ARBITRATION OPINION AND AWARD

In the Matter of Arbitration

Between

PUBLIC HEALTH DEPARTMENT OF THE CITY OF MADISON

And

1199W/UNITED PROFESSIONALS FOR QUALITY HEALTH CARE

CASE 176
NO. 50771
INT/ARB-7253

Decision No. 28272-A

Impartial Arbitrator

William W. Petrie
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Post Office Box 320
Waterford, WI 53185-0320

Hearing Held

Madison, Wisconsin
September 7, 1995

Appearances

For the Employer

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BACKGROUND OF THE CASE

This is a statutory interest arbitration proceeding between the Public Health Department of the City of Madison, Wisconsin and District 1199W of the United Professionals for Quality Health Care, with the matter in dispute the terms of a two year renewal labor agreement covering January 1, 1994 through December 31, 1995. The only remaining impasse item relates to whether bargaining unit employees should be limited or restricted in their choices of residence:

(1) *The Union proposes no limitation or restriction* in choice of residence, which proposal would reverse a long standing requirement which mandates city residences for city employees.[1]

(2) *The Employer proposes two provisions to encourage employees to reside within the City of Madison*: limited *$500 resident purchase assistance payments* for certain employees who purchase primary residences within the City; and a *6% longevity pay cap* for those employees who do not reside within the City.

After their preliminary negotiations had failed to result in agreement, the Union on March 13, 1994 filed a petition with the Wisconsin Employment Relations Commission requesting final and binding arbitration pursuant to Section 111.70(4)(cm)(7) of the Wisconsin Statutes. After a preliminary investigation by a member of its staff, the Commission on December 29, 1994 issued certain *findings of fact, conclusions of law, certification of the results of investigation and an order requiring arbitration,* and on March 3, 1995 it issued an *order appointing arbitrator,* directing the undersigned to hear and decide the matter.

An arbitration hearing took place before the undersigned in Madison, Wisconsin on September 7, 1995, at which time both parties received full opportunities to present evidence and argument in support of their respective positions. After an interim determination by the Arbitrator relative to the

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[1] Although the prior agreement did not specifically address residency requirements for bargaining unit employees, the parties are in agreement that Madison City Ordinances have required employees to reside within the City since at least 1956.

parties' rights to cite certain decisions of other interest arbitrators in arguing their respective cases, the parties closed with the submission of post-hearing briefs and reply briefs, the last of which was received by the undersigned on November 18, 1995.[2]

THE FINAL OFFERS OF THE PARTIES

The Union's final offer proposes the addition of the following provision to the renewal labor agreement:

> "RESIDENCY: Employees covered by this collective bargaining agreement shall not be restricted in their right to choose their place of residency."

The Employer's final offer proposes the addition of the following provisions to the renewal labor agreement:

"A. All members of UPQHC who buy a residence in the City of Madison will be granted a $500 Resident Purchase Assistance 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."

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[2] The interim determination was confirmed in writing on October 31, 1995, and held that a preliminary document authored by Arbitrator John W. Freiss on January 28, 1995, in Case 174 No. 50402 INT/ARB-7157, could be cited by either or both of the parties in arguing their cases, subject to the following limitation: "...if parties have agreed to repudiate, to disregard, or to otherwise limit the action of an arbitrator, such limitation would significantly bear upon any future weight to be placed upon the action."

THE STATUTORY CRITERIA

Section 111.70(4)(cm)(7) of the Wisconsin statutes provides that the Impartial Arbitrator must give weight to the following arbitral criteria in reaching a decision and in rendering an award in these proceedings.

"a. The lawful authority of the municipal employer.

b. Stipulations of the parties.

c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.

d. Comparison of the wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes performing similar services.

e. Comparisons of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes generally in public employment in the same community and in comparable communities.

f. Comparisons of wages, hours and conditions of employment of the municipal employes involved in the arbitration proceedings with the wages, hours and conditions of employment of other employes in private employment in the same community and in comparable communities.

g. The average consumer prices for goods and services, commonly known as the cost-of-living.

h. The overall compensation presently received by the municipal employes, including direct wage compensation, vacation, holidays, hospitalization benefits, the continuity and stability of employment, and all other benefits received.

i. Changes in any of the foregoing circumstances during the pendency of the arbitration hearing.

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

POSITION OF THE UNION

In support of the position that its final offer, rather than that of the City, is the more appropriate of the two before the Arbitrator, the Union emphasized the following principal considerations and arguments.

(1) That appropriately defining the issue is critical to the outcome in these proceedings.

(a) That neither of the final offers requires that bargaining unit employees are required to be residents of the City of Madison.

(b) That the only significant difference in the two offers is whether senior employees should suffer wage losses for choosing to reside outside the City, while less senior bargaining unit employees are not similarly penalized.

(c) That the City proposed $500 payment to facilitate employee home purchases within the City of Madison may be used only once every fifteen years, and constitutes only a *de minimis incentive*.

(d) That the City has failed to provide any convincing rationale in support of its proposed adverse treatment of more senior bargaining unit employees.

(2) That the following background and underlying facts are material and relevant in these proceedings.

(a) That residency had not been an issue in prior negotiations, and all employees had continued to reside in the City of Madison in compliance with a long standing ordinance.

(b) Beginning in the 1970s, that various bargaining units had unsuccessfully sought to negotiate exemptions from the residency ordinance; thereafter, however, that certain units gained residency exemptions through court cases and interest arbitrations, and by the parties' 1994-95 negotiations, only a minority of the City's represented employees were required to live in the City.

(c) That identical negotiations impasses and interest arbitrations took place in these proceedings, and in blue collar and professional and non-professional library units represented by Local 60 of AFSCME; that mixed results occurred in the other interest arbitrations.[3]

(d) That the parties agree with respect to the residency rights of employees during their first twelve years of service, and they differ only with respect to the Employer proposal for treating them differently after their twelfth year of service.

(e) That this impasse involves only a small bargaining unit of thirty-six public health professionals, comprised of a majority classified as Public Health Nurses, and the reminder as Public Health Educators and Social Workers; that only nine of the thirty-six employees, the most senior in the bargaining unit,

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[3] Citing three decisions: Arbitrator Milo Flaten's July 1, 1995 selection of the final offer of the employer in *City of Madison v. AFSCME Local 60*, WERC Case 174, No.50402, INT/ARB 7157; Arbitrator Solomon Levine's July 27, 1995 selection of the final offer of the union in *City of Madison v. AFSCME Local 60*, Cases 178 and 179, INT/ARBS 7310 and 7309; and Arbitrator John W. Friess' January 28, 1995 interim opinion, in the case later decided by Arbitrator Flaten.

would be subject to the wage limits proposed by the City. That eight of the nine affected employees are Union activists, including five present or past officers of the local, and three active members of internal committees.

