produced no evidence in support of such matters as knowledge and a stake in the community, community loyalty and performance, economic stability, and work force reliability as well as employee diversity, job attendance, labor productivity, employee turnover, etc. -- even no evidence of any adverse effects from the 28% of represented city employees who live outside the city, a dozen years after exemption from the residency requirement was first granted to transit employees. The Union concludes, too, that its own final offers in the instant cases will have no adverse consequences for the City. (Un. br. pp. 15-16)

Rejecting the City's position that it was forced involuntarily to relinquish the residency requirement in the case of the transit employees, firefighters, police officers, and public works employees, the Union argues that the evidence shows that all this actually was done voluntarily except in the case of Local 236, which went to interest arbitration. The Union denies the City's claim that the parties failed to bargain collectively over the matter of residency. It is the Union's position that residency is an old issue going back to earlier contract negotiations in the case of the instant collective bargaining units, and that the City's "compromise" proposal was designed to be rejected and to invite interest arbitration. It was not even clear, the Union states, why the 6% cap on longevity or the $500.00 residence purchase assistance were chosen for the City proposal -- no justification was offered for this proposal. (Un. reply br. pp 3-6)

Turning to a summary of the City's position, the City rejects the Union proposals as

"unnecessarily" eliminating the residency requirement without any "safeguard" for the City to make sure that employees will remain Madison residents. In contrast, the City argues, the City proposals reflect "its own desire of maintaining a residency requirement" but with opportunity and flexibility for employees to live outside the city. The City, it claims, therefore is offering a compromise. (City br. pp. 4-5) The offer of the $500.00 assistance payment and the capping of longevity pay, *the City holds, are " an incentive to encourage employees to remain residents* of the City." (City br. p. 5) Citing testimony from the hearing (Tr. pp. 141-142), the City concludes that the Union is not open to compromise in negotiations over the residency issue. It maintains that its own offers better meet the controlling statutory factors than do the Union's in serving the interest and welfare of the public, taking cognizance of bargaining history over the issue, and achieving compatibility with both "internal" and "external" comparables.

"Internal" comparisons, the City points out, show that 12 of 14 city compensation groups have union representation in 10 collective bargaining units and 6 of them, representing 44% of the total 2,100 unionized employees, still are subject to the residency requirement . In addition, the City calculates, there are more than 815 non-represented employees, all of whom are subject to the residency requirement, bringing the total of those covered by the ordinance to approximately 1,750. (City br. pp. 12-13) The City indicates this to be a majority of all city employees.

The City urges that in making internal comparisons the arbitrator should disregard those collective bargaining units which are exempt from the residency requirement "because such exemptions were secured through specific legal recourse rather than through the voluntary give and take of contract negotiations." (City br. p. 13) In support of this position, the City reviews

the history of key events involving the firefighters, police, and transit employees: the " me-too" provisions of the 1970's for the firefighters and police officers; the 1983 NLRB decision affecting the City transit employees and subsequent collective bargaining over the residency requirement; the 1983 grievance arbitration award by Arbitrator George Fleischli and resulting court actions in 1985; the 1985 grievance arbitration award by Arbitrator Joseph Kerkman and resulting court actions in 1987 and 1988. This history, the City emphasizes, does not indicate at all that the City voluntarily relinquished the residency requirement. (City br. pp.13-16.)

Even more "distinguishable", according to the City, is the 1993 interest arbitration case involving Local 236 (street employees), in which the parties took "winner take all" positions as final offers from which Arbitrator Stern had to make his choice. Under the circumstances, the City argues, Arbitrator Stern made his decision solely on the basis of internal and external comparability rather than other factors such as the public interest and welfare. (City br. pp. 16-17) In the instant cases, the City holds, there is no such "winner take all" situation but rather the offer of a compromise solution by the City beneficial to both parties that could have been the outcome in voluntary collective bargaining. (City br. p. 19)

The City especially urges a view of residency in the City of Madison as being in the best interests and welfare of the public as well as desired by the community. Moreover, the City reminds one that the employees in the instant cases knew from the start about the residency requirement, so therefore they did not suffer any violation of their rights. Reviewing Mayor Paul Soglin's testimony at the hearing, the City lists the benefits of required residency to the City such as availability of employees during emergencies, retention of the middle class within the city, and consequent maintenance of neighborhoods, community involvement, economic

contributions as consumers and homeowners, quality of city services, community standards, broadened city tax base etc. (City br. pp. 20-22) After citing the opinions of several authorities on the subject of residency, the City summarizes that "strong and convincing public support exists for the maintenance of residency requirements for public sector employees and residency requirements are most certainly needed to protect the underlying economic stability of the municipalities." (City br. p. 24) In the City's view, the Union has not demonstrated the necessity for its final offers.

