EDWARD B. KRINSKY, ARBITRATOR

In the Matter of the Petition of	:	
LABOR ASSOCIATION OF WISCONSIN, INC.	:	Case 66 No. [illegible]
For Final and Binding Arbitration Involving Law Enforcement Personnel in the Employ of	:	
CITY OF ST. FRANCIS (POLICE DEPARTMENT)	:	Decision No. 26577-A

Appearances:
Mr. Patrick J. Coraggio, Labor Consultant, for the Association.
Davis & Kuelthau, Attorneys at Law, by Mr. Roger E. Walsh, for the City.

On September 4, 1990, the undersigned was appointed by the Wisconsin Employment Relations Commission as impartial arbitrator ". . . to issue a final and binding award in the matter pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act.

A hearing was held at St. Francis, Wisconsin, on November 6, 1990. A transcript of the proceeding was made. At the hearing the parties were given the opportunity to present evidence, testimony and arguments. After several postponements of the briefing deadline to accommodate on-going settlement efforts by the parties, the record was completed on April 18, 1991, with the exchange by the arbitrator of the parties' reply briefs.

Under the statute the arbitrator must select one party's final offer in its entirety. Two items of the parties' final offers are not in dispute, and hence are really part of their stipulations. These items are: (1) the wage increases for 1990 and 1991; (2) a provision dealing with health insurance where both husband and wife are employed by the City. The remaining items which are in dispute are as follows:

Association Final Offer:

2. ARTICLE XIII - HEALTH AND WELFARE INSURANCE

Section 13.01 - Health Insurance: Rewrite to read as follows: "All employees who were hired prior to January 1, 1989, shall be allowed to participate in a traditional plan or an HMO to be provided by the City

and the City shall pay the full premium for the hospital and surgical care insurance traditional plan and the HMOs made available for regular full-time employees and their families.

All employee (sic) hired on or after January 1, 1989, shall be required to enroll in one of the HMO plans made available by the City. If they wish to join the traditional plan, they will be required to pay the monthly difference between the traditional plan and the highest HMO rate."

3. ARTICLE XIII - HEALTH AND WELFARE INSURANCE

Section 13.04 - LTD INSURANCE: rewrite the first paragraph to provide as follows: "The parties agree that a long term disability (LTD) insurance program (non-occupational) shall be in effect for all employees covered by this Agreement. Employees covered under this agreement shall pay seventy-five percent (75%) of the premium through payroll deduction for such long term disability insurance and the City shall pay the remaining twenty-five percent (25%)."

4. Create new article entitled RESIDENCY to read as follows: "Employees covered under this agreement shall be required to reside within the following boundaries. The Milwaukee County line to the south, the Milwaukee County line to the west, south side of Wisconsin Avenue to the north, and Lake Michigan to the east.

City Final Offer:

3) Article XIII - Health and Welfare Insurance
Section 13.01 - Health Insurance: Rewrite to read as follows: "As of 3-1-91, all employees hired prior to 1-1-89 shall be allowed to participate in the traditional plan or the HMO provided by the City. The City shall pay the premium for the hospital and surgical care insurance traditional plan capped by 105% of the highest HMO cost. HMO's made available for regular full-time employees and their families shall be paid in full at a fixed dollar amount.

All employees hired on or after January 1, 1989, shall be required to enroll in one of the HMO plans made available by the City. If they wish to join the traditional plan, they will be required to pay the monthly difference between the traditional plan and the highest HMO rate."

In making his decision, the arbitrator is required to weigh the factors which are specified in the statute. There is no dispute with respect to several of them: (a) the lawful authority of the employer; (b) stipulations of the parties; (c) that portion of (c) relating to the financial ability of the unit of government to meet the costs; (d)(2) comparisons in private employment; (e) cost of living; (f) overall compensation; and (g) changes in circumstances during the pendency of arbitration. The three factors in dispute are: that portion of (c) relating to the interests and welfare of the public; (d)(1) comparisons in public employment in comparable communities; and (h) other factors . . . normally taken into consideration . . . in arbitration.

The parties are not in agreement about which other jurisdictions should be used in making comparisons. Both agree that the following comparables are relevant: Cudahy, Franklin, Greendale, Greenfield, Hales Corners, Oak Creek, South Milwaukee and West Milwaukee. The Association asserts that the following additional jurisdictions are relevant: Bayside, Brown Deer, Fox Point, Glendale, River Hills, Shorewood, Wauwatosa, West Allis and Whitefish Bay.