(f) That the scope of public health services provided by the bargaining unit are not limited to residents of the City of Madison, nor exclusively carried out within the City limits; that they include certain services rendered to non-residents, and they are sometimes jointly rendered with non-resident health professionals.

(g) That the public health professionals in the bargaining unit are not emergency responders; that no emergency response plan requires them to report to work during their off-shifts, and they are not interchangeable with emergency medical technicians or emergency room staff at any of the three acute care hospitals in the City of Madison.

(h) That the clients of the Madison Department of Public Health is the community, and the well being of the community is its primary focus; that these considerations cause those in the bargaining unit to perform services and to establish professional relationships beyond City boundaries.

(i) That Madison's public health jobs are changing, and entail increasing involvement with the Dane County Department of Social Services in broad based community-wide projects.[4]

(3) That consideration of the statutory arbitral criteria favor the selection of the final offer of the Union.

(4) That the City has failed to prove that its final offer would protect *the public interest and welfare.*

(a) That the motive of *winning the arbitration* is not synonymous with protecting such interests and welfare.

(b) That the MERA requires that the offer of the Employer be intended to protect the interests and welfare of the public, and that the City's offer, if accepted by the Union, would not protect such interests and welfare.

(c) That the antipathy of the Mayor toward negotiating residency issues does not promote the interests and welfare of the public.

(5) That the City has failed to prove that its final offer would prevent Madison from experiencing the urban problems of New York City.

(a) That the City failed to prove any cause-effect relationship between imposing income penalties for public health employees

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[4] Citing the contents of Union Exhibit 35, the Excellence Dane County Task Force Report, which recommends merger of the City and the County Health Departments.

after their twelfth year of service, and the development of major urban problems.

(b) That punishing nine employees in the bargaining unit by the proposed loss of longevity pay could not be expected to affect demographic trends in Madison.

(6) That the City's arguments relating to *quick response time* in the event of emergencies are not persuasive.

(a) Public health professionals are not emergency personnel, and it is not necessary to economically punish them for living outside the City.

(b) That the sprawling nature of the City of Madison undermines such arguments, in that quicker responses could sometimes be achieved by calls to employees living in adjoining or included municipalities.

(7) That the City failed to prove that its final offer would promote the interest and welfare of the public, even if it convinced all thirty-six bargaining unit employees to live in Madison. That while those in the bargaining unit are well educated, employed, and show a strong interest in community issues, their absence in a city population of more than 190,000 would not pose a threat to public welfare.

(8) That imposing wage penalties on senior public health professionals is not necessary to maintain their good attendance at work, their productivity, and/or their commitment to their jobs; that City arguments to the contrary are unsubstantiated, and are inconsistent with its willingness to permit the least senior employee to live outside of the City and to penalize more senior employees for doing so.

(9) That even if the longevity penalty were 100% effective, it would not protect the interest and welfare of the City by significantly strengthening its economy or tax base; that the Employer has failed to substantiate such arguments, and has undermined its position by granting hundreds of its employees the right to reside outside the City.

(10) That *comparison with other Wisconsin cities* supports the selection of the final offer of the Union in these proceedings.

(a) That Union Exhibit #35 identifies two public health nurses as the only Milwaukee employees exempt from its residency requirements.

(b) That Union Exhibit #26 shows that the City of Racine requires only state residency for public health nurses, and that those cities requiring residency for public health nurses do so for all city employees.

(c) That no municipal comparables selectively restrict the residency of public health professionals; that the City of Madison proposes to do so, in that it currently exempts many employees from any residency requirements.

(d) That the longevity penalty proposed by the City appears to be unique in the State of Wisconsin.

(11) That *internal comparables* support the selection of the final offer of the Union.

(a) That Union Exhibit #22 shows that the City's residency requirements apply primarily to the building trades, to attorneys, and to blue collar workers represented by AFSCME, Local 60.

(b) That Union Exhibit #25 shows that none of the surrounding communities has a seniority based penalty for non-resident public health employees or other employees.

(12) That the lack of evidence of any *proximity to work requirements for private sector employees* supports the position of the Union in these proceedings.

(13) That arbitral consideration of *changes in circumstances during the pendency of the proceedings* favors the selection of the final offer of the Union; that these changes include the issuance of the two above referenced interest arbitration awards, and the publication of the Excellence Dane County Task Force Report which recommends merger of City and County public health departments.

(14) That various other miscellaneous considerations favor the position of the Union in these proceedings.

(a) That Arbitrator Friess in his interim opinion opined that the City had a *"substantial burden" to establish that its final offer was good public policy and that the provisions of the final offer were likely to have an actual impact on the public interest and welfare.*

(b) That Arbitrator Levine in his decision and award opined, for various reasons, that restrictions on residency can outlive their usefulness.

(c) In consideration of the above arbitral views, that the City's final offer in this case fails to meet *the requisite standards of reasonableness;* in other words, that the proposed longevity penalty is not reasonably related to the public policy goals advanced in its support by the Employer.

(d) That the parties' bargaining history indicates that the City's final position is not a reasonable one, under the standards employed in the decision and award of Arbitrator Flaten. In this connection, that the Union proposed a *"me too"* compromise during mediation, which proposal the City failed to address.

(e) Throughout negotiations, that the City has failed to consider the nature and needs of this bargaining unit, in favor of its professed need *"to win."*

(15) That the parties are not in dispute on *costing the proposals,* and various of the statutory arbitral criteria are not in issue, including the *lawful authority of the employer,* the *stipulations of the parties,* and the City's *ability to pay.*

In its *reply brief* the Union principally urged that the seven major arguments emphasized in the initial brief of the City were unsupported by either evidence or logic.

(1) That the arbitrator should give no weight to the history of the City's residency requirement, because the City had waived this requirement in its final offer.

(a) That the City abandoned the prior residency requirement during contract negotiations, in favor of its proposed residency *incentives* and *disincentives.*

(b) Unlike prior arbitrations, that the Arbitrator is not called upon to determine the merits of a residency requirement, but whether the new incentives and longevity penalty are supported by the statutory criteria.

(c) That the outcome of this case turns upon whether the City has proved that its *incentive/disincentive proposal* meets the statutory criteria, and whether it would actually cause employees to buy homes in Madison or to remain residents for all of their years of service.

(2) That the Union's position on the penalty issue has not been an uncompromising one.