For "external" comparisons, the City aligns Madison with the 9 other largest cities in the state and finds that the external comparability criterion does not support complete elimination of a residency requirement.. Enough evidence exists, the City finds, to demonstrate the continuing application of residency requirements in one form or another in the other cities.(City br. p. 28)

Turning to the opinions of several arbitrators including Arbitrator Johnson's recent decision for La Crosse mentioned earlier, the City stresses the desirability of making changes in a residency requirement through collective bargaining rather than interest arbitration. It argues that the Union offers should be rejected as "too pervasive" in favor of the City's "more moderate" offers. (City reply Br. pp.3-4.) The City offers, it maintains, provide " an incentive *to maintain residence within the City*" by "*continued progression through the longevity pay* scale." (City reply br. p. 6.) In the City's opinion, residency and longevity benefits " go hand-in-hand." Indeed, according to the City, some employees, notably those in the Police Supervisory Association, embrace the idea of required residence in the city, and only 28% of the represented employees not subject to the residency requirement actually have chosen to

reside outside the City. If the dropping of the residency requirement were so sought after, the City reasons, one would expect to find a larger proportion of the exempt employees taking advantage of the exemption. (City reply br. pp. 7-9)

Thus, in the City's view, the need for exemption among the members of the police, firefighters, transit and street unions is not compelling and would not be for library employees. This is supported, the City further contends, by low employment turnover rates among the library employees. (City reply br. p. 8) One would expect higher turnover rates and non-residency rates, implies the City, if the employees felt the residence requirement to be inequitable The City offer, however, claims the City, would serve the needs of the relatively few who must reside outside the city. In its estimation, therefore, there is little support for the "wholesale elimination" of the residency requirement as the Union proposes. It would appear inconsistent, the City holds, to encourage City employees to reside outside the city by adopting the Union proposals when the community actually desires to keep the residency requirement. .

Discussion

The arbitrator is required by the Statute to select one offer or the other in its totality for an Award. Section 111.70 (4) (cm) 7. sets forth several factors, in paragraphs a through j, which the arbitrator is directed to give weight to in reaching a decision. Among these statutory factors, factors a and b -- lawful authority of the employer and stipulations of the parties -- require no discussion, since they are fully recognized not to be in contention and are accepted by the parties. No weight is given to either of these in favor of one party or the other. The arbitrator, therefore, concentrates attention upon remaining statutory factors, which are taken up below in the order they appear in the Statute.

Factor c deals with the interests and welfare of the public and the financial ability of the unit of government to meet the cost of any proposed settlement. In the instant case, no question was raised directly about the City's financial ability, but much of the dispute centered around which of the proposals better serve the interests and welfare of the public. It is difficult for the undersigned to choose between the stand of the City and that of the Union regarding this factor, since very little systematic supporting evidence was offered in the specific case of Madison by either party. There were no concrete data offered regarding the economic and social loss that Madison would suffer were either the Union or City proposals accepted. Except for anecdotal evidence provided by witnesses (Tr. pp. 52-54, 71-73, 80-81, 89, 94-95, & 139-140), there were no systematic data to support contentions about impact upon work performance and attitudes or upon living conditions. What was advanced by the parties as evidence was largely intuitive and speculative or based upon experiences in communities other than Madison, even though a substantial number of Madison City employees have been allowed to live outside Madison for up to a decade in some cases. Despite the City's contention that ordinances passed by the City Council best express the public policy for the community, the undersigned concludes from the lack of supporting evidence in the instant cases that neither party should prevail in their differences over which proposals better suit the interest and welfare of the public.