The City introduced into evidence a 1977 interest arbitration decision by Arbitrator Zeidler between the City and its police, then represented by another bargaining representative. In that proceeding the City asserted the relevance of the same jurisdictions as it does in the present dispute (except for Greenfield, which the parties agree is relevant in the present dispute). The Union's list in that proceeding included Bayside, River Hills and Wauwatosa. Zeidler's Award includes the following statements:

> The Arbitrator believes that this list (the City's) is a more reasonable list for comparing, than the larger list of the Union, in that the municipalities in the south suburban region interact culturally and economically, and reflect a similar type of relationship with the large central city to the north. The Arbitrator will give some weight to the Union's list, but will give more weight to a list of the south suburban municipalities.

There is no evidence in the present proceeding indicating that the parties have agreed upon a list of relevant comparables since the Zeidler decision. There is also nothing in the present record which persuades the arbitrator that it is not still more reasonable to use the jurisdictions in southern Milwaukee County for economic comparisons, and not those suggested by the Association. Two of the Association's proposed jurisdictions,

West Allis and Wauwatosa, are much larger than any of the jurisdictions which the parties agree are relevant, both in terms of population and the size of their police forces. The other jurisdictions are in northern Milwaukee County and are considerably more affluent than those in southern Milwaukee County.

Unless otherwise indicated, the arbitrator's references to comparables, below, refer to the comparison police department proposed by the City.

The parties are not in dispute about the costs of their final offers. If the Association's final offer is implemented, the City's health insurance costs over two years will be $5,830 greater than under the City's final offer, but the City will realize a savings of $1,099 each year in LTD premiums. The net result is a cost to the City of $3,630 above the Association's final offer over two years, or $279 per officer. There are 13 officers. If the City's offer is implemented, and if the nine officers now enrolled in the traditional health plan continue in that plan during 1991, they will have to pay a total of $5,830 in premiums which they do not pay at the present time. They will not pay any premiums if they enroll in one of the offered HMOs.

Issues:

Health Insurance:

The parties' 1988-1989 Agreement distinguished between employees hired before and after January 1, 1989. Both parties' final offers continue that distinction.

Under the 1988-1989 Agreement the City paid the "full premium" for health insurance up to certain dollar limits, in 1988 and agreed to pay any increases in 1989. The Association now offers to have the City pay the "full premium" in 1990 and 1991, but makes no mention of dollar limits. The City's final offer is to pay the premium for the traditional plan as of 3-1-91 ". . . capped by 105% of the highest HMO cost."

Under the 1988-1989 Agreement there were also HMOs made available for employees hired prior to January 1, 1989, but there was no mention of who would pay the premiums. The Association now offers to have the City pay the "full premium for . . . HMOs made available for regular full-time employees and their families." The City's final offer is to allow participation in ". . . the HMO provided by the City." It offers also that "HMO's made available for regular full-time employees and their families shall be paid in full at a fixed dollar amount." Thus, there appears to be agreement that the costs of HMOs will be paid by the City, with the dollar amounts specified.

Under the 1988-1989 Agreement employees hired after January 1, 1989, were required to enroll in ". . . one of the HMO plans made available by the City." No mention was made of how the premiums would be paid. If such employees wanted to join the traditional plan they were required to pay ". . . the monthly difference between the traditional plan and the highest HMO rate." Neither party proposes to make changes in these arrangements.

In summary, the dispute over health insurance in the present case involves the premium payment arrangements for employees hired prior to January 1, 1989, who enroll in the traditional plan. The existing arrangement is that the City pays the full cost, up to a specified dollar amount. Both parties are seeking to change the status quo in this proceeding. Will the City now pay the full cost without a specified dollar cap as the Association proposes? Or, will the City now pay the premiums up to 105% of the highest HMO cost, as it proposes? The dispute affects premiums paid beginning March 1, 1991.

Eleven of the thirteen members of the bargaining unit were hired prior to January 1, 1989, and nine of the eleven are enrolled in the traditional plan. Thus, the dispute affects most of the bargaining unit.

Both parties use comparisons with other police departments in support of their positions on the insurance issue. There is no data presented for other public employees or for private employees.

Of the eight comparison jurisdictions, six offered traditional plans in 1990. Of those, four (Cudahy, Franklin, Greenfield and Oak Creek) provided that the employer pay the full premium. In the remaining jurisdictions, for 1990, the following conditions prevailed:

Hales Corners provides full payment, apparently, for employees hired before January 1, 1988. For employees hired after that date its Agreement provides for an employee contribution in 1990 of $35 and $50 in 1991 "toward the health and dental insurance premiums." There is no breakdown of the premiums according to how much is health and how much is dental.

South Milwaukee, in 1990, pays 105% of the lowest HMO cost. Given the rates in 1990, an employee who takes the traditional insurance pays $34.41 per month for the single plan, and $68.22 for the family plan.

In Greendale and West Milwaukee, which do not offer traditional plans, the employer's contribution is equal to the highest HMO rate.