(a) That the testimony of Union negotiations committee member Robert Keonig indicated that the Union had made a "me too" offer in mediation, offering to resolve the dispute at hand on the basis of the outcome of the then pending Local 60 arbitration, which offer was not accepted by the City.

(b) During negotiations, that the Union disregarded possible extra money and/or possible extra holiday time, in favor of maintaining its position on the residency requirement.

(c) That the Union was prepared to pay for its position in a normal quid pro quo, but elected to remain with its position because it knew that the Employer would not give up on the residency issue.

(3) That the City's argument for consistency among all Department of Public Health employees does not add up: that twenty percent of such employees are required to live within the City of Madison, due to the fact that they are unrepresented; that forty-six percent may at some point suffer a loss of longevity pay due to their residence; and that the remainder of such employees are exempt from the residency requirement.

(4) That the City's arguments regarding internal comparability with all City employees, are flawed by the same factors referenced immediately above.

(a) That the City's exhibits show as follows: that employees in six bargaining units comprising one-half of its 2,256 represented employees, are required to be City residents in order to keep their jobs; that of the remaining 997 represented employees, 882 are in the Local 60, general bargaining unit; that fifty-seven

represented employees in the City Attorney's office, the building trades, and/or police and fire supervision, aggregating five percent of the represented work force, are required to be City residents.

(b) That the City provided no information about how many of the 882 employees in the Local 60 General Unit may be subject to a longevity penalty.

(c) Pursuant to the above, that fifty-five percent of represented employees are required to be residents, and forty-five percent, including all of the unaffected Local 60 general employees, are not so required. That adding nine more employees to the "residency restricted" group would only change the percentages by an approximate one percent.

(5) That past arbitration decisions should not be disregarded in these proceedings, merely because the City lost such cases.

(a) That City arguments to disregard residency exemptions gained through legal recourse rather than in the give and take of bargaining, should be rejected by the Arbitrator.

(b) That past arbitral outcomes in pattern setting units should be credited in these proceedings.

(6) That various City arguments based upon the interest and welfare of the public criterion, are unsupported by the record.

(a) That there is no evidence in the record that the residency of City employees affects the economic well-being of the City, or that it would be a critical element in local prosperity.

(b) Despite an increasing percentage of its employees who are not required to reside in the City, various exhibits show that Madison's economic health is good.[5]

(c) That general statements and opinion pieces relative to the value of residency requirements should be disregarded by the Arbitrator in these proceedings.

(7) That there are no external comparables appropriate for arbitral consideration in these proceedings, in that the evidentiary record shows no other Wisconsin cities imposing either wage penalties for residing outside the City or monetary incentives for the purchase of homes within the City.

In summary and conclusion, that the position of the Union should be selected by the Arbitrator for the following principal reasons: the weight of evidence

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[5] Citing the contents of Union Exhibit #28 showing increasing average assessments, Union Exhibit #29 showing a growing population, and Union Exhibit #36 showing significant increases in the median value of owner occupied housing between 1970 and 1990.

indicates that the City's final position is not really intended to protect the interest and welfare of the public, nor would it be effective in doing so; an award for the Union would not upset existing equities in the treatment of employees groups; an award for the Union would merely recognize that this small unit of health care professionals should not be subjected to economic losses in order to remain true to their commitment to public health and to the effective delivery of services by the Department; that if the positive effects of residency were the goal of the City, its bargaining position would recognize that the goal has already been met in this unit; and that the position of the City is a sham, and is merely designed to achieve a *technical win* in arbitration.

POSITION OF THE CITY

In support of the contention that its final offer is the more appropriate of the two before the Arbitrator, the City emphasized the following principal considerations and arguments.

(1) That the following background information is material and relevant to the outcome of these proceedings.

(a) That the City's final offer would provide a bargaining unit employee with the opportunity to move outside the City of Madison boundaries, a choice not previously available; that the Union's final offer would completely eliminate the longstanding residency requirement for bargaining unit employees.

(b) That the bargaining unit consists of thirty-six public health professionals, including public health nurses, registered nurses, health educators, HIV/AIDS outreach specialists, and a communicable disease specialist; that it is part of the City's Public Health Department of approximately 110 employees.

(c) That the employees in the bargaining unit have been subject to a residency requirement since the inception of their employment; that the requirement is set forth in the City of Madison's General Ordinances, and such a requirement has been on the books since at least 1956.

(d) That the Union is attempting to strip the City's attempt to maintain its residency ordinance, in a manner similar to that employed in three Local 60 bargaining units (i.e., the general unit, the library professionals and the library paraprofessionals).

(e) That both final offers alter the residency requirement within the bargaining unit; that the Union's offer unnecessarily eliminates

the requirement, while the City's offer reflects a compromise from the existing policy by not requiring but by encouraging continued city residency.

(f) That the City's final offer provides employees with a meaningful choice by providing a $500 assistance payment toward the purchase of a residence within the corporate bounds of the City of Madison, and by denying access to the higher levels of longevity pay for those who voluntarily choose to live outside the City. That these options are not currently available to bargaining unit employees.

(g) That the City regards the following statutory criteria as controlling in these proceedings: the *interest and welfare of the public; internal department consistency*; and *internal and external comparability.*

(h) That the City offers a compromise to what is frequently viewed as an *all or nothing issue*, by providing alternatives and choices to the employees.

(i) That the Union's final offer reflects its continued belief that the issue of residency is *a one-sided one*, that its position is uncompromising, and that it inappropriately fosters a *winner take all* mentality.

(2) That the City's residency requirement has been both long standing and firm. That City Ordinances, dating back to at least 1956, reflect a continuing desire on the part of the City Council to maintain city residency for all its employees.

(3) That in bargaining for the 1994-95 agreement, the Union engaged in a blatant refusal to bargain on the issue of residency. In this connection, that it made clear its unwillingness to accept less than the *complete* removal of the residency restrictions.

(a) That the City's willingness to bargain is reflected in the fact that it offered this Union the same residency proposal offered to three bargaining units represented by Local 60 of AFSCME.

(b) In a recent interest arbitration on residency in one of the AFSCME units with similar facts, that the Arbitrator concluded in part as follows:

"[T]he single most important factor to be taken into consideration in reaching an ultimate decision is that of reasonableness. Here, the Employer reluctantly abandoned its 39-year policy. Instead, it compromised on its rigid requirement when it partially granted the Union's request that its members not be restricted in their right to choose the place of residency....The Employer has tendered an olive branch bereft of much foliage, it still is an offer of conciliation. On the other hand, the Union has remained steadfastly rigid in its demand. For this reason I am therefore

of the opinion that the Employer's position is the more reasonable one."[6]

(c) Despite the above decision, that the Union showed no interest in counter-proposals and rigidly maintained its position.[7]

(d) That the City's abandonment of its 39-year policy and its residency offer was predicated upon its desire to salvage as much as possible of the residency requirement, in the face of past losses before arbitrators and judges.[8]

(e) Based upon bargaining history and Arbitrator Flaten's decision, the City's offered a compromise which was both realistic and sensitive to the needs of the parties.

