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BEFORE THE ARBITRATOR

WISCONSIN EMPLOYMENT
RELATIONS COMMISSION

In the Matter of the Petition of:

Case 248⁷ No. 50953 MIA-1901

GREEN BAY POLICE BARGAINING UNIT

Decision No. 28354-C

For Final and Binding Arbitration
Involving Law Enforcement Personnel in
the Employ of

Heard: 11/01/95
Record Closed: 1/24/96
Award Issued: 3/8/96

CITY OF GREEN BAY (POLICE
DEPARTMENT)

Sherwood Malamud
Arbitrator

APPEARANCES:

Thomas J. Parins & T. J. Parins, Jr., Attorneys at Law, 125 S. Jefferson Street, Green Bay, Wisconsin 54301, appearing on behalf of the Green Bay Police Bargaining Unit.

Judith Schmidt-Lehman, Assistant City Attorney, City Hall, Law Department, Room 300, Green Bay, Wisconsin 54301, appearing on behalf of the Municipal Employer.

ARBITRATION AWARD

Jurisdiction of Arbitrator

On March 28, 1995, the Wisconsin Employment Relations Commission appointed Sherwood Malamud, who the parties had selected to serve as the Arbitrator, to determine the dispute over residency pursuant to Sec. 111.77(4)(b) of the Municipal Employment Relations Act. Hearing in the matter was held on November 1, 1995, in the Green Bay City Hall. Post-hearing briefs and reply briefs were exchanged through the Arbitrator by January 24, 1996. At that time the record in the matter was closed. 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.

BACKGROUND AND SUMMARY OF ISSUE IN DISPUTE

The parties signed and implemented the collective bargaining agreement for calendar years 1994 and 1995. Residency is the only issue remaining. All other issues were resolved in the parties' negotiations. The Arbitrator will determine whether the 1994-1995 Agreement will include the Green Bay Police Bargaining Unit's (Unit) contractual proposal on residency.

Since 1908, the City of Green Bay (the City or the Employer) has maintained a work rule on residency. Rule #9 in the 1908 General Rules for the Police Department provides as follows:

All persons connected with the Police Department are required to reside in the City of Green Bay, and no member shall leave the City without permission of the Chief of Police.

The current ordinance on residency that appears at Section 1.80 of the ordinances of the City of Green Bay, reads as follows:

1.80 CITY EMPLOYEE RESIDENCY REQUIREMENT.

(1) **DECLARATION OF POLICY.** All employees of the City are required to establish and maintain their actual bona fide residence within the boundaries of the City within 12 months of the date of their employment. This requirement has been established to enhance an employee's community pride and efficiency of operation, to provide jobs for the City's own residents, to provide for effective recall of employees during emergency situations, and to promote understanding of local customs and habits through the development of a community identity resulting from City residency.

(2) **RESIDENCY DEFINED.** The term "residence", as used in this section, shall be construed to mean the actual living quarters which must be maintained within the City by an employee. Neither voting in the City nor payment of taxes of any kind by employee, by itself, shall be deemed adequate to satisfy the requirements of this section, nor shall the provisions of this section be satisfied by

the maintaining of a rented room or rooms by an employee solely for the purpose of establishing residency when it appears that his/her residence is outside the City. Ownership of real property within the City when not coupled with the maintenance of actual living quarters in the City, as herein required, shall be deemed insufficient to meet the requirements of this section.

(3) NOTIFICATION. All City employees shall report the address of their current residence and telephone number to their department head. Any subsequent changes must be reported to the department head within 10 days of the date the change occurred. The department head will notify the Personnel Department which will maintain a current roster of employees and their addresses and telephone numbers. An employee shall not change his/her residency to a location outside the boundaries of the City until approval has been given by the Personnel Committee and the Common Council. Failure to properly notify the City, and receive approval, prior to changing residency to a location outside the boundaries of the City will automatically place the employee in violation of this ordinance.

(4) REVIEW OF VIOLATIONS. The Personnel Committee is hereby authorized to investigate complaints made to the City with respect to the residency of employees of the City and may initiate any such investigation on its own motion. Department heads are expected to enforce the residency requirement in their own departments. Upon notification or discovery of an employee who is not a City resident, a department head will investigate the circumstances and take appropriate action which may include discharge. Upon appeal, the Personnel Committee shall make a finding with respect to whether or not such an employee is or is not actually a resident of the City in accordance with the requirements set forth herein. No consideration shall be given by the Personnel Committee to the fact that such employee intends to maintain residency in the City if actually the employee does not maintain such a residence as herein provided for. Whenever the facts disclose the existence of dual

residencies, the decision of the Personnel Committee shall be final.