In regard to the comparisons called for in factors d, e, and f, both parties offer data for the first two factors but not for factor f presumably because the last calls for comparisons of the library personnel with similar employees in the private sector, which are difficult to gather. The data offered by both parties for factors d and e are divided into" internal" and "external" comparisons among municipal employees, that is, within and outside the City of Madison. While

the arbitrator agrees with the Union argument that "the issue of residency is one in which internal comparability must be the primary criteria (sic)" (Union br. p.8), the question here remains as to which is the "pattern" internal to the City. Calculation of the extent of residency exemption among Madison's unions covered by the Municipal Employment Relations Act shows approximately 55% of the represented employees. (Un. ex. v.1, p.26.) On the other hand, the City estimates that a majority of both represented and non-represented employees are non-exempt (City br. pp. 12-13), a figure challenged without clear explanation by the Union as too high because of alleged double-counting (Un. reply br. p. 5, fn. 3).

On the basis of these differing claims, it is a close call as to which is the pattern within the city. Both are in a sense: the Union's estimate for the represented; and the City's for all employees. The undersigned believes, however, that non-exemption from the residency requirement should be taken as the pattern of internal comparables among City employees in the instant cases not only because at least a slight majority of the represented employees is non-exempt, but also because the exempted bargaining units are in the oldest and most influential unions -- a point similar to that made by Arbitrator Stern in his 1993 decision. (Un. ex. v.I, no.34.) It is to be expected that collective bargaining units such as the professional and paraprofessional library employees would follow behind the gains obtained by the firefighters, police officers, and bus drivers in the same city. The undersigned does not agree with the City contention that the existing exemptions should not be included in the internal comparisons because they were achieved through recourse to the courts or interest arbitration. The factor in question, the arbitrator believes, directs him to give more weight to what actually exists than to how it was achieved.

Moreover, the issue in the instant cases is not whether the library employees should or should not be subject to the residency requirement, but whether in exempting them from the residency requirement their longevity pay should be reduced after 14 years of continuous service if they reside outside the City of Madison. Admittedly, the City offers this as an innovation. No other exempt unit has such a limitation or any other limitation in case of non-residency. There is no pattern for this proposal, internal or external.

In making "external" comparisons for the instant cases, again there is a close call. Once more, the parties present different conclusions regarding the application of residency requirement in other communities. As the Union indicates, however, the prevailing practices differ among them not only for various types of municipal employees in different jurisdictions, but even for represented library employees alone. (Un. br. pp. 11-12) The City's offering of external comparisons are limited to Wisconsin's 10 largest cities, which show within-city residency requirements in 7 of them for at least some city employees, but no data are presented specifically for library employees. (City br. pp. 27-28) While neither party provides sufficient evidence to ascertain a clear pattern outside the City of Madison for either library professionals or paraprofessionals, the undersigned prefers the Union's findings over the City's in regard to this factor because they are more inclusive and relevant. Again, as mentioned, neither party cited any instances where a limitation on longevity pay is applied in the event of non-residency. In all, then, factors d and e slightly favor the Union, while factor f supports neither position.

In their presentation, the parties have given limited attention to factor g, which deals with the cost-of-living. The main inference here is that during the past several decades the economic and social conditions of Madison and its surrounding communities have made the residency

requirement which was adopted in 1956, and perhaps earlier, increasingly costly by 1995. As the Union points out, not only has Madison's population nearly doubled since those years, but property values have soared especially in comparison with other prices and with wage and salary earnings. To meet the increased living costs, there is a need to expand opportunities to live in residential areas outside of Madison for those who reside in Madison as well as for newcomers to the community. The arbitrator is persuaded by this point of view on the grounds that a City like Madison, with its growing population and its relatively large scale middle class groups derived mainly from University and State employment, is a dynamic not a static entity that should be viewed in conjunction with its surrounding communities. An indication of the continuing outward reach of the City is the development of the Madison City Library operations themselves to serve all of south central and south western Wisconsin as well as Dane County. The Monona Terrace Convention Center development is another indication of this trend. Given the changes that have occurred, especially in the Madison library system over the past two decades or more, it is not reasonable to expect employees such as the library personnel to adhere to a commitment adopted long before these changes occurred even though they accepted the restriction upon being hired. In the undersigned's view, the continued application of the residency requirement to employees like those in the library is obsolete and not in keeping with dynamic changes taking place in their community and professions. Given these conditions, the right to residency without limitation for the library employees makes sense. Factor g favors the Union.