(4) That the *internal comparison criterion* supports the position of the Employer.

(a) That a majority of *Public Health Department* employees are governed by the same residency provisions set forth in the City's final offer or remain covered by the City Ordinance, while only 35% are in the UPQHC bargaining unit.[9]

(b) That 50% of *city bargaining units* and almost 50% of represented employees are governed by a residency requirement or are provided with a residency incentive identical to that contained in the City's offer in these proceedings.[10]

(c) That all 555 *non-represented city employees* are still required to maintain residency within the City of Madison.[11]

(5) That those bargaining units which are currently exempt from the City's residency requirements are distinguishable, in that the exemptions arose from legal recourse rather than give and take of bargaining.

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[6] Citing the July 1, 1995 decision of Arbitrator Milo G. Flaten, in City of Madison -and- AFSCME Local 60, Case 174, No. 50402, INT/ARB 7157, at pages 16-17.

[7] Citing the testimony of Union negotiator Laura Berger at Hearing Transcript pages 62-64, and that of Union President Susan Haag at page 76.

[8] Citing the testimony of Mayor Paul Soglin at Hearing Transcript pages 83-84.

[9] Citing the contents of Employer Exhibit 10A which shows total department employment of 110, with 51 represented by Arbitrator Flaten's decision and award, 21 non-represented and subject to the City Ordinance, and 38 in the Local 1199W bargaining unit.

[10] Citing the contents of Employer Exhibits 29, 26 and 28.

[11] Citing the contents of Employer Exhibits 12, 13 and 16.

(a) That the *police and fire bargaining units* won their exemptions from "*me too*" clauses in their agreements, which were triggered by the City's acquisition of the Madison Service Corporation which included a bus driver agreement which did not require residency. That the City did not voluntarily relinquish the residency requirements in these agreements.

(b) That the street department bargaining unit proceeded to arbitration in 1993, with both the City and Local 236 relying upon *winner take all final offers;* that the Arbitrator decided in favor of the Union on the internal comparability criterion, perceiving the police and fire union as the internal pattern setters for other Madison bargaining units.[12]

(c) Feeling the need to strike a balance of compromise or face further erosion of its well intentioned residency requirement, the City abandoned its prior *winner take all* approach, in favor of fashioning a compromise final offer which provides the arbitrator with the opportunity to choose a final offer beneficial to both parties.

(d) That the case at hand should not be decided without arbitral consideration of the fact that the elimination of the residency requirement for the transit employees, the police officers, the firefighters, local 236 and Local 60 (library professionals and paraprofessionals), all occurred through *legal recourse.*

(6) That the *interests and welfare of the public* criterion favors the selection of the final offer of the City in these proceedings.

(a) That while everyone has an opinion on the issue of residency, the evidentiary record in these proceedings clearly supports the proposition that the interests and welfare of the public are served by City residency for those in the bargaining unit.[13]

(b) That the message being sent to the taxpayers of Madison is a questionable one in various respects: the Union is apparently seeking to abolish the residency requirement because a few employees no longer wish to live in the city; the Union failed to offer a single substantive reason, or to otherwise substantiate any need for the change, and it also failed to offer any quid pro quo in support of its demand.

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[12] Citing the June 1993 decision of Arbitrator James Stern in City of Madison -and- Local 236, Dec. No. 27406-A.

[13] Emphasizing the following items of record: a *recent Milwaukee radio station editorial*, Employer Exhibit 37; the *testimony of Mayor Soglin* at Hearing Transcript, pages 84-86; excerpts from the January, 1977 decision of Arbitrator Haferbaker in *City of Manitowoc(Police)*, Dec. No. 14793-A; excerpts from the Spring 1992 issue of *Government Union Review*, Employer Exhibit #48; excerpts from a 1980 edition of the *Urban Law Annual*, Employer Exhibit 39; various news articles indicating public support for residency requirements, Employer Exhibits 40, 41, 44, 45, 46, 49, 51.

(c) That no employee is forced to accept employment with the City, public employment is a privilege rather than a right, and all current bargaining unit employees are residents of the City; accordingly, no employee will be harmed by the continuance of the residency requirement, as modified by the City's final offer.

(d) That the abolition of the residency requirement will not promote the public interest and welfare, but will only serve the interest of a small group of bargaining unit members who elect to move out of the City.

(e) That the compromise inherent in the City's final offer is entitled to significant weight in the final offer selection process.[14]

(7) That *comparison with the State's ten largest cities* supports the City's continued maintenance of a residency requirement in these proceedings.

(a) That the comparison group includes the cities of Milwaukee, Madison, Green Bay, Racine, Kenosha, Appleton, West Allis, Waukesha, Oshkosh and Eau Claire.

(b) That Milwaukee, Green Bay, Kenosha, West Allis and Eau Claire require residency of all of their employee groups as a condition of employment, and with the exception of Kenosha, such residency is limited to the specific city limits; that the only exempt group in Waukesha is the water utility; that Racine and Appleton require only non-represented department heads to live in the City; and that Oshkosh is the only city without some form of residency requirement for any employees.

(c) That arbitral consideration of the external comparisons simply does not support the complete elimination of residency requirements; to the contrary, that the majority of external comparables have maintained residency requirements as a condition of public employment.

In its *reply brief* the Employer emphasized or reemphasized seven major arguments in support of the selection of its final offer.

(1) That the Union's reliance upon the preliminary decision of Arbitrator Friess must be completely rejected in these proceedings.

(a) That the preliminary views and opinions of the Arbitrator were not sanctioned by either the City or the Union, and both parties promptly and jointly called for his dismissal.

(b) That the case was ultimately heard and decided by Arbitrator Flaten.

(2) That arbitral selection of the City's final offer does not penalize anyone.

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[14] Citing excerpts from the decision and award of Arbitrator Haferbaker in City of Manitowoc, supra.

(a) That nobody in the bargaining unit will be adversely impacted by arbitral selection of the final offer of the City, in that all unit employees reside within the corporate boundaries of the City of Madison.