(5) VIOLATIONS. After a public hearing to determine the status of an employee's current residency, upon the finding of a violation of this section, the Personnel committee shall make a recommendation of suspension or termination of the employee to the Council, whose decision shall be final.

(6) EXTENSIONS. No extensions will be granted to newly hired employees to establish their actual bona fide residence within the boundaries of the City beyond the time limit as indicated in sub. (1) above.

(7) EXCEPTIONS. If unusual circumstances or cases of hardship arise, considering the standards hereafter enumerated, which appear to the Personnel Committee to merit exemption from the City residency requirement, the Committee shall make a finding based upon the standards enumerated below and recommend appropriate action to the Council. Such recommendation shall include the name and title of the employee as well as the reason or reasons for the exception. The requesting employee shall not change his/her place of residency to a location outside of the boundaries of the City until approval has been given by the Council.

(8) STANDARDS. The following standards may be considered by the Personnel Committee in deciding to grant or not to grant an exception to the City residency requirement.

(a) Location of the Employee's Normal Worksite. Employees exempted from the City residency requirement on the basis of this standard are expected to maintain their bona fide residence closer to their normal worksite than to the boundaries of the City. Subsequent changes of residence shall conform to the intent of this section.

(b) Unusual Hardship. Employees exempted from the City residency requirement on the basis of this factor may be granted such exemption for a

period not to exceed six months. Exemptions granted on the basis of this standard shall terminate earlier than six months if the basis for the unusual hardship no longer exists. Failure to re-establish residency within the time period approved by the Personnel Committee and the Common Council shall automatically place the employee in violation of this ordinance.

(c) Interjurisdictional Provision of Services. Exemptions on the basis of this standard shall terminate at the time the service is no longer provided on an interjurisdictional basis.

(d) Pre-Existing Agreements. In some instances, exemptions from the residency requirement have been made before adoption of these residency standards because of unique circumstances. Such exemptions not covered by the three standards enumerated above shall remain in effect with the understanding that if those employees move, they shall move into the City.

All cases of exemption from the City residency requirement shall be reviewed by the Personnel Committee annually. Individual cases may be reviewed more frequently at the discretion of the Committee. In addition, the Personnel Director shall periodically review the status of the residency of the City employees to assist in the determination of violations of this section.

The expired collective bargaining agreement and its predecessors do not contain a provision on residency. The ordinance sets out the police department rule on residency. The City strictly enforces the residency requirement.

The first change that the Union proposes is the inclusion of a residency provision in the Agreement. The Union proposes the inclusion of the following language in the 1994-95 collective bargaining Agreement:

2.03 As a condition of employment, the City may impose geographical residency requirements on officers provided that such requirements relate solely to insuring that off duty officers will be able to

report for duty to the police station from the primary residence of the officer in a reasonable time frame based upon the demonstrable needs of the department; provided that the requirement may not in any event require that an officer reside closer to the police station than the distance from the station to the outermost point of the City limits. What constitutes a "reasonable time frame" shall be determined by agreement between the parties by way of collective bargaining. [transition rule: Until the parties bargain the term "reasonable time frame" the City may unilaterally impose within the above restrictions a geographic residency rule pending further negotiations and agreement, and all present restrictions are terminated.]

In their negotiations for a successor agreement for calendar years 1994 and 1995, the Employer and the Union recognized that the issue of residency would not be resolved on a voluntary basis. They entered into the following stipulation on the subject of residency:

1. One of the major issues in the pending negotiations of the parties for a 1994-95 labor contract was the residency requirement of the City for its police officer. The Bargaining Unit proposed ending this requirement.

2. At the outset of negotiations, this issue was at impasse with no prospect of resolution, and continues at impasse.

3. Again at the outset of negotiations the parties agreed that this issue should not hold up all other issues in collective bargaining, but rather it should be set aside pending the negotiation of the other issues, and in the event all other issues were resolved, a labor contract would be implemented for these other issues, and the issue of residency, if still at impasse, would proceed to interest arbitration, and that the terms and conditions of the settlement of the other issues would not impact on the arbitration; the arbitrator would decide the residency issue solely on its merits.

4. The parties have reached an agreement as to all issues save residency, and this agreement has been entered into in writing by the parties. There is no reasonable prospect of resolution of the issue except for a ruling and award of an arbitrator in these proceedings.