In summary, of the eight comparison jurisdictions, employees pay nothing for traditional insurance in four of them, and pay something towards it in the other two where it is available. The offer by the City is clearly more generous than what is paid by the cities of Greendale, West Milwaukee and South Milwaukee.

For 1991, the arrangements in Cudahy and Greenfield are not yet known. The Hales Corners arrangement is described above. For the remainder of the jurisdictions, the arrangements are the same as for 1990.

The Association presented an exhibit relating to the health insurance arrangements for other bargaining units (3) within the City of St. Francis. All of those units are in negotiations. As of the close of the hearing in this proceeding, the City was continuing to pay the full premium for employees in these units. Nothing was submitted concerning bargaining proposals which have been made in those negotiations.

In the arbitrator's opinion, neither party has adequately justified its attempt to change the status quo on health insurance through arbitration, rather than through voluntary agreement. That is, neither party presents compelling evidence for making a change at this time through arbitration and neither shows that it has attempted to make its change over a long period of time, only to be frustrated by the other party's intransigence. Thus, if each final offer on health insurance were presented to the arbitrator for a separate final and binding determination, the arbitrator would rule against the party seeking the change in the status quo at this time. However, since the arbitrator will have to rule in favor of one party's final offer in its entirety, it will be necessary for him to order a change in the status quo on at least some of the disputed issues.

The City's proposal to limit its contribution for employees hired before January 1, 1989, who take the traditional plan to 105% of the highest HMO will require substantial premium payments by those officers who wish to continue in the traditional plan. Thus, the City's proposal is disadvantageous to a majority of the bargaining unit covered by the traditional plan. On the positive side, the City's proposal allows it to increase its ability to control health care costs. The City's premium costs in 1990 for the traditional plan were higher than for all but one of the comparables. The City's final offer still allows all officers to have no-cost coverage if they are willing to switch to an HMO. There is no specific evidence presented concerning hardships to officers which would result from such a change. Of course, any change to an HMO probably results in inconvenience and a greater limitation on which health care providers an officer can utilize than is the case under a traditional plan.

With respect to the 105% plan, the internal comparables favor the Association's final offer. No other unit in the City has the 105% plan which the City is proposing. The external comparables are divided, with as many providing no-cost coverage to employees for traditional plans as there are which either do not make such coverage available at all, or require cost-sharing. None of the comparables has the precise arrangement proposed by the City.

The Association's proposed language gets rid of the existing language which specifies dollar caps. While providing the officers with continuation of their desired coverage, the Association's language eliminates the City's ability to control its health care premium costs.

The Association argues that the effects of its proposal are not significant. This is because in the past, even where dollar caps were specified, the dollars agreed upon covered the full cost of the premiums. If the contract expired and the insurance premiums went up, the City paid the increases.

The Association is apparently correct about what was done previously, since there was no rebuttal testimony or argument on that point. It remains the fact, however, that with dollar caps specified there is no obligation on the part of the City to absorb the premium increases during a hiatus period between labor agreements. The Association's proposal would require the City to absorb all premium increases without limitation.

On this issue the internal comparables favor the City, since the most recent agreements with the other Unions contain language specifying dollar caps. The external comparables favor the Association's position slightly more than the City's. Four pay "full" premium. A fifth pays the full premium although it is not stated that way. A sixth pays "full" premium for more senior employees, but there is a specific contribution for newer employees. Two others have caps.

Long Term Disability Insurance:

The 1988-1989 Agreement provides that LTD insurance (non-occupational) ". . . shall be in effect for all employees covered by this Agreement." It further provides that ". . . the City will pay 75% of the premium for such long term disability insurance and the individual employee covered under this agreement is to pay remaining 25% through payroll deduction."

In the present dispute, the Association offers to have employees pay 75% of the premium, and the City 25%. It makes its offer, which will save the City money, in recognition of the increasing costs of medical insurance and as a show of good faith

of its desire to give up something in return for the loosening of the residency requirement (see below) which is its principal bargaining objective. The City's final offer is silent with respect to LTD insurance, thus continuing the present arrangements.

Among the eight comparison jurisdictions, six do not provide LTD insurance. Of the remaining two, Hales Corners and Oak Creek, the employer pays the full premium.

With respect to the internal comparables in St. Francis, the Association shows that no LTD insurance is provided for the firefighters. For the AFSCME unit, and the non-represented employees, the City pays the full premium cost, and the employee receives the benefit until age 65. For police lieutenants and sergeants, the City pays 100% of the cost. These employees receive the benefit for one year (as is true with the bargaining unit in the present proceeding).

The external comparables are inconclusive on this issue because most jurisdictions do not have the benefit. In the two cases in which LTD is paid, the employer pays for it. The internal comparables favor the City's position. Still, if the Association's offer were implemented, there would be a cost savings to the City and no disadvantage to it.