(b) That the City's final offer provides an incentive to employees to remain residents of the City and recognizes that some employees may choose to live elsewhere; that it is the employee's choice which triggers the cap on longevity pay.

(3) That the merits of the Employer's final offer must be examined in light of the composition of the City's Public Health Department.

(a) That the Union's focus on the alleged lack of a rationale for treating employees differently after their twelfth year of service misses the point; that the relevant question is why unit employees should be presented with the opportunity to completely eliminate the residency requirement while other Public Health Department employees are held to different standards.

(b) That all department employees are represented either by Local 1199 or Local 60, or are unrepresented; that those represented by Local 60 have the same residency flexibility contained in the City's final offer in these proceedings, while the non-represented employees are governed by the residency ordinance.

(c) That the City's final offer guarantees the continued equal treatment of all represented employees within the Public Health Department.

(d) That while the bargaining units in the other three cases were located within various city-wide departments, the unit in the case at hand is confined to one department.

(e) That Arbitrator Levine noted the unique set of facts governing his decision and award in the library bargaining units.

(4) That the City's belief that its final offer best reflects the interests and welfare of the public was underscored in the decision and award of Arbitrator Flaten.

(a) In his decision that the Arbitrator recognized that a residency requirement was sound public policy, and that employees living outside the City sent a message to taxpaying citizens who themselves might contemplate moving.[15]

(b) That it cannot be disputed that those in the bargaining unit are *public health care professionals*, that *care of the community is their primary concern*, that they are *well educated, employed, and show a strong interest in community affairs*, and that their *continued residence in the City it is in the best interests of the public.*

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[15] Citing the decision of Arbitrator Flaten in City of Madison -and- AFSCME Local 60, supra, at page 15.

(c) That the final offer of the City reflects a dramatic shift in policy, retains its belief that residency is sound public policy, but allows employees to voluntarily maintain residence outside the City.

(5) That any union which desires the complete elimination of a residency requirement must do so through direct bargaining.

(a) That it is a commonly held principle of interest arbitration that major contract changes should take place in the give and take of bargaining, rather than imposed by an arbitrator.[16]

(b) That while both offers involve a change in the current contract language, it is the Union who is seeking the greatest change by completely eliminating the residency requirement.

(6) That the impact of the longevity cap is greater for the Local 60 general unit than for the public health nurses.

(a) That Arbitrator Flaten's decision affected 235 of 882 members of the Local 60 general bargaining unit, versus nine of thirty-six bargaining unit employees being affected in the case at hand.

(b) That if the City's final offer is reasonable and appropriate for the large Local 60 unit, it is similarly appropriate in the Local 1199 bargaining unit.

(7) That the number of City employees who live outside the City of Madison does not support the Union's argument for the complete elimination of a residency requirement.

(a) That the City of Madison is a good community, a good place to live, those in the bargaining unit tend to improve community standards, and it is reasonable that the City would want to maintain a residency standard for them.

(b) That employees within the City have overwhelmingly decided to maintain their residences within the City boundaries, and the Union has failed to show a burning desire on the part of employees to reside elsewhere.

(c) That only 27% of those bargaining unit employees who are not subject to a residency requirement (i.e., police, fire, street, transit and library professionals/para-professionals), have chosen to live outside the City of Madison; the almost three-quarters who have maintained residence within the city does not indicate a compelling need for the complete elimination of a residency requirement.[17]

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[16] Citing the May, 1991 decision and award of Arbitrator Edward Krinsky in City of Saint Francis (Fire Department), Dec. No. 26577-A, and the May, 1995 decision of Arbitrator David Johnson in City of LaCrosse, Dec. No. 28069-A.

[17] Citing summary date extracted from Employer Exhibit 11.

(d) That employees throughout the City of Madison are choosing to remain residents, which simply does not indicate that a residency requirement is widely perceived as inequitable.

(e) That the testimony of the Mayor and his desire to win should be applauded rather than condemned, and his efforts to search for and to offer a compromise on the residency issue reflects a sensitivity to both local policy and employees needs.

In summary and conclusion, that the final offer of the City is favored by the following principal considerations: it has demonstrated substantial justification for its final offer; it has offered a compromise on an extremely volatile issue; it has provided unit employees with a choice of remaining City of Madison residents or living elsewhere; and it emphasized the reliance upon bargaining history considerations by Arbitrator Flaten. That while the Union suggests that internal consistency and equity compel the complete elimination of the residency requirement, it has ignored the fact that changes in the police, fire, street and transit contracts were made through extensive legal recourse rather than the process of voluntary collective bargaining.

FINDINGS AND CONCLUSIONS

The undersigned first notes that this case represents a significant departure from the typical statutory interest arbitration in Wisconsin, in that the parties are in full agreement with respect to the wages and fringes to be applicable during the term of the renewal agreement, and the single impasse item is the matter of *City residence for bargaining unit employees*. Accordingly, the relative merits of the two final offers cannot realistically be measured/compared on the typical economic bases. The Arbitrator is therefore called upon to utilize a larger measure of subjective judgment in evaluating the relative merits of the two final offers under the various statutory criteria, prior to reaching a decision and rendering an award. The impasse of the parties has principally generated questions relating to the nature of the Wisconsin interest arbitration process, including the significance of the parties' *status quo ante* and their *negotiations history*, the internal and external comparison criteria, the interests and welfare of the public criterion, and

various reasonableness considerations, each of which factors will be separately addressed by the undersigned prior to reaching a decision and rendering an award in these proceedings.

The Nature of the Wisconsin Interest Arbitration Process

As the undersigned has indicated in various prior decisions and awards, including the following, a Wisconsin interest arbitrator operates as *an extension of the parties' collective negotiations process*, his or her *normal role is to attempt to put the parties into the same position they would have occupied but for their inability to reach full agreement at the bargaining table*, and *certain special considerations normally apply to proposed changes in the status quo ante*:

> "An interest arbitrator operates as an extension of the parties *normal collective bargaining process*, and his or her normal role is to attempt to put the parties into the same position they would have occupied but for their inability to agree at the bargaining table. An interest arbitrator will closely examine and consider the parties' *past practices* and their *negotiations history* (which criteria falls well within the scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes), in the consideration and application of the various other statutory criteria. This principle of described as follows in the frequently cited book by Elkouri and Elkouri:
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> > 'In a similar sense, the function of the 'interest arbitrator is to supplement the collective bargaining process by doing the bargaining for both parties after they have failed to reach agreement through their own bargaining efforts. Possibly the responsibility of the Arbitrator is best understood when viewed in that light. This responsibility and the attitude of humility that appropriately accompanies it have been described by one arbitration board speaking through its chairman, Whitley P. McCoy:
> >
> > > 'Arbitration of contract terms differs radically from arbitration of grievance. The latter calls for a judicial determination of existing contract rights; the former calls for a determination, upon consideration of policy, fairness, and expediency, of what the contract rights ought to be. In submitting their case to arbitration, the parties have merely extended their negotiation - they have left to this Board to determine what they should in negotiation, have agreed upon. We take it that the fundamental inquiry, as to each issue, is: what should the parties themselves, as reasonable men have agreed to? ... To repeat, our endeavor will be to decide the issues, as upon the evidence, we think reasonable negotiators, regardless of their social or economic theories might have decided them in the give and take of bargaining ...'2 (emphasis supplied)

