BEFORE THE ARBITRATOR

In the Matter of the Petition of	Case 121 No. 69409 MIA-2900
CITY OF KAUKAUNA	**Dec. No. 32939-A**
For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of the City of Kaukauna who are Represented by	Heard: 3/16/10 Record Closed: 5/18/10 Award Issued: 7/6/10
CITY OF KAUKAUNA PROFESSIONAL POLICE ASSOCIATION	Sherwood Malamud Arbitrator

APPEARANCES:

Gill & Gill, S.C., by Gregory B. Gill, Jr., Attorneys at Law, 128 N. Durkee Street, Appleton, Wisconsin 54911, appearing on behalf of the Kaukauna Professional Police Association.

William G. Bracken, Labor Relations Coordinator, Davis & Kuelthau, S.C., 219 Washington Avenue, P. O. Box 1278, Oshkosh, Wisconsin 54901, appearing on behalf of the City.

ARBITRATION AWARD

The City of Kaukauna, hereinafter referred to as the City or the Employer, and the Kaukauna Professional Police Association, hereinafter referred to as the KPPA or the Association, selected Sherwood Malamud from a panel of names submitted to them by the Wisconsin Employment Relations Commission to hear the within interest arbitration dispute. On January 21, 2010, the Wisconsin Employment Relations Commission appointed Sherwood Malamud to determine this dispute involving this unit of law enforcement personnel pursuant to Sec. 111.77(4)(b), of the Municipal Employment Relations Act. Hearing in the matter was held on March 16, 2010, in the City of Kaukauna City Hall. The parties submitted original and reply briefs by May 18, 2010. This Award is issued pursuant to Sec. 111.77(4)(b) Form 2 in that:

> The Arbitrator shall select the final offer of one of the parties and shall issue an award incorporating that offer without modification.

The Sole Issue in Dispute

The parties agreed to and implemented the 2009-2010 Collective Bargaining Agreement. They did not agree on the KPPA proposal to include a residency clause in the Agreement. The KPPA proposes that the agreement contain the following language:

> Employees shall reside within a distance of twenty (20) road miles of the police department. For purposes of this provision, road mile shall be determined by taking the most direct route from the officer's residence to the police department.

STATUTORY CRITERIA

STATUTORY CRITERIA TO BE UTILIZED BY THE ARBITRATOR FOR LAW ENFORCEMENT AND FIREFIGHTER EMPLOYES

The criteria to be utilized by the Arbitrator in rendering the award are set forth in Section 111.77(6), Wis. Stats., as follows:

"(6) In reaching a decision the arbitrator shall give weight to the following factors:

a. The lawful authority of the employer.

b. Stipulation of the parties.

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

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

(1) In public employment in comparable communities.

(2) In private employment comparable communities.

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

f. The overall compensation presently received by the employes, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

g. Changes in any of the foregoing circumstances during the pending of the arbitration proceedings.

h. 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.

BACKGROUND

In 1984, the City Council of the City of Kaukauna adopted a residency ordinance that read as follows:

1.50 RESIDENCY REQUIREMENTS. All employees of the City shall be residents of the City.

Then, in 1994, at the request of the City's employees, the City Council modified the ordinance effective March 1994 to provide under Ordinance No. 1272 and to amend its municipal code at Section 1.50 to provide that:

> All employees of the City of Kaukauna who are department heads and all employees of the Kaukauna Fire Department shall be residents of the City of Kaukauna. All other employees shall reside within the area as outlined in orange on the map attached hereto and made a part hereof. The allowable residency area shall extend only to the center line of all boundary roads, streets and highways.

This ordinance has been in effect since 1994. It has not been incorporated in the Collective Bargaining Agreement between the KPPA and the City nor has a residency requirement been incorporated into the Collective Bargaining Agreements between the City and its two other bargaining units, the Street employees represented by AFSCME Local 130 and by its Firefighters.