The arbitrator has no particular basis for favoring either party's offer on the LTD issue. The importance of the issue, as the Association argues, is that the Association has provided a cost savings to the City which it views as part of a quid pro quo made to secure a change in the residency requirement, discussed below.

Residency Requirement

It is clear from the parties' presentations that both regard the residency issue as a very important one. The Association argues that it is the most important issue, and that its members have made real sacrifices in wages and benefits in attempting to secure a change in the requirements. While arguing that the health insurance cost issues are more important, the City argues strenuously that the residency requirements should not be changed through arbitration.

The City has had a residency requirement since at least 1963. It has been in ordinance form since 1971, requiring that within one year of their hiring employees must reside within the City limits. The requirement is also in the City's Municipal Code.

The City has an area of 2.6 square miles. Its very small size limits the amount and type of housing available to employees, and there are no lots available for building single family residences at the present time. These and other difficulties caused by the residency requirement are considered below.

The ordinance makes residency ". . . a requirement of continued employment, and in the event residency is not established within the time limited above, or any extension thereof, the Common Council shall dismiss such employee or department head without recourse." The only specific exception in the ordinance and code is for the part-time health officer. There is also a possible exception in the code for part-time positions requiring degrees, and such exceptions must be reviewed annually.

In a 1977 arbitration case between the City, and another Union which at that time represented the police officers , Arbitrator Yaeger denied a grievance over the City's notification to two officers in 1973 that their employment with the City would be terminated pursuant to the residency ordinance.

Since that arbitration, there have apparently been no further grievances filed over the residency requirement. It is also apparently the case that between 1977 and the negotiations which led to the current dispute, a period of some twelve years, there was no attempt by the Association or the prior bargaining representative to change the residency requirement in bargaining. There is nothing in the record to indicate whether other unions or employees have challenged or sought to change the requirement.

As already mentioned, the ordinance and code cover all City employees. Thus the internal comparable units are subject to the same residency requirement which the Association seeks to change in this proceeding. Internal comparability therefore favors the City.

Three of the external comparables require residency within their corporate boundaries. The jurisdictions and their area are: Cudahy - 4.74 sq. mi.; Greenfield - 12 sq. mi.; Oak Creek - 28.5 sq. mi.

Three other comparables have radius residency requirements: Franklin - 12 miles from City limits; Greendale - 15 miles from Village Hall; Hales Corners - 15 miles from Village limits.

West Milwaukee has specified residency boundaries: the Milwaukee County line on the north and south (the south includes Union Church Road); the eastern boundary is Lake Michigan; the western boundary is a straight north-south line from Highway V in Menomonee Falls to the north, through Crow Bar Drive in Muskego to the south. This is an area larger than the size of Milwaukee County.

South Milwaukee has had a residency requirement for at least the last three three-year agreements which restricts new employees hired as of the last day of each agreement to residency within the city limits. However, in each negotiations, this requirement has been extended to take effect at the end of the new agreement. Therefore, for all practical purposes the residency requirement for new employees (those hired prior to the last date of the agreement) is to reside within Milwaukee County, the same requirement for those who are not new employees.

The City proposes that the residency requirement remain as is; that is, the boundaries of the City of St. Francis. The Association proposes a broadening of the boundaries to be the Milwaukee County line to the west, south and east, and the south side of Wisconsin Avenue to the north. This area includes slightly more than half of Milwaukee County.

Since residency is not primarily an economic issue, there is not as much reason to confine comparability to those suburbs of Milwaukee which are economically comparable to St. Francis. For that reason the arbitrator has considered the information provided by the Association about residency requirements in other suburban jurisdictions. Among those other jurisdictions which the Association regards as comparable in this proceeding, Bayside, Fox Point and Glendale have no residency requirements. Brown Deer's requirement is 20 minutes by motor vehicle from the police department, Shorewood's is 20 miles from City Hall, Wauwatosa's is 15 miles from the department for anyone hired after 1978; for those hired before that time, there is no requirement. Whitefish Bay's requirement is 20 miles from City Hall. River Hills has a specific geographic boundary. In West Allis, the employees must reside within the City.

Whether one looks at the City's comparables, or includes the Association's suggested comparables, it is clear that it is a minority of jurisdictions that require residence within the corporate limits (3 of 8 using City comparables; 4 of 17 if Association comparables are included). These numbers, while favoring the Association's position, do not provide compelling reasons for imposing such a change through arbitration. This is especially so because the requirement has been in place for many years and remained in effect despite several challenges to it. Since the only bargaining about it in recent years has been in the negotiations leading to this proceeding, it is not clear to the arbitrator that the parties have exhausted efforts to change the requirements voluntarily. If this issue had been exhaustively bargained, and if the City was alone, or almost so, in having a residency requirement, the arbitrator would feel more favorably disposed towards imposing a change in the requirement.