5. The parties request that an impasse be declared in these arbitration proceedings; that the Investigator advise the Commission that impasse exists as to the residency issue; and that such issue proceed to arbitration under Sec. 111.77 of the Wisconsin Statutes.

At the arbitration hearing, the parties did not agree on the meaning and scope of the stipulation quoted above. The Union argues that the stipulation provides for arbitral determination of the residency issue solely on its merits without regard to the other proposals agreed to in the course of the parties' negotiations for the 1994-95 Agreement. The City argues that the stipulation provides that the residency issue would be determined in arbitration pursuant to the statutory factors set forth at Sec. 111.77(4)(b), Wis. Stats.

The Employer placed in evidence exhibits and testimony concerning the pattern of settlement and the absence of any quid pro quo for the adoption of the Union proposal on residency. The Union objected to the submission of such evidence. It argued that the evidence was irrelevant in light of the stipulation of the parties to have the residency dispute determined "on its merits." The Arbitrator informed the parties at the hearing that he would address the issue over the interpretation and effect of the above stipulation in this Award.

POSITIONS OF THE PARTIES

The Green Bay Police Bargaining Unit Argument

The Police Bargaining Unit argues that paragraph 3 of the stipulation clearly delineates the authority of the Arbitrator in this matter. The residency issue shall be determined "solely on its merits."

The Union argues that the ordinance serves as a work rule. The Union does not challenge the authority of the City to adopt a work rule on residency. However, the Union argues that the ordinance is unreasonable in several respects. It unduly restricts officers in the selection of an appropriate residence. Some officers have hobbies, such as raising horses, which is difficult to pursue within the corporate limits of the City of Green Bay.

Some Unit officers are married to a public employee of another municipality that may have a residency requirement. This limits the area in which the couple may reside.

There is no intrinsic need for a police officer to reside in the corporate limits of the City of Green Bay. Many officers live on the west side of the City on tribal lands. Many officers maintain a second residence outside the City limits. They or their families may spend significant periods of time at the second residence. The time spent in a second residence by a police officer conforms to the restrictions of the ordinance.

The Police Bargaining Unit final offer expands the residency requirement set forth in the ordinance to include areas outside the corporate limits of the City of Green Bay. The Unit argues that the only basis for limiting the right of police officer free choice in the selection of a place to live is the operational need for swift response time. In its final offer, the Unit measures the distance from the Green Bay police station to the outer limits of the City; it employs this distance to describe a circle with the Green Bay police station at the circle's center. The Unit proposes that the City not require any officer to reside inside the circle. The Police Bargaining Unit proposal and geographic limitation residency is directly related to provide the City with reasonable response time for officers to report as demonstrably necessary.

The stipulation provides that residency will be determined on its own merits. The Union argues that the Arbitrator may look to certain statutory factors. The stipulation limits the scope of arbitral inquiry into the reasonableness of the Union proposal as contrasted to the residency requirement in place. The Union maintains several factors are irrelevant: factor 6.f., "overall compensation," "cost-of-living" and 6.h., "such other

factors" . . . to the extent that the criterion conflicts with the stipulation of the parties. The Police Bargaining Unit emphasizes that a status quo-quid pro quo analysis is inappropriate here in light of the stipulation of the parties.

The Police Bargaining Unit notes that, in the recent past, arbitrators have rejected union attempts to eliminate residency requirements on the basis of a status quo-quid pro quo analysis. Arbitrator McAlpin in Milwaukee Board of School Directors & The Milwaukee Teachers Education Association (27833-A) notes that:

In interest arbitration the proponent of change in the status quo must either show a compelling educational need or provide a *quid pro quo* for the change. It is generally accepted that interest arbitration should not be used to change basic working conditions in the absence of compelling reasons . . . Other arbitrators have stated that substantial change should be made not through arbitration, but the result of bargaining between the parties. Arbitrators need not agree or approve what has happened in the past but should avoid giving either party what they could not achieve at the bargaining table. Interest arbitration is not the forum to accomplish difficult and substantive changes to the status quo.

The Police Bargaining Unit acknowledges that Arbitrator McAlpin's analysis is appropriate in the situation in which the parties have not limited the scope of arbitral inquiry. However, in this case there was an exchange, a quid pro quo between the Green Bay Police Bargaining Unit and the City of Green Bay when the parties agreed to submit the issue of residency to arbitral determination.