Factor h needs little consideration in the instant cases. Overall compensation is a settled matter between the parties. The only unresolved item is whether or not there is to be a

reduction in longevity pay beginning after 14 years of continuous employment if a library employee resides outside the City. The undersigned agrees with the Union that this provision penalizes the most senior and,in all likelihood, most skillful library employees. While the City argues that residency and longevity pay go hand-in-hand and therefore the reduction in longevity payment proposed is justified, it offered no evidence that that was the philosophy behind longevity pay in the first place or as the years have gone on. A common perception is that longevity pay is especially related to improved knowledge of and performance on the job with increased years of experience rather than place of residency. Neither party prevails with regard to factor h.

As for factor i concerning changes in the foregoing circumstances during the pendency of the instant arbitration proceedings, the undersigned is mindful of the fact that two other interest arbitrations have been going forward at the same time involving City of Madison employees over the identical issue as in the instant cases. One of these is between the City and the very same Union here. While outcomes in the other cases would serve to support either the Union or City in the instant cases, in the Arbitrator's view, such support would not make a critical difference. No precedents are being set. Each of these cases stands alone as they were intended to be when they were created as separate collective bargaining units. While there is justification for consolidating the two instant cases because of their close similarities, it would have been far less so to include the others. The judgments reached here therefore do not depend on the decisions made in the other instances. Factor i favors neither party.

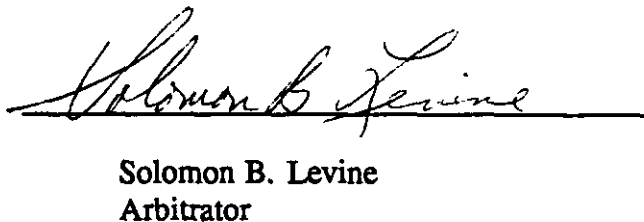
In considering factor j, which takes up such other factors not already dealt with, the undersigned is of the opinion that the Union proposals should not be rejected because, as alleged

by the City, the Union failed to offer a quid pro quo in collective bargaining, while in contrast the City offer is a "compromise" from its preferred position to retain the residency requirement for library employees. While negotiated settlements are preferable to interest arbitration, it is not clear in the instant cases which offers are closer to the outcomes which would have emerged had collective bargaining continued to a conclusion agreed upon by the parties. As found by Arbitrator Stern, proposals to eliminate the residency requirement are quite old to collective bargaining in the City of Madison and have been adopted in several prominent cases in the past only after a great deal of give-and-take. There has been plenty of opportunity to bargain collectively in the intervening years. If it were a wholly fresh proposal in the instant cases, a quid pro quo from the Union would be expected. On the other hand, it strains credulity to accept the Union argument that in fact the Union has given a quid pro quo in delaying the effective timing of the salary increases for the library employees. Nonetheless, given the history of the issue in Madison, the arbitrator leans toward the Union in regard to this factor.

Summarizing the above factors, the undersigned finds that the Union final offers prevail by a slight margin in factors d, e, g, and j and that none of the other factors clearly favors either party.

AWARDS

In both the instant cases under consideration, the arbitrator hereby selects the final offers of the Union and orders that they and the agreed upon stipulations be placed into effect.



July 27, 1995
Madison, Wisconsin

Solomon B. Levine
Arbitrator

CITY OF MADISON
FINAL OFFER
FOR
LOCAL 60, PROFESSIONAL LIBRARIAN UNIT
1994-1995 AGREEMENT

The 1992-1993 Collective Bargaining Agreement between the City of Madison and the Dane County, Wisconsin Municipal Employees Local 60, Professional Librarian Unit, AFL-CIO shall be modified as follows:

Section 1.06 shall be added as follows:

A. All members of the Local 60, Professional Librarian Unit who buy a residence in the City of Madison will be granted a $500.00 Resident Purchase Assistant Payment.