* * * * *

> The proponent of change(s) in the status quo ante is asking an arbitrator to reach a decision that is inconsistent with the parties' bargaining history, and it generally must establish *a very persuasive case* in support of such a proposal. In accordance with Section 111.70(4)(cm)(7)(j) of the statutes, Wisconsin public sector interest arbitrators have recognized the need for innovation or change where the proponent has demonstrated that a legitimate problem exists which requires attention, when the proposal reasonably addresses the problem, and where an appropriate quid pro quo is provided in connection with the change. The rationale for the latter requirement is that neither party should achieve the elimination of or a substantial change in a previously negotiated policy or benefit, without having advanced something equivalent to what would have been required at the bargaining table.[18]

In considering the significance of *the parties' apparent forty year past practice of requiring a Madison residence for bargaining unit employees*, the undersigned must recognize the above described principle that when one of two parties proposes a significant change in the status quo ante, a *very persuasive case* for such change should be established, normally including demonstration that a legitimate problem exists, that the proposed change reasonably addresses the problem, and that an appropriate quid pro quo has been provided by the proponent of change.

What, however, of the Union's ingenious argument that no weight should attach to the long standing residency requirement because the City had allegedly waived the status quo ante in its final offer? This proposition by the Union is both unpersuasive and inconsistent with normal arbitral practice; by way of hypothetical analogy, no basis has been established for disregarding prior levels of wages and benefits, merely because one or both parties to an interest arbitration have made wage and benefits proposals which differ from those in existence under their prior agreement. It is the Union which has proposed the *total elimination* of the long

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[18] Sheboygan County -and- American Federation of State, County and Municipal Employees, Local Unions No. 2427, 1749, 110; American Federation of Teachers, Local Union No. 5011; Sheboygan County Social Workers. Case Numbers: 150 No. 47658 INT/ARB-6518; 151 No. 47659 INT/ARB-6519; 152 No. 47660 INT/ARB-6520; 153 No. 47661 INT/ARB-6521; 154 No. 47662 INT/ARB-6522. February 24, 1994 at page 11. (Included quotations from Elkouri, Frank and Edna Asper Elkouri, How Arbitration Works, Bureau of National Affairs, Fourth Edition - 1985, pp. 104-105.)

standing city residence requirement and, accordingly, it bears the principal burden of substantiating the basis for such change in the status quo ante. In this connection, the Union has presented no evidence of significant pre-existing problems with the prior residency requirement, except that it wishes to have it eliminated due to the growing number of city employees who are exempt from such requirement. Further, the record shows that all thirty-six unit employees live within the City of Madison, and there is no evidence that any employee(s) currently intend to move their residence(s) outside of the City.[19] Finally, the Union has offered no apparent quid pro quo in support of its requested elimination of the city residency requirement.[20]

In summary, the undersigned preliminarily concludes that the Union has failed to establish the normally required *persuasive basis* for its proposed change in the status quo ante, in that it failed to establish the *existence of what would normally constitute a significant problem*, it failed to establish that its proposed change in the status quo *reasonably addressed any such problem*, and it failed to provide *any quid pro quo in support of its proposal*. These considerations clearly favor the selection of the final offer of the Employer in these proceedings.

The undersigned next notes that the Employer is quite correct in advancing the argument that interest arbitration should not normally be the vehicle for either party to achieve changes which they could not have gained at the bargaining table, although this principle is not always followed in public sector disputes where the parties lack the right to strike or to lock out in support of their positions. These considerations have also been addressed by the undersigned in various past interest decisions, including the following:

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[19] See the *rebuttal testimony of Ms. Christian* at Hearing Transcript, page 120, line 24, through page 121, line 12.

[20] While the Union argued that it had perceived hints from the Employer that it might offer increased wages or benefits in exchange for abandonment of the Union's position on residency, this subjective impression falls far short of constituting a *quid pro quo*.

"When an interest arbitrator is faced with the demand to significantly modify past practices, or to add new language or new or innovative benefits, he will normally tread carefully. This factor is very well described in the following, frequently referenced excerpt from an interest arbitration decision by Professor John Flagler:

> 'In this contract making process, the arbitrator must resist any temptation to innovate, to plow new ground of his own choosing. He is committed to producing a contract which the parties themselves might have reached in the absence of the extraordinary pressures which led to the exhaustion or rejection of their traditional remedies.
> The arbitrator attempts to accomplish this objective by first understanding the nature and character of past agreements reached in a comparable area of the industry and in the firm. He must then carry forward the spirit and framework of past accommodations into the dispute before him. It is not necessary or even desirable that he approve what has taken place in the past but only that he understand the character of established practices and rigorously avoid giving to either party that which they could not have secured at the bargaining table.'

Over sixty years ago, John R. Commons and John B. Andrews urged the application of the same principle, in an interest mediation context.

> 'He acts purely as a go-between, seeking to ascertain, in confidence, the most that one party will give and the least that the other will take without entering on either a lockout or a strike. If he succeeds in this, he is really discovering the bargaining power of both sides and bringing them to the point where they would be if they made an agreement without him.'

The reluctance of interest neutrals to innovate or to plow new ground is much less pronounced in public sector disputes than in the private sector. In his treatise on public sector interest arbitration, Arbitrator Howard S. Block distinguishes between the above referenced view in the private sector, and the perceived need for greater innovation in public sector disputes.

> '... As we know, a principal guideline for resolving interest disputes in the private sector is prevailing industry practice -- ...
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> * * * * *
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> ... the public sector neutral, I submit, does not wander in an uncharted field even though he must at times adopt an approach diametrically opposite to that used in the private sector. More often than in the private sector, he must be innovative; he must plow new ground. He cannot function as a lifeless mirror reflecting pre-collective negotiation practices which management may yearn to perpetuate but which are the target of multitudes of public employees in revolt.'[21]

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[21] Elkhorn Area School District, Case XI No. 28262, MED/ARB 1266, June 6, 1992, page 14. (Included citations are as follows: Des Moines Transit, 38 LA 666; Principles of Labor Legislation, New York, Harper & Bros., 1916, page 125; Criteria in Public Sector Interest Disputes, Reprint No. 230, pages 164-165, Institute of Industrial Relations, UCLA, 1972.)