From time to time as the City and its employees negotiated their respective agreements, the unions, including the KPPA, made proposals concerning residency. However, this law enforcement unit is the first to insist on incorporating residency into its Collective Bargaining Agreement, and it proposes substantial expansion of the residency requirement from roughly 8 miles to a 20-mile radius of the City's Police Department.

The parties proceeded to arbitration under a stipulation.

Memorandum of Understanding Regarding Implementation of Tentative Agreements Relating to the 2009-2010 Contract

> The City of Kaukauna (hereafter the City) and Kaukauna Professional Police Association (hereafter the "Association") hereby agree as follows:
>
> 1. The parties agree to the stipulations contained in the attached November 20, 2009, letter from Mr. Gill to Mr. Bracken, including the attached email correspondence regarding the same stipulations.

2. The parties agree to implement the attached tentative agreements dated November 25, 2009, as soon as administratively feasible.

3. The parties agree to proceed to interest arbitration over the sole issue of residency.

The pertinent portion of the November 20, 2009 referenced letter in paragraph 1 reads as follows:

> 2. The parties stipulate that the parties would be free to argue that any of the provisions as implemented do not constitute a sufficient quid for the Association to drop its request for residency or alternatively for the City to concede residency. In short, the Association is requesting that the parties be free to make whatever arguments are deemed appropriate to support their respective positions.

The following email exchange between counsel for the KPPA and the representative of the City further clarified paragraph #2 of Mr. Gill's November 20 letter:

> Email from Mr. Bracken: "I am unclear as to your intent in #2. The City plans to argue that the Union is changing the *status quo* and must meet the tests developed by arbitrators to do so. This includes offering a *quid pro quo.* The City will also argue that the Union has not done so. Are you agreeable to the City advancing these arguments in light of your letter?"
>
> Response of Mr. Gill: "The basic intent of Section 2 is to state that the parties are free to make any arguments regarding the reasonableness or unreasonableness of the other's total package despite the existence of an agreement to implement the terms that have already been agreed upon."

The Arbitrator analyzes the residency issue on the basis of the parties' stipulations and their understanding of the intent of those stipulations. Although the City argued at the hearing and in its briefs that the KPPA attempts to open up and present as issues health insurance and holiday pay that the parties agreed to and have implemented, the Arbitrator in accordance with the stipulation

considers the total package and agreements reached in determining whether those agreements amount to a *quid pro quo* for residency.

The Arbitrator now turns to apply the statutory criteria to the residency issue. Rather than summarize the approximately 100 pages of argument submitted by the parties, the Arbitrator references pertinent arguments as he proceeds through the analysis and determination of this issue.

DISCUSSION

Introduction

There are eight statutory criteria to be applied to the parties' final offers to determine which final offer shall be included in the 2009-2010 Collective Bargaining Agreement between the City of Kaukauna and the KPPA. Five of the eight statutory criteria serve to distinguish between the parties' offers. The three that do not are an extended analysis of wage rates and wage levels under the comparability criterion, the cost of living criterion and changes that occur during the pendency of the arbitration proceeding.

To a limited extent, comparability is a factor with regard to the presence or absence of residency requirements among and in communities in geographic proximity to the City of Kaukauna; communities deemed comparable to the City. The application of the criteria to distinguish between the parties' offers on residency, follows.

The Lawful Authority of the Employer

The Wisconsin Employment Relations Commission issued a declaratory ruling in City of Clintonville, Dec. No. 12187-A (1974) in which it established that residency was a mandatory subject of bargaining. Residency has been a subject raised in prior bargaining between the parties. However, between 1989 and this arbitration, the parties have settled their contract disputes voluntarily without including a clause concerning residency into the agreement. At present the

Employer has exercised its lawful authority by establishing a residency requirement by ordinance. Initially, it required all of its employees to reside within its city limits. Then in 1994, it established a map that comprises a residency area that approximates eight miles. The Western border of the map is considerably less than eight miles. The other borders of the map approximate eight miles.