This payment will not be made more than one (1) time per each fifteen (15) years of employment.

This payment will be made only to employees who have been permanent employees for at least 13 months. Unpaid leaves will not count.

This payment is to provide assistance for the purchase of homes in which the employee will establish their primary residence.

B. After the completion of a probationary period, employees covered by this Labor Agreement shall not be restricted in their right to choose their place of residency.

C. Any permanent employee who has a primary residence outside of the City of Madison will not be eligible for any longevity payment in excess of six (6) percent.

All provisions of the 1992-1993 Collective Bargaining Agreement not specifically modified by this final offer shall be included in the 1994-1995 Collective Bargaining Agreement.

All tentative agreements reached by the parties during the negotiations for this successor agreements shall modify the prior agreement and shall be included in the 1994-1994 Collective Bargaining Agreement. Such agreements shall be set forth in a written stipulation by the parties to be filed on or before the date of closure of this investigation.

Dated this 26th day of October, 1994

FOR THE CITY

Gary A. Lebowich
Labor Relations Manager

B:\COROFFR.NOV
11/4/94

FINAL OFFER

OF

DANE COUNTY, WISCONSIN MUNICIPAL EMPLOYEES LOCAL 60
(Librarian Unit), AFSCME, AFL-CIO

to

CITY OF MADISON

November 7, 1994

The 1992-93 collective bargaining agreement between Dane County, Wisconsin Municipal Employees Local 60 (Librarian Unit), AFSCME, AFL-CIO, and the City of Madison shall be modified as follows for the 1994-95 collective bargaining agreement:

1. Add the following: Section 1.06 RESIDENCY: Employees covered by the terms of this Labor Agreement shall not be restricted in their right to choose their place of residency.

2. The stipulations of the parties.

CITY OF MADISON
FINAL OFFER
FOR
LOCAL 60, PARAPROFESSIONAL UNIT
1994-1995 AGREEMENT

The 1992-1993 Collective Bargaining Agreement between the City of Madison and the Dane County, Wisconsin Municipal Employees Local 60, Paraprofessional Unit, AFL-CIO shall be modified as follows:

Section 1.06 shall be added as follows:

A. All members of the Local 60, Paraprofessional Unit, who buy a residence in the City of Madison will be granted a $500.00 Resident Purchase Assistant Payment.

This payment will not be made more than one (1) time per each fifteen (15) years of employment.

This payment will be made only to employees who have been permanent employees for at least 13 months. Unpaid leaves will not count.

This payment is to provide assistance for the purchase of homes in which the employee will establish their primary residence.

B. After the completion of a probationary period, employees covered by this Labor Agreement shall not be restricted in their right to choose their place of residency.

C. Any permanent employee who has a primary residence outside of the City of Madison will not be eligible for any longevity payment in excess of six (6) percent.

All provisions of the 1992-1993 Collective Bargaining Agreement not specifically modified by this final offer shall be included in the 1994-1995 Collective Bargaining Agreement.

All tentative agreements reached by the parties during the negotiations for this successor agreements shall modify the prior agreement and shall be included in the 1994-1994 Collective Bargaining Agreement. Such agreements shall be set forth in a written stipulation by the parties to be filed on or before the date of closure of this investigation.

Dated this 26th day of October, 1994

FOR THE CITY

Gary A. Lebowich
Labor Relations Manager
City of Madison, Wisconsin

B:\COROFFR.NOV
11/4/94

FINAL OFFER

OF

DANE COUNTY, WISCONSIN MUNICIPAL EMPLOYEES LOCAL 60
(Para-professional Library Unit), AFSCME, AFL-CIO

to

CITY OF MADISON

October 26, 1994

The 1992-93 collective bargaining agreement between Dane County, Wisconsin Municipal Employees Local 60 (Para-professional Library Unit), AFSCME, AFL-CIO, and the City of Madison shall be modified as follows for the 1994-95 collective bargaining agreement:

1. Add the following: Section 1.06 RESIDENCY: Employees covered by the terms of this Labor Agreement shall not be restricted in their right to choose their place of residency.

2. The stipulations of the parties.

Jack Bernfeld