Without unnecessary elaboration, it is quite clear from the record that the Union would not have been able to achieve the complete elimination of the residency requirement at the bargaining table, which renders much more difficult any attempt to gain such a result in the interest arbitration process. While, as described above, public sector interest neutrals may be more flexible in approving change than their private sector counterparts, the proponent of change normally has the burden of establishing an appropriate basis for such a result.

On the above described bases, the Impartial Arbitrator has preliminarily concluded that consideration of the *general nature of the Wisconsin interest arbitration process,* including the significance of the *status quo ante* and the *negotiations history of the parties,* clearly supports the selection of the final offer of the City rather than the Union in these proceedings.

The Internal and External Comparison Criteria

In most interest arbitrations, particularly those where the only impasse items consist of wages and fringe benefits, *comparisons* are the most important and persuasive of the various arbitral criteria, and so-called external *intraindustry comparisons* are generally considered to be the most persuasive of the various possible comparisons. The weight normally placed upon comparisons in general, however, and/or various types of specific comparisons in particular, will vary with *the nature of the specific impasse item(s)* and/or with *the importance historically placed upon such comparisons* by the parties themselves. In the case at hand, with only the city residency question in issue, it is logical to conclude that *comparisons in general* should be far less important than normally is the case, and that *external comparisons* should be relatively less important in these proceedings than *internal comparisons.*

In addressing internal comparisons with other groups of city employees, both parties argued the significance and the weight to be placed upon various internal comparisons, including the backgrounds involved in how members of other bargaining units had achieved their contractual rights to live outside the City of Madison.

The undersigned notes, however, that *the fact of such rights is much more important than how the rights evolved*! As elaborated above, *the Wisconsin interest arbitration process is a continuation of the parties' bargaining processes, with each arbitrator attempting to put the individual parties into the same position they might have and/or should have reached at the bargaining table.* Accordingly, the Arbitrator attaches no *determinative weight* in these proceedings relative to whether contract provisions in other City bargaining units evolved from the give and take of face-to-face bargaining, or resulted from the parties' use of the statutory interest arbitration processes or court proceedings; such considerations are merely factors for arbitral consideration in determining the *relative weight* to be placed upon such comparisons.

The internal comparisons are basically set forth in Union Exhibits 21, 22 and 23, and in Employer Exhibits 15, 16, 17 and 18. Although there are minor differences in the exhibits of the parties, the data generally consists of the following:

(1) There are apparently sixteen bargaining units of City of Madison Employees, nine of which have either the residency requirements established by city ordinance or contractual residency limitations identical to those proposed by the City in these proceedings.[22]

(2) Applying the figures contained in Employer Exhibit 16, the nine bargaining units with residency requirements total 975 employees, while

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[22] Three of the five bargaining units represented by *AFSCME Local 60* have contractual residency limitations, while its two library units have no residency requirement; two transit bargaining units represented by *Teamsters Local 695* have no residency requirements; one streets bargaining unit represented by *Laborers Local 236* has no residency requirement; one police bargaining unit represented by the *Madison Professional Police Officers* has no residency requirement; one fire bargaining unit represented by *Firefighters Local 311* has no residency requirement; one health bargaining unit represented by *Local 1199W of the United Professionals for Quality Health Care* has a residency requirement; one attorneys bargaining unit represented by the *Madison City Attorneys Association* has a residency requirement; certain employees represented by *trade unions* have a residency requirement; one police bargaining unit represented by a *police supervisors union* has a residency requirement; and one fire bargaining unit represented by a *fire supervisors union* has a residency requirement.

the seven without residency requirements total 1279 employees, showing that 56.7% of the represented employees have no residency requirements.[23]

(3) Also using information contained in Employer Exhibit 16, a total of 555 non-represented employees have the residency requirements set forth by city ordinance; when these totals are added to those shown in (2) above, they show that 54.5% of the City's employees have residency requirements.

While the above referenced internal comparisons are somewhat mixed, if the 55% to 60% of represented employees without residency requirements had gained such rights in conventional bargaining, it would very significantly favor the selection of the final offer of the Union in these proceedings. When the undersigned considers the rather unconventional background leading to the elimination of the long standing residency requirement in seven bargaining units, however, it is entitled to significantly less weight than would otherwise have been the case.

On the basis of the above, the Impartial Arbitrator has preliminarily concluded that *the internal comparison criterion somewhat favors the selection of the final offer of the Union in these proceedings.*

What next of the City offered external intraindustry comparisons of the residency requirements utilized by the ten largest cities in Wisconsin? The comparisons, which are summarized in Employer Exhibit 35, generally show that four of the ten cities have virtually unqualified city residency requirements, that four have city residence requirements for some but not all employees, that one has an area residency requirement for virtually all employees, and that one has no residency requirement. While these external comparison figures favor the selection of the final offer of the City in these proceedings, as explained above they are entitled to significantly less weight in these proceedings than would be the case in the more typical interest proceeding involving wages and benefits.

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[23] If the somewhat smaller employment figures shown in Union Exhibit 21 are used, they show that 60.6% of the City's represented employees have no residency requirements.

The Interests and Welfare of the Public Criterion

Prior to applying this arbitral criterion to the dispute at hand, the undersigned will preliminarily address two questions generated by the arguments of the parties relative to its use in these proceedings.

What first of the Union's argument that the *Employer had failed to prove that its final offer affirmatively enhanced the interests and welfare of the public?* Contrary to this argument, the various statutory arbitral criteria do not generally create obligations on the part of the proponent of a final offer to prove that its offer affirmatively meets any or all of the statutory criteria.[24] Section 111.70(4)(cm)(7)(c), for example, does not require an affirmative showing by the City that either the *interests and welfare of the public* or the City's *ability to pay* are affirmatively enhanced or improved by its final offer, but merely requires that these criteria be given appropriate weight in evaluating the two offers, in the final offer selection process.

What next of the use of *subjective arbitral opinions relating to the desirability of municipal residency requirements in applying the interests and welfare of the public criterion?* While an arbitrator may offer his or her unsupported personal opinions in this context, it should be noted that such opinions are *dicta* and they cannot *alone* determine arbitral application of the interests and welfare of the public criterion. To the contrary, the application of this criterion must be determined by arbitral review and evaluation of *the evidence in the record and the arguments of the parties* as they relate to the interests and welfare of the public.