A residency requirement limits an employee's ability to live where the employee and his family desire to live. It requires new employees to move within and comply with the residency requirement. Arbitrators have recognized the compelling interest of communities to adopt residency requirements for economic and social reasons, City of Milwaukee (Police), Dec. No. 16825-A (Mlainowski, 1979) sense of community. Milwaukee Public Schools (Teachers), Dec. No. 27833-A (McAlpin, 1994) removal of residency requirement rejected by the Arbitrator because of the sociological and to a more limited extent the economic impact on the District.

The City presents safety as a primary reason for its position on residency. As a requirement for firefighters, who are on call emergency responders, and law enforcement personnel whose very presence and residence in a city provide assurance of safety to the residents of that community, residency attains political significance. This is particularly the case in a community of relatively small size and smaller population. City of Fond du Lac (Police) Dec. No. 13183-A (Zeidler, 1975) who noted that citizens do not like to be accosted or arrested by officers they deem to be outsiders. An individual's freedom to live where one wants versus a community's need to maintain its tax base and sense of community pride and safety describe the tension that underlies the residency issue.

This statutory criterion does not serve to distinguish between the offers of the parties. It does spotlight the legitimate interests that conflict in the determination of this issue.

Stipulation of the Parties

As noted above, the parties agreed to and implemented what is the City's final offer. Since the City position on residency is the *status quo*, the maintenance of the approximately 8 mile area surrounding the City which it established by ordinance and which it proposes to retain in effect by ordinance, the terms of this bargain have either contemplated or did not take into account the residency issue.

The KPPA was not the only party proposing a substantial change to the expired 2008 Agreement. The City entered negotiations with a proposal to make a substantial change to the health insurance plan in effect in the City. The City proposed going from a health insurance plan built on a choice of between two HMOs, Network and United, with the Employer paying 90% of the premium, to the State of Wisconsin plan, in which the Employer continues to pay 90% of the premium cost of the lowest cost provider. The premium year fully covered by the Agreement, 2009-2010, the Network plan was the lowest bidder. Ten of the 21 law enforcement unit employees who subscribed to the United HMO plan previously in effect, had to switch carriers or pay not only the employee 10% share of premium but the difference between the Employer's contribution at 90% of the cost of the premium for the Network deductible plan and the cost of the United deductible plan. The difference amounts to approximately an additional $150 a month over and above the 10% employee contribution to the cost of health insurance premiums. In this unit, the change brought about by the State plan required many of this unit's members to switch doctors, with all of the attendant dislocation brought about by such change.

The City notes that the State plan reduces costs to employees. It provides for a lower premium contribution due to the 10% an employee must pay towards premium. The State plan contains no physician office visit co-pays. The City proposal provides for HRA contributions in an amount sufficient to more than cover the deductibles associated with the family plans offered by the providers in the State plan in this area and falls a little short of offsetting the full cost of the deductible for employees taking the single coverage under these plans. Whether the KPPA agreement to the change in health insurance coverage provides a *quid*

pro quo for residency is the subject of greater discussion under the such other factors criterion, below.

The other change that the KPPA identifies as substantial and provides a *quid pro quo* for its demand on residency is the change demanded by the City to the list of holidays. In the expired agreement, an employee's birthday was a holiday. If the employee worked on her birthday, that generated increased pay. The City entered negotiations seeking a change to the birthday holiday in favor of a fixed holiday to simplify administration and scheduling. The KPPA asserts that for half of the unit they would lose approximately $350 as a result of the shift of the holiday from a birthday to a fixed day.

The City argues that the basis for the holiday pay depends on the ability of the employee to switch work days. It involves application of Fair Labor Standards Act rules. For half the unit there would be no decrease in pay even under the KPPA argument. The Arbitrator does not view that this change is so substantial that it warrants consideration as anything other than an administrative change to rationalize scheduling of employees. Similarly, the adjustments the City made to the clothing allowance and funeral leave are the sort of adjustments that parties engaged in a healthy bargaining relationship make over time to update their agreement and to insure that their contract remains effective. The changes the parties agreed to in the grievance procedure similarly favorably impact both the Employer and the Association. It is the health insurance change that is substantial and which raises the question as to whether it serves as a *quid pro quo* for the proposed change on the residency issue.