The one factor that is not readily evident from looking at comparability, of course, is that St. Francis is unique because of its very small geographic area which limits employees' housing

opportunities accordingly. Much of the Association's presentation about residency deals with its argument that the current requirement is unreasonably restrictive because of the shortage of affordable, quality housing and available lots on which houses may be built within the City.

Drawing upon information obtained from the City's Building Inspector, the Association exhibits show that fewer than 515.84 acres of the City is zoned for residential occupancy, including apartments, single-family and multi-family houses. The 515.84 acres is reduced by the fact that the total includes an area in which twenty-seven homes were recently demolished for freeway construction. Another scheduled building project will result in loss of five residences, including a duplex, within the next two years. A newspaper article shows that another house was recently purchased by the City.

The Association presented real estate advertising from the St. Francis (weekly) newspaper between September 6, 1990 and November 1, 1990. It contained the following number of ads for houses in St. Francis each week (1, 1, 2, 2, 2, 2, 2, 3).

From various sources Association witness Blumenberg, a retired St. Francis patrolman, ascertained that between October 26 and 29, 1990, there were six houses and three duplexes in the City for sale, and two adjacent lots zoned R-2 Duplex. Two of the homes were in the $50,000 range, one in the $60,000 range, two in the $70,000 range and one in the $80,000 range. Blumenberg testified that there are no condos in St. Francis.

The City presented a list of all residential one- and two-family home sales in the City during 1989. There were 104 sales during that period. Of these, 22 were sold for less than $50,000; 65 sold for prices in the range between $50,000 and $70,000; 15 sold in the $70,000 to $90,000 range; and 2 were at or above $90,000. The City also presented an exhibit of MLS listings for November 1, 1990, showing 14 properties available for sale in the City. Of these, 4 had asking prices below $50,000; 5 had prices between $50,000 and $70,000; 2 had prices between $70,000 and $90,000 and 4 were priced at or above $90,000.

City Administrator Voltner testified about current and potential home sites. During the week following the hearing there was to be a vote by the public (the vote was in favor) to decide whether to purchase a private school and to replace the existing Faircrest School. The Faircrest building will be razed and made available for home sites. There will be room for ten homes.

The arbitrator has not detailed the remaining potential home sites here because none of the proposed developments have begun, and there are no set times for start of construction. Voltner

testified on cross-examination that there is also potential for the loss of some 30 homes in the future which could result from an airport noise study. Voltner characterized the real estate market in the City as "tight, no doubt about it," but he denied that there is a shortage of housing and he cited his own recent purchase of a house in the range between $70,000 and $80,000.

There was testimony about the difficulties of finding housing in the City. Officer Kaebisch testified that he sold his house in West Allis in order to comply with the residency requirement in St. Francis. With the help of a realtor he began looking for housing in the City from his date of hire. He found that housing was very limited and good ones were taken very fast. He was also looking for a duplex or flat to rent, and found very few. He ended up renting a two bedroom apartment so that his daughter would be set for the new school year. At the time of hearing he had bid on a home and had the bid accepted. Kaebisch testified that there were lower priced (in the 40s and 50s) houses available and some high ones (in the 125s range) but little in between. He testified that two were available in the 70s - 80s range, and one of those was next to a railroad track. On cross-examination he testified that his goal was to move up, not down, from his West Allis situation, where his home was worth less than $70,000. He acknowledged that his new home will be an improvement.

The arbitrator has no doubt about the validity of the Association's complaints about limited housing opportunities. The fact remains, however, that no one has left the force because of the issue, and no one has been unable to find housing. There is also no evidence that anyone has been forced to live in inadequate or substandard housing in order to conform to the residency requirement. What is involved is a matter of quality of lifestyle. Wide choices might enable a person to live better, or in nicer or more desirable quarters, or to build a house, than is currently possible under the City's restrictions. Limited housing availability weighs in the Association's favor but, as further discussed below, other aspects of the residency problem must also be considered.

Other officers testified about the difficulties caused them by the residency requirement. Officer Ratkowski testified that he sometimes encounters problems remaining impartial in disputes involving neighbors because he knows them and has off-duty relationships with them. He testified also that his children have been harassed by other children because of his work as a policeman. He also cited an incident in which there were two drug-related search warrants issued at a property five doors from his home, and on a Sunday night one of the occupants appeared at his door step in an inebriated condition wanting to talk. Ratkowski called for back-up support, and sent his wife and children to the basement. There was a verbal confrontation, but the man left. Ratkowski's wife was very upset.