The Union notes that in the City of Madison vs. Madison Professional Police Officers Association, 144 Wis. 2d 576 (1988), the Wisconsin Supreme Court overruled a prior decision by that court and established that an ordinance does not govern or enjoy any higher legal status than a provision of a collective bargaining agreement. Where the parties to the collective bargaining agreement and the subject of the ordinance are identical, it is the Collective Bargaining Agreement that prevails.

The thrust of the Union argument is that the ordinance is not reasonable. The Union argues that the residency rule was unilaterally imposed by the Employer. The Police Bargaining Unit argues that the residency ordinance is not reasonably related to the needs, the direction or operation of the City of Green Bay Police Department. **The City put in no evidence to establish the rationale for the City's residency requirement.**

Captain Boncher testified that the Unit's proposal may be too restrictive. He supervised the Emergency Response Unit (the SWAT team) that required the most immediate response. Officers in that unit were expected to respond within a half hour. An individual may reside in the Town of Allouez and be only blocks away from the police station. The outer most City boundary to the east or west side of the City may be ten miles from the police station. The Police Bargaining Unit emphasizes there is no relationship between response time, the major reason for the existence of a residency requirement, and the City ordinance that limits residency to the corporate limits of the City of Green Bay.

On the other hand, the Police Bargaining Unit emphasizes that its proposal is directly related to response time. The City may not require that an officer reside any closer than the distance from the police station to the outermost corporate City limit. In this regard, the response time needs of the City are not compromised by the Police Bargaining Unit proposal.

The Police Bargaining Unit applies the various statutory factors to its proposal. Of the 22 municipalities cited as comparables by the Employer, only 5 limit residency to the corporate limits of the particular municipality. The City of De Pere residency rule is less restrictive than the Police Bargaining Unit proposal here. The Police Bargaining Unit emphasizes that its proposal does not eliminate the residency requirement; it merely expands it. The residency requirement it proposes is directly related to the operational needs of the Department. It sets forth a residency requirement that is directly related to response time. The Police Bargaining Unit concludes that its proposal is reasonable. The City's residency ordinance is unreasonable. The Arbitrator should select the Police Bargaining Unit's proposal.

The Employer Argument

The determination of the residency dispute is based on the legal rights and responsibilities of each of the parties to this dispute. When the parties employ the term merits, they did so with regard to the legal meaning of the term. The right and wrong, the substance of the issue to be determined by the Arbitrator is the subject to be decided in this arbitration proceeding. The parties did not intend any limitation on the scope of arbitral review when they stated in the stipulation that the residency matter will be determined on its merits.

The Employer maintains that the Arbitrator should determine this residency dispute through the application of the traditional statutory factors set forth at Sec. 111.77(4)(b). The statute does not limit the arbitral inquiry to the reasonableness of the Employer's or the Police Bargaining Unit's proposals. Should the Arbitrator determine that the stipulation limits the arbitral inquiry to the reasonableness of the ordinance, the statutory factors are in and of themselves indicia for measuring the reasonableness of the parties' final offers on residency.

The right of a municipality to impose and enforce a residency requirement has been upheld by the United States Supreme Court in: Detroit Police Officers Ass'n. vs. The City of Detroit, (1972) 405 US 950; Hicks v. Miranda, (1975) 422 US 332; McCarthy v. Philadelphia Civil Service Commission, (1976) 424 US 645. The authority to maintain residency is recognized by the home rule policy established by the Wisconsin legislature at Sec. 66.01, Wis. Stats.

The City emphasizes that in the preamble to the ordinance, quoted above, the legislative body of the City identifies the rationale and public policy underlying the interest and welfare of the public for the imposition and enforcement of a residency requirement. The Police Bargaining Unit ignores loyalty, pride and the personal stake in communal affairs that serve as a rationale for residency. Rapid response is not the sole determinant or basis for the imposition of a residency requirement.

The City emphasizes that half of the comparables, 11 of 22, have a residency requirement. Residency is limited to the corporate city limits in

the cities of: Eau Claire, LaCrosse, Milwaukee, West Allis, and Wisconsin Rapids.

The Union has shown no compelling need to change the residency requirement. The Union received a better wage package than the other units. Yet, it insists on including residency in a successor agreement. The officers who are engaged in the hobby of raising horses can either do so in the City limits or they can purchase second homes as many of the police officers in this unit have. There is no quid pro quo offered by the Union for inclusion of its residency proposal. In prior negotiations, the City has measured the value of residency from its own point of view as equal to a wage freeze.