This factor, the stipulations of the parties, does not serve to favor the offer of either side. However, the stipulation entered into by the parties leads the Arbitrator to reject the City argument that the Arbitrator should refrain from fully weighing the nature and scope of the change brought about by the Association's agreement to switch from the two HMO plans to the State plan.

The Interest and Welfare of the Public

There is no question but that the City has the ability, financial and otherwise, to meet the Association's demands. The Arbitrator focuses on the first part of this statutory criterion, i.e., the interests of the public, in the selection of the City position, the *status quo* or the KPPA proposal on residency.

Chief of Police Manion testified to the rationale for his opposition to the adoption of the Association's position and the incorporation of its proposal into the parties' Agreement. Chief Manion articulated a number of reasons why the application of the criterion the interest of the public supports the current residency requirement. He asserted that residency generated interest of the employee in the community. The community felt secure through the visibility of law enforcement personnel as they go about their daily routine. The Arbitrator finds that these two arguments are relevant in the case where residency is limited to the geographic boundaries of the City. However, the City on its own broke that sense of security and community pride, when it extended residency to approximately eight miles beyond the City limits.

Chief Manion testified to a third factor that supports the *status quo* when applying the interest and welfare of the public criterion to residency. Chief Manion raised a legitimate concern, one an arbitrator must give substantial weight, response time. The Association proposal would allow an officer to live approximately 30 minutes away from the police department. Chief Manion indicated that if an arrest is made in the City, the officer must remain with the prisoner until another officer is called in to transport the prisoner. If the officer is coming from 30 minutes away as opposed to 10 or 15 minutes, it injects additional delay and impacts the security of the community. Rather than patrolling the community, an officer may be tied up watching a prisoner awaiting an officer to come in to transport the prisoner.

Chief Manion expressed concern with the increased response time of a half hour under normal driving conditions established by the Association residency. However, there is no evidence in this record as to the number of occasions arrests

resulted in officer call-ins. In City of St. Francis, Dec No. 26577-A (Krinsky, 1991), the Arbitrator accorded substantial weight to the issue of response time. There is no evidence that the response time of a Kaukauna officer who resides at the margin of the 8-mile residence limit is any different from that of an officer who lives in town. Similarly, there is no evidence that officers who live in the City or outside in the residency area have any greater or less loyalty to the City or that residency impacts their job performance in anyway.

The Association argues that its proposal for an expanded residency affords officers and their families greater safety. The Association introduced testimony that the "bad guys" know where an officer may live and may drive by or attempt to intimidate the family. Such an incident may occur no matter what the size of the residency area.

The Chief injected the matter of extra cost the KPPA proposal would generate for the City. However, the City never raised cost as an issue in bargaining. There is no exhibit in the record in which this cost is detailed. The Arbitrator accords cost no weight in his selection of the final offer for inclusion in the 2009-2010 Agreement.

The Chief's concern about response time supports the City's maintenance of the *status quo*. However, the lack of hard data limits the weight the Arbitrator accords this factor.

Comparability

The parties did not agree on a comparability pool. Both parties agree that the City of DePere, Fox Valley Metro-- the combined law enforcement departments of the Villages of Little Chute and Kimberly, the City of Menasha, and the City of Neenah should serve as external comparables. At the time Arbitrator Petrie rendered his interest award between these very same parties in 1989, the Villages of Little Chute and Kimberly maintained separate police departments. He had available to him a comparability pool of five external comparables. This Arbitrator

requires a comparability pool of at least five communities in order to establish a valid basis of comparison.