On cross-examination Ratkowski cited other instances of neighbors coming to his house to complain about such matters as parking tickets, parking restrictions and dogs barking. Some came to his house for assistance in these matters, he acknowledged. He put at four or five times in eight years, the number of times that his children have been harassed by other children related to his work.

Voltner testified about the reasons that the City maintains a within-City residency requirement:

> . . . there is a genuine feeling by residents of the community that they . . . feel it's important that the employees that work for the City of St. Francis live within the community . . . it's a very proud community with city functions that have gone astray in other communities, such as St. Francis Days and many other things, and they have festivals in Cudahy and South Milwaukee which have gone by the wayside. But I think there's a very strong feeling about the community and the feeling that it's a good community, and I think there's a feeling that the employees add to that, that feeling of a good community . . . It's nice to have a police officer as a neighbor or down the block.
>
> . . .
>
> Q Has that been expressed to you as either an alderman or a city administrator by the residents?
>
> A A number of times, yes.
>
> Q They feel secure -- a little more secure that way?
>
> A Yes.
>
> Q In fact, police officers are probably some of the highest paid residents of the city, aren't they?
>
> A Yes.
>
> Q How about the small businessmen?
>
> A I think one of the things that also has been brought up by the association of congressmen and small businessmen in the community is that the employees when they live within the community, they frequent the small business places and add something back, and small businessmen get some rebate back from the taxes that they pay for the community in some small way. But I think there's also a feeling of a better rapport between the businessmen and the people in the community also.

Q If they are employee --

A You see them off the job.

Q Right. Okay. How about your feeling, or is there a feeling of the city of how the employees themselves are in relation to their city if they are city employees, or if they are required to be residents? Excuse me.

A I think, you know, one of the things that -- and I think we have a very professional group of employees. No doubt about it. But I think one of the things that may be an incentive is that in reviewing policies and procedures that they work under, they are more apt to look for efficiency, look for safety when it involves not only their tax dollars but also their -- the safety of their children or the safety of the community as a whole. If they move out of that -- if they move out of this community, professionally I'm sure that some of that would continue. But I think it brings it much more into light when it's your family in that neighborhood, you know, and so that's one of the things that I think is important.

Q You're saying you feel that they would be more concerned with the city that they live in?

A Yes.

There is merit to both points of view about the desirability or undesirability of having police live in the same community where they work. Aside from generally supporting an individual's right to choose where to live, the arbitrator does not have a clear opinion about which approach is of greater benefit to a community. Improved morale is in the interests of the officers as well as the community which they serve. On the other hand, this community apparently views it as in its own interests to have the officers reside within, or very close to, the City.

These arguments and those discussed below are relevant to factor (c), the "interests and welfare of the public." However, the arbitrator does not view either party's evidence and arguments as demonstrating that they are more in the interests and welfare of the public than the other's.

Officer Varga lives outside of the City, with the City's permission. He has applied for and received three, three-month extensions to continue living outside the City, but he is concerned about what will happen in the future. Prior to his

move outside, he rented an apartment in the City. Then his grandmother had a stroke. Prior to that she had a break-in at her home and was robbed and assaulted. Varga moved in with her as her sole help, to assist her, to take care of the house, and to see that she received her medications. He testified that he would continue this arrangement if there were no residency requirement. He testified that it takes approximately ten minutes for him to drive to work from his grandmother's house. On cross-examination Varga testified that he is the only relative of his grandmother who wants to take care of her. He has several other relatives who live in the Milwaukee area.

Officer Makar testified that he lives in the City in a rented apartment. He is engaged to be married. His fiancee has a job in another community some 35 miles away from his apartment. He testified that if there is no change in the residency requirement, he will seek employment in another police force. On cross-examination Makar testified that when he took the job in the City he knew of the residency requirement, but he did not know that there was no place to build new housing, and it has been his dream to build a new house. Also, when he took the job, his fiancee was not yet established in the other community.

In the arbitrator's opinion, personal hardships such as those which will face officers Varga and Makar and perhaps others, support the Association's argument that the residency requirement should be liberalized.

Blumenberg testified about the Association's proposed boundaries. He recorded some driving times from these boundaries to the City. From the proposed northern boundary, to the northern boundary of the City is a distance of 4.4 miles. At 11:30 a.m., in "medium to light" traffic, it took him 10 minutes and 45 seconds to get to the City. Driving from the City's southern boundary to the Association's proposed southern boundary, a distance of 6.6 miles at 2:15 p.m. in "medium" traffic, it took Blumenberg 10 minutes. Driving from the City's western boundary to the Association's proposed western boundary, a distance of 8.6 miles, it took Blumenberg 16.5 minutes at 3:15 p.m. in "medium" traffic. On these drives Blumenberg did not use the freeways and did not go during rush hour. The weather was partly cloudy and there was no precipitation.