Internal comparability is often accorded great weight by arbitrators. Here, the internal comparables, the other represented units of employees of the City of Green Bay, are subject to the residency work rule-ordinance that the Union seeks to modify in this proceeding. The City argues that if the Union is successful in this proceeding, this award will affect the other 750 City employees. In their negotiations with the City, the other organized units of employees will seek to escape the effects of the residency requirement or expand residency in a manner identical to that achieved by the Police Bargaining Unit in this proceeding. The City argues that the police are not uniquely affected or harmed by the residency requirement. The City concludes that its offer to maintain the status quo should be adopted by the Arbitrator.

The Police Bargaining Unit Reply

The Union emphasizes that this case and its determination is governed by the stipulation of the parties. Consequently the statutory criteria employed to determine which final offer is to be selected for inclusion in the successor agreement is impacted by the stipulation. The Arbitrator should decide the residency issue without reference to the other economic and non-economic agreements reached by the parties in their negotiations.

The Police Bargaining Unit notes that police officers, at present, work outside the confines of the corporate City limits in the metropolitan drug

enforcement effort of several area law enforcement agencies. In addition, the Police Bargaining Unit points to the Mayor's plan to make available City police services to other area municipalities.

The Police Bargaining Unit addresses the City's argument concerning the economic impact of the expansion of the residency requirement. The Police Bargaining Unit maintains that there will not be a mass exodus from the City. There is no reason why the City must offer any relaxed residency requirement to other bargaining units. In the City of De Pere only two officers live outside the city limits of De Pere under their more relaxed residency requirement.

The Police Bargaining Unit deflects the City's argument concerning internal comparability. The fact that other units labor under the residency rule has no bearing on the question of the reasonableness of that rule. The rule is not directly tied to the operational needs of the City. It is not tied to response time which is the only legitimate concern of the City and the legal source of authority for the imposition of a residency requirement.

The Police Bargaining Unit meets the argument of the City concerning the status quo- quid pro quo analysis. An exchange of a quid pro quo occurred between the City and the Union when they agreed to exclude residency as an issue from their bargain. The City obtained labor peace and avoided the disruption resulting from the payment of a large back pay award. Police officers receive a raise in a timely fashion. Each side gained as a result of entering into the stipulation. The Union argues that the Arbitrator should decide the residency issue on its merits.

The City Reply

The City deflects the Union's reliance on Potomac Edison Co., 96 LA 1012 (Talarico, 1991). He employed "east coast standards" in an analysis of the reasonableness of a residency requirement imposed by a public utility. The appropriate standards that must be applied in this case are all the statutory criteria set forth at Sec. 111.77(6). The City questions whether the stipulation may legitimately limit the use of those standards in the determination of this matter.

The City maintains that the Police Bargaining Unit has the burden of proof to establish a change in circumstance or some necessity to change the rule. The police unit has failed to meet that burden. In the case of the marriage of a police officer to a firefighter of the City of De Pere, there is no evidence that the police officer requested or sought an exemption from the operation of the residency ordinance. The Union has failed to demonstrate any hardship or need for the change. When employees apply for a position in the City, they are informed that there is a residency requirement in place. When they accept a position with the City, they must acknowledge, in writing, that they are aware of the residency requirement that they must meet within a 12 month period from their date of hire. Many employees seek and receive extensions to meet the requirement. The City urges the Arbitrator to determine this dispute on the basis of the status quo.

DISCUSSION

Introduction - Factors Employed to Determine the Residency Issue

Many of the arguments presented by the parties focus on the question of the impact of their stipulation on this arbitration proceeding. The Employer maintains that in the stipulation the parties agreed that residency would be determined in this arbitration proceeding. The Arbitrator should apply all the statutory criteria to determine whether the status quo would continue or whether the Union's proposal would be included in a successor Agreement. The Union maintains that the residency issue shall be determined on "its own merits." In this regard, the Arbitrator should determine the reasonableness of the Union's proposal.

The Union acknowledges that the Arbitrator would apply some of the statutory criteria in determining the reasonableness of the Union's proposal. However, the Union maintains that when the parties specified that residency would be determined on its own merits, the Arbitrator should not weigh whether the union offered an appropriate quid pro quo in exchange for the expansion of the residency requirement.

The Employer suggests that the Arbitrator may not have the authority to ignore any of the statutory criteria in the selection of the final