The Association would add the Town of Grand Chute to the comparability pool. It is geographically proximate and larger, at a population of 20,000 as contrasted to Kaukauna's 15,000. The City argues that town government is sufficiently different from city government that it should not serve as a basis for comparison. It is not clear to the Arbitrator why village government should serve as a basis of comparison to the City of Kaukauna when town government would not serve as a basis of comparison. The City also argues that the Town of Grand Chute is impacted by the traffic associated with the Fox Valley Mall. The Arbitrator does not view this argument as a meaningful basis for excluding the Town of Grand Chute as a comparable on this residency issue.

The Association argues that the Town of Menasha and the City of Appleton should serve as a comparables. In 1994, when the City Council took up the matter of opening up residency to approximately eight miles beyond the city limits, it referenced the Town of Buchanan, Town of Kaukauna, Town of Vandenbrock, the Village of Little Chute, and the Village of Combined Locks. However, the evidence is not sufficiently strong to permit this Arbitrator to meet the requests of both parties to identify a pool of external communities comparable to Kaukauna.

Similarly, the Association argues that the Village of Combined Locks should be included in the group of comparables. The Village falls within the 8-mile residency map. By geographic proximity and size, it should be considered a comparable to Kaukauna. However, other evidence of comparability is wanting in this record. The Arbitrator primarily relies on the four comparables that both the Association and the City agree are comparable to Kaukauna. The Arbitrator considered the Town of Grand Chute in applying this statutory factor.

The Association references the Kaukauna Utilities Commission both as an internal and external comparable. It can only serve as one or the other. The Arbitrator will discuss below why it should serve as an internal comparable.

The City of DePere has a residency map of roughly 20 miles from the police department. Fox Valley Metro has no residency requirement. The City of Neenah has a 30-mile radius and the City of Menasha 20 miles. The Town of Grand Chute has no residency requirement. The comparability evidence establishes the reasonableness of the Association proposal. It supports the Association proposal to extend residency from 8 to 20 miles, and the selection of its final offer for inclusion in the 2009-2010 Agreement.

Such Other Factors

The other criteria (the average consumer prices, overall compensation and changes in any of the foregoing) really do not serve to distinguish between the final offers of the parties on the one issue of residency.

Internal Comparability

This Arbitrator determines the factor, internal comparability, under the Such Other Factors criterion. The review of other settlements in other bargaining units of the Employer as contrasted to what the City offers to this unit is reviewed under this criterion.

The KPPA argues that the City of Kaukauna Water and Electric Utilities, should serve as an internal comparable, in this case. The City argues that it does not determine the wages, hours and working conditions of the employees of the City Utilities. Those determinations are made by the Utilities Commission. A member of the City Council and the Mayor serve on the Utility Commission. The interlocking of decision makers, if not decisions, justify the treatment of the Utilities as an internal comparable. The Utilities Commission and Local 2150 of the IBEW entered into a three-year agreement January 1, 2009 through December 31, 2011 that includes a letter that provides for the change in health insurance of Utilities' employees to the State deductible plan. The Utilities' employees also received what calculates out to 3% across the board wage increases for calendar years 2009 and 2010, the years covered by the tentative agreement and the duration of the contract at issue for the police unit.

The KPPA emphasizes that the residency requirements at the Utilities is 20 miles. Furthermore, Utilities' employees are subject to call-in, whereas police officers are not subject to call-ins except as testified to by the Chief.

The other bargaining units, the Firefighters who have a restrictive residency requirement similar to that of department heads, who must reside within the city limits of Kaukauna, raised residency in bargaining, but settled their contract at 3% with the health insurance changes. AFSCME Local 130 settled its contract without any change in residency at the same wage and health insurance changes as the City proposes, here.

The City argues that this pattern of internal comparability should weigh heavily in the Arbitrator's determination of this issue. If the Arbitrator were to provide to this unit something not provided for in voluntary collective bargaining with the other units that did resolve their wage and working condition issues on a voluntary basis, that would cause turmoil in the labor relations of the City.

The KPPA points to the 20 mile residency limit in effect for Utilities' employees who may be subject to more frequent call-ins than law enforcement personnel. The evidentiary record does not contain any details concerning the number of times that law enforcement personnel were called in to cover patrol or transport a prisoner when an arrest was made. Similarly, no data was entered into this record concerning the frequency of call-ins of Utilities' personnel. On the whole, the internal comparability factor supports the City position. Settlements in all other units were achieved without any change in residency boundaries. However, given the 20-mile residency requirement in place for the internal comparable the Utilities' employees, the Arbitrator does not accord to this factor the substantial weight that it would normally carry.

Quid Pro Quo Analysis

The City argues that the KPPA did not offer a *quid pro quo* for its proposal on residency. The KPPA acknowledges that in bargaining it did not specifically state to the City's bargaining team that it would exchange acceptance of the City's

proposal on health insurance changes for a package that included expansion of residency beyond eight miles.

For its part, the City acknowledges that it did not assert in bargaining that its offer of 3% across the board in each of the two years, 2009 and 2010, was put forth in exchange for acceptance of its proposals on health insurance. The Arbitrator concludes from this bargaining history that the parties proceeded issue by issue determining the merits of each issue to the point that the parties were ready to accept the wage and health insurance settlement.

The record supports the KPPA assertion that the pattern of wage settlements between the City and its employees has been at 3% for well over a decade.

The health insurance change in plan to a deductible plan is funded through City funded HRA contributions which more than cover the deductibles for those employees taking family coverage and offsets most of the deductible contribution that a single employee or a person taking single coverage would have to contribute under the State plan.

The KPPA negotiator credibly testified that in their approach to bargaining the Association considered that with the City's demands for extensive changes to health insurance that the Association was in a position to provide a *quid pro quo* for expanding residency. The failure to articulate that position at the bargaining table, but assert that argument in arbitration impedes collective bargaining. For example, if the Association asserted that it would accept the City's health insurance changes it required if the City were to accede to the expansion of residency, the City could reject that proposal but could counter offer with a proposal providing another benefit. Similarly, if the City had tied its 3% wage increase, a wage increase at a level consistent with the pattern of wage settlements over many years, to acceptance of its health insurance proposals, that would have provided a basis for the Association to counter with its proposal on residency. Both parties are guilty of not asserting what they viewed privately as *quid pro quo* for changes they proposed in bargaining.

The fact is that the City's proposed and ultimately accepted health insurance changes greatly impact this unit. Approximately half the unit had coverage under the prior insurance program with a different carrier that became too expensive for employees in this unit to continue in effect, when the difference between the lowest cost provider and their provider would require they contribute approximately $150 a month to maintain coverage with their former provider. For that reason, the Arbitrator credits the KPPA testimony that it based its bargaining position on its ability to achieve the expansion of residency with its acceptance of the City proposal on health insurance.

The question remains whether the KPPA provides an adequate *quid pro quo* for its proposal on residency. However, before reaching that question, it is worth restating the *quid pro quo* analytical framework. 1) The party proposing a change must demonstrate the need for the change. In other words it must show that a problem exists that should be addressed. 2) The proposal it makes should resolve the problem. There should be some indication that the proposal made is related to the problem identified. An Arbitrator should be able to look at the problem and its proposed solution and determine that the proposal is related to achieving that resolution of that problem. Finally, arbitrators require the provision of a *quid pro quo*. This Arbitrator has remarked in the past that bargaining is a conversation that is full of exchanges: I give you this; if you will give me that or we have this problem, can we solve it in this way. The party proposing change should establish that it has met its burden with substantial evidence.

The City argues that the KPPA has failed to demonstrate the existence of any problem with the current residency requirement. It points to the fact that as of the date of the hearing no employee had asserted a desire to move outside the area of residency established by the ordinance map. There simply is no problem for the KPPA solution to solve, the City argues.

The City ignores Officer Bowen's situation, when he was hired as a police officer. He resided approximately two blocks outside of the Western edge of the residency boundary. If he had resided the same distance from the police department on the East side of the City, his residence would have been located

well within the City residency boundary. The City does not dispute what occurred with Officer Bowen. The City notes that Officer Bowen received an extension of a year beyond his probationary period in order to move. The law enforcement unit probationary period is 18 months. Consequently, he had an extended period of time in order to move his residence to conform with this City ordinance. Nonetheless, the application of residency in the particular case of Officer Bowen appears to be arbitrary, when given the same distance from the police department in one direction it would conform to the residency requirement and in the other direction it does not.

The City argued that it takes more time to come from the West than from the East. There is little evidence on this point in the record. Furthermore, the parties have discussed whether residency should be based on time or miles to the police department.

In addition, there is almost no evidence in this record to suggest what concerns were addressed and protected in the creation of the map. The City Council passed an ordinance that referenced various communities that would fall within the expanded residency boundary. There is no evidence to suggest on what basis this map was drawn.

Officer Bowen encountered personal hardship by complying with the City residency requirement. He had to obtain an apartment within the City residency area. In the interim, he had to live apart from his wife during the time that it was necessary for them to sell their home and purchase one within the residency area. The Arbitrator concludes from this evidence that the KPPA has indeed established the existence of a problem. How the City applies a residency map that is not consistent and evenly drawn. The result is an outcome that appears arbitrary, particularly in the most recent past, as it was applied to Officer Bowen.

The City defends by noting that any boundary implies an area that falls within the boundary and an area that falls outside the boundary. That is correct, except in this case the location of Officer Bowen's former residence would have fallen within the boundary of the residency area had it been on another part of

town. The City argument does not address that arbitrary quality of the residency map. The evidence does not establish how and what factors went into the drawing of the residency map back in 1994. The Arbitrator concludes, therefore, that the Association established the first leg of the analytic framework.

The next question to be addressed under the *quid pro quo* analytic framework is does the Association proposal address the issue? At first glance, the proposal at 20 miles from police headquarters appears over broad. The arbitrary nature in which the irregularly shaped residency map operates is documented in the Bowen case. Arbitrary outcomes may result from an irregularly shaped map. This arbitrary quality may be resolved by drawing a residency area that maintains an eight mile radius from police department headquarters.

However, the internal unit, the Water and Electric Utilities, maintains a 20 mile residency area. The City of DePere utilizes a residency map of approximately 20 miles. The City of Neenah employs a 30-mile residency area from its department. The City of Menasha maintains a 20-mile radius. Fox Valley Metro does not impose a residency requirement on its employees. The Town of Grand Chute maintains no residency requirement. As noted above, Chief Manion testified to the desirability of a response time that consumes less time and is more responsive to the department's needs than the approximate 30 minutes it would take an officer residing within the outer edge of a 20-mile residency area to respond and report to the Kaukauna police department. The body of this evidence establishes the reasonableness of the KPPA proposed 20-mile residency area.

Is the Association acceptance of the health insurance changes proposed by the City sufficient *quid pro quo* to include the subject of residency in the Collective Bargaining Agreement and expand the residency from approximately 8-miles to a 20-mile radius from the police department?

The City argues that a proposal as basic as residency should not be inserted in the Collective Bargaining Agreement by arbitral fiat. The City's position may have some merit and its concerns would be included as part of the mix of evidence considered by an arbitrator, but for the fact that the City has acknowledged the

need to expand the residency area beyond the city limits. It did so some 16 years ago in 1994. Its argument that the residency map established by ordinance has well served the community and employees of the City was true up to the point that the application of the irregularly drawn map arbitrarily placed Officer Bowen's former residence outside the residency area, when in many other areas of the map the distance from his former home to the police department offices would have fallen within the residency area. Where there is a demonstrated problem with only one side proposing to address it, it is appropriate for arbitration to serve as the forum in which to resolve the problem.

Nonetheless, this Arbitrator requires a showing of some *quid pro quo* for the demand to expand the residency area made by the KPPA. It argues that its acceptance of the health insurance changes proposed by the City, changes that both the City and the KPPA represent as significant, represents the *quid pro quo* for its residency proposal.

As noted above, the Arbitrator's reading of the bargaining history indicates that the bargaining exchanges focused on each subject without regard to any other proposal. A review of the terms of the health insurance are instructive. The change in carrier imposed a burden on almost half this bargaining unit that participated in the prior insurance program through a different carrier. That carrier, United, was not the lowest priced carrier for 2010. The Employer pays 90% of the lowest premium. The Employee pays either the remaining 10% or 10% plus the difference between the carrier it chooses and the 90% of the lowest premium paid by the City. However, under the State plan, employees receive dental insurance, a benefit they did not previously receive. In addition, there are no office co-pays. The substantial increase in costs represented by the deductible plans are more than offset for family coverage and mostly offset for single coverage through the City's HRA contributions. Although the HRA contributions remain City funds and are not transferred for employee use, either for medical or other purposes, employees have up to ten years post employment to consume those funds for IRS recognized medical needs.

What further complicates the KPPA burden of establishing that its acceptance of the insurance benefits is its *quid* for residency, is the fact that the other bargaining units achieved settlements at 3% and the health insurance changes without a change in residency. The Firefighter unit, which shares the most limited residency area, that of the City limits, did not view the need to change that residency requirement to achieve a bargain for the 2009-2010 calendar years.

On the basis of the entire record, the Arbitrator concludes that the evidence does not support a finding that the agreement by the Association to the health insurance changes constitutes a *quid pro quo* for the change in residency. The advantages of the new State health plan inure to the benefit of employees covered under the plan. The drawbacks to the State deductible plan are more than offset by the agreement in this bargain by the City to establish HRA accounts for each employee in an amount in the case of family coverage that more than offsets the $1,000 deductible with an $1100 contribution. In the case of single coverage, the $400 City contribution falls somewhat short of offsetting the $500 deductible. The *quid pro quo* analysis favors the selection of the City offer over that of the KPPA.

SELECTION OF THE FINAL OFFER

In the above analysis, the Arbitrator concludes that the statutory factors that serve to distinguish between the parties' offers were the Interest and Welfare of the Public, External comparability, Such other factors internal comparability and the *quid pro quo* analytical framework. The Arbitrator concludes that the Interest and Welfare of the Public criterion provides limited support to the adoption of the City position. Comparability provides substantial support for the selection of the Association offer. Internal comparability supports the City position, but not with the force this Arbitrator accords this criterion. The *quid pro quo* analysis supports the City position, as well.

On this latter point, the Association did establish to the Arbitrator's satisfaction the existence of a problem, an irregularly drawn residency map. In

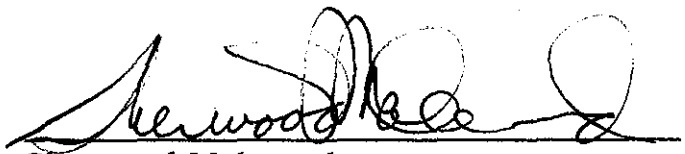
Madison Metropolitan School District, Dec. No. 32195-A (Malamud, 2008) this Arbitrator found that the Employer failed to establish that its offer included a *quid pro quo* for the insurance changes it proposed. Nonetheless, the Arbitrator awarded for the District due to a compelling reason. The Arbitrator concluded that unit employees were running from the *status quo* carrier to the less expensive plan. In this case, the Association proposal to expand residency to a 20 mile residency is not supported by such compelling evidence.

On the basis of the above analysis, the Arbitrator issues the following:

AWARD

The 2009-2010 collective bargaining agreement between the parties shall incorporate the final offer of the City of Kaukauna to maintain the *status quo.* No residency provision shall be included in the parties' agreement. Residency shall continue in effect on the basis of the 1994 ordinance adopted by the City.

Dated, at Madison, Wisconsin this 6th day of July, 2010.



Sherwood Malamud
Arbitrator