Chief Hayes testified that his only concern with the proposed residency boundaries is the adverse effect on response time. He noted that the compass distance from the City to the most remote point using the new boundaries is 13.25 miles, a distance which is greater by road because there are not direct routes to take. He is concerned that the result of having these new boundaries would be the necessity for more overtime worked, and employees would not be available when needed.

Hayes testified that he drove to the City from the County line, using I-43 at 7:40 a.m. and it took between 20 and 25 minutes, using the 27th Street exit and Layton Avenue. The next day he did the same thing using the Howard Avenue exit, and it took longer than 25 minutes, and he stopped timing it.

Hayes testified that he thinks it is reasonable to expect that it will take an officer about 30 minutes to get to work after a call-in (about 15 minutes to get ready, and about 15 minutes to get to work). Hayes would not object to boundaries outside of the City limits, but the boundaries in the final offer proposed by the Association are too big to allow for response within an acceptable amount of time.

Voltner testified that under the existing residency requirement, it takes officers no more than two or three minutes to drive from home to the Police Department.

Association witnesses testified about the infrequency of call-ins. Ratkowski testified that there have been no situations in his ten years on the police force in which he has been called in to work because of an emergency. He noted the existence of a mutual aid pact (discussed below).

Blumenberg testified that for eight years he was the department photographer. He was on the police force for 23 years altogether. Aside from his time as the photographer, he was called in from duty only twice; once, in 1967 because of the Milwaukee riots, and once in 1970 because of a train-car wreck resulting in fatalities.

Hayes testified that he has not ever called in all off-duty officers, and would not do so because some officers have to get their rest in order to be able to man all shifts. It occurs frequently, he testified, perhaps two or three times a week during the summer, that officers are asked to come in earlier than their normal starting times. These are not for emergencies, but just to assure that there is minimum manning on the streets if other officers are kept off the street dealing with arrests. When officers are asked to report early for their shifts, Hayes expects a reasonable response time of twenty to thirty minutes from the time the call is made until the officer reports. Hayes also cited emergency situations in which some off-duty officers have been called in; for example, in 1984 for an air crash; and more recently when a person started shooting a weapon from a residence.

Hayes testified also that there are occasional situations in which officers cannot start their personal cars in winter because of the cold. Given the small area of the City, other officers have been authorized to call for them and bring them to work. This would not be possible in the larger area proposed by the Association.

There is a mutual aid pact in existence between St. Francis, Cudahy and South Milwaukee. Officers are assigned to those communities by St. Francis, or to St. Francis by these other communities on a discretionary basis in response to mutual aid requests, "to the fullest extent possible, given the manpower and equipment capabilities of the department." It is to be implemented in emergency situations "that exceed the capability of a local agency to counteract (the emergency) successfully."

Hayes testified that mutual aid cannot be used routinely to augment personnel shortages. Mutual aid is most commonly used to handle fight and robbery situations. On cross-examination Hayes testified that mutual aid is used once or twice per month with Cudahy, and this does not necessitate the call-in of off-duty officers. He testified that mutual aid was used also in the 1984 air crash. In that situation there was a call-in of some off-duty officers.

On the issue of response time, it is clear that the City could continue to operate efficiently if officers lived within a boundary bigger than the City limits. Part of what is at issue is how big those limits should be. One of the City's objections in this proceeding is that the boundary sought by the Association is too large, with the result that distance and response time are too great. The arbitrator notes that the Association's proposed boundary would permit distances which are greater than those in effect in the four communities which have within-city boundaries, and greater also than at least two of the communities whose residency restrictions are broader than their City limits.

In the arbitrator's opinion, the response time issue is a real one, particularly given the small size of the City's police force and the limited number of officers available to be called in to work, the mutual aid pact notwithstanding. One cannot predict where, within the Association's proposed boundaries, officers would live. It is not unreasonable for the City to consider the maximum distances and how long it would take for officers to travel such distances at busy times of the day.

The arbitrator recognizes that perhaps as many as ten of the cited jurisdictions permit officers to live as far or further from their departments as would be the case under the Association's proposal. In that context the Association's proposal is a reasonable one. The arbitrator does not know what considerations have gone into the establishment of the residency boundaries in other departments or what problems, if any, exist in them with respect to meeting staffing needs in acceptable response times. In the present case, however, the arbitrator must respect the Chief's concerns about how the potential response time might affect the department's operations. Certainly there is subjectivity involved in such judgments, but

the arbitrator cannot dismiss as unimportant or arbitrary the Chief's concerns that more than twenty-five minutes of driving time might be involved in the response time of an officer who was called in to duty.

Given the choice between the existing boundaries and those offered by the Association, the response time argument favors the City's position more than the Association's, in the arbitrator's opinion.

There was testimony concerning the granting of extensions for delaying compliance with the residency requirement. Ratkowski testified on cross-examination that officers can request extensions, by making such requests to the department, which must then be approved by the City Council. Kaebisch testified that he applied for and received a six-month extension before he moved into the City. Approval took about two weeks from the initiation of his request, he testified, and there was no hassle. As noted above, Varga has requested and received three three-month extensions.

There is no evidence to suggest that the City has been arbitrary or inflexible with respect to granting extensions with respect to compliance with the residency requirement. Still, the arbitrator is sympathetic to officers who are faced with the uncertainty of whether their extension requests will be approved, and the difficulties that such extension requests cause in enabling one to make long-range plans. Given the smallness of the existing boundaries, the arbitrator is more supportive of the Association's position than the City's with respect to the extension question. Moreover, broadening boundaries might minimize the necessity of requesting extensions.

The last aspect of the question to be considered is the Association's argument that it provided a quid pro quo to the City for obtaining changed residency requirements, namely, a lower-than-otherwise-justified wage settlement, plus reductions in LTD costs and several concessions in health insurance language. The adequacy of a quid pro quo is one of the "other factors" which arbitrators traditionally weight under factor (h). In the arbitrator's opinion, this argument is only important if the arbitrator concludes that there is sufficient merit to the Association's position on the residency requirement itself to warrant a change through arbitration at this time. In that event, the arbitrator would have to determine whether the Association had met the burden of changing a long-established residency requirement, and one aspect of that question would be an evaluation of the quid pro quo offered by the Association as incentive to the City to agree to the proposed change.

The arbitrator is not persuaded by the Association's arguments that he should impose the Association's proposed boundaries through arbitration. There are several reasons for

this. First, and as a general statement, the arbitrator believes that where possible residency requirements should be changed through bargaining, not imposed by an arbitrator. This is because he believes that an employer's residency requirements should be uniform for all of its employees. While it would improve the morale of the police officers if the boundaries were broadened, such a decision would create serious morale and political problems among other groups of city employees who would continue to be subject to the tighter requirements. An arbitrator should avoid causing such problems where possible, unless there are compelling reasons to order such a change. On the other hand, if a judgment is made by the parties that the requirements for one group should be different, that is their decision, but it is not one ordered by an arbitrator.

The arbitrator has referred above to the uniformity of the policy. For all practical purposes in this proceeding, the policy is uniform among all groups of employees, except, of course, for the limited stated exceptions in the ordinance. The Association points to the fact that it does not cover teachers, but teachers are employed by the School District, not the City.

Second, turning to the specific final offer of the Association, the arbitrator is persuaded by City arguments that given the small size of the police force, the boundaries proposed by the Association are too broad in terms of potential response time for supplementary and/or emergency staffing. It is very clear, as already mentioned, that the present boundaries could be enlarged substantially, but the Association has not persuaded the arbitrator that the boundaries that it wants are more reasonable than the existing conditions, when all aspects of the problem are considered.

Third, the arbitrator is sympathetic to the City's argument that if the existing boundaries are maintained in this proceeding and then subsequent bargaining results in wider boundaries, there will be fewer problems caused than if the Association's proposed boundaries are put into effect now and then there is a need to narrow them because problems result.

Fourth, as previously mentioned, this is apparently the first round of bargaining since 1977 in which the residency issue has been raised. This is not a case where there has been an impasse for years and the City has refused to budge or to consider changing its requirements. In the arbitrator's opinion, given the nature of the residency issue, its complexities and ramifications, the parties should continue to strive to reach voluntary agreement on a solution. It is premature to impose such a change through arbitration.

The arguments made by the Association concerning limited housing and home building opportunities, personal inconvenience, potential hardships and uncertainty, all favor the Association's

position and argue for a broadening of the present restrictions. However, in the arbitrator's opinion, they are outweighed by the City's arguments relating to potential problems with response time. Given this conclusion in favor of the City's position, there is no further need to consider the Association's arguments about its offered quid pro quo.

Conclusion:

As mentioned above, the arbitrator is required by statute to choose the offer of one party in its entirety. The decision is particularly difficult in this case where both parties are using the arbitration process to try to change the status quo in significant ways rather than resolve the issues through bargaining. On balance, the arbitrator had decided that it is preferable to assure controlled health costs and adequate response time by supporting the City's offer, than it is to assure greater housing opportunities and improved morale for the officers by supporting the Association's final offer. It is unfortunate that the consequence of such a decision is that the majority of the bargaining unit either must drop its traditional health insurance coverage and switch to HMOs, or pay a substantial amount to maintain it.

Based upon the above facts and discussion, the arbitrator hereby makes the following

AWARD

The City's final offer is selected.

Dated at Madison, Wisconsin, this 16th day of May, 1991.

Edward B. Krinsky
Arbitrator