In examining the evidentiary record in these proceedings the undersigned particularly notes *the persuasive testimony of Mayor Soglin* relating to his perception of various public benefits flowing from municipal residency requirements,

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[24] An exception to this principle is an employer's obligation to affirmatively establish any alleged *inability to pay*, which criterion is not in issue in these proceedings.

and *the contents of the various City proffered editorials and articles* relating to residency which are referenced in *Footnote 11* supra. While some of the opinions of Mayor Soglin and the contents of the various exhibits might be subject to reasonable debate, the Employer is quite correct that they constitute the evidentiary record in these proceedings. While it is impossible to quantify the positive or negative impacts upon the City of Madison or its citizens flowing from arbitral selection of either of the two final offers, the undersigned has preliminarily concluded that the evidentiary record supports the conclusion that interests and welfare of the public criterion favors the selection of the final offer of the City. This criterion is not, however, entitled to determinative weight in the final offer selection process.

The Reasonableness Criterion

Various types of reasonableness considerations are frequently urged for arbitral consideration by parties to Wisconsin arbitration or fact-finding proceedings, they normally fall well within the general scope of Section 111.70(4)(cm)(7)(j) of the Wisconsin Statutes, and, by way of contrast with the discussion immediately above, arbitral opinions relating to the reasonableness of the parties' positions and actions may properly be utilized in applying the reasonableness criterion.

In the case at hand, each party urges that the other had acted unreasonably during the negotiations process, with the Union characterizing the Employer's final offer as motivated solely by the desire to win in arbitration, and the Union's final offer characterized by the Employer as reflecting intransigence and inflexibility. In these connections, the undersigned notes that the *final offer interest arbitration process* was designed by the Wisconsin Legislature to encourage the parties to move close together during the negotiations process, to minimize their differences prior to any use of the statutory interest arbitration process, and, in effect, to penalize a party who remains inflexible in its final offer, at a point significantly removed from where a negotiated settlement might have been reached. Indeed, if both parties are inflexible and remain far apart, an arbitrator

may be required to select between two offers, neither of which reasonably represents what the parties could have or should have agreed upon at the bargaining table.

In applying the above described considerations to the case at hand there is no dispute that the Union has persisted in its initial demand for a complete elimination of any residency requirement for those in the bargaining unit, while the Employer has proposed a qualified and conditional right to reside outside the City of Madison. Contrary to the arguments advanced by the Union that the City had failed to provide an appropriate supporting rationale for its final offer, Mayor Soglin candidly testified at the hearing that the offer had been designed either to facilitate a negotiated settlement or to strengthen the City's hand in any interest arbitration proceedings. While the Union is quite correct that the Employer's final offer may be criticized on various grounds, such criticism could have been addressed by counter-proposal(s); when it offered no counter-proposal, however, and elected to stand fast on its proposed elimination of any residency requirement, it accepted the risks inherent in Wisconsin's *final offer* approach to statutory interest arbitration. In these connections, the undersigned finds himself in agreement with the following excerpt from the previously cited decision of Arbitrator Flaten:

> "...the single most important factor to be taken into consideration in reaching an ultimate decision is that of reasonableness. Here, the Employer reluctantly abandoned its 39-year policy. Instead, it compromised on its rigid requirement when it partially granted the Union's request that its members not be restricted in their right to choose the place of residency. Admittedly, it did so at a rather stiff price. Capping off a long-term employee from longevity pay after the sixth step is a severe sanction for an employee to pay in exchange for a residence change. It should be noted, however, that the Employer's policy has been in effect even longer than the longevity benefit has.
>
> The Employer has tendered an olive branch. While it is a branch bereft of much foliage, it still is an offer of conciliation. On the other hand, the Union has remained steadfastly rigid in its demand. For this reason I am therefore of the opinion that the Employer's position is the more reasonable one."[25]

What, however, of Arbitrator Levine's July 27, 1995 comprehensive decision and award in the Library Professional and Paraprofessional bargaining units, wherein he

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[25] City of Madison v. AFSCME Local 60, WERC Case 174, No. 50402, INT/ARB 7157, at pages 16-17.

selected the Union's final offer for the elimination of the residency requirement? In this connection, I will merely observe that I fully agree with the following excerpts from Arbitrator Levine's decision:

> "...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...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...The judgments reached here therefore do not depend on the decisions made in the other instances."[26]

For the above described reasons, the undersigned has preliminarily concluded that reasonableness considerations clearly favor the position of the City of Madison, and that this criterion is entitled to very significant weight in the final offer selection process.

Summary of Preliminary Conclusions

As addressed in more significant detail above, the Impartial Arbitrator has reached the following summarized, principal preliminary conclusions.

(1) Arbitral consideration of the *general nature of the Wisconsin interest arbitration process*, including the significance of the *status quo ante* and the *negotiations history* of the parties, clearly supports the selection of the final offer of the Employer in these proceedings.

(2) Arbitral consideration of the *internal comparison criterion* somewhat favors the selection of the final offer of the Union in these proceedings.

(3) Arbitral consideration of the *external comparison criterion* somewhat favors the selection of the final offer of the Employer in these proceedings.

(4) Arbitral consideration of the *interests and welfare of the public criterion* favors the selection of the final offer of the Employer, but its application is not alone entitled to determinative weight in these proceedings.

(5) Arbitral consideration of the *reasonableness criterion* clearly favor the selection of the final offer of the Employer in these proceedings, and it is entitled to very significant weight in these proceedings.

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[26] City of Madison v. AFSCME Local 60, WERC Case Nos. 178 and 177, Nos. 51703 and 51058, Dec. Nos. 28233 and 28226, at page 20.

Selection of Final Offer

Based upon a careful consideration of the entire record in these proceedings, including a review of all of the various statutory criteria, the Impartial Arbitrator has preliminarily concluded that the final offer of the Employer is the more appropriate of the two final offers, and it will be ordered implemented by the parties.

AWARD

Based upon a careful consideration of all of the evidence and arguments advanced by the parties, and a review of all of the various arbitral criteria contained in Section 111.70(4)(cm)(7) of the Wisconsin Statutes, it is the decision of the Impartial Arbitrator that:

(1) The final offer of the Employer is the more appropriate of the two final offers before the Arbitrator.

(2) Accordingly, the final offer of the City of Madison, hereby incorporated by reference into this award, is ordered implemented by the parties.

William W. Petrie

WILLIAM W. PETRIE
Impartial Arbitrator

January 15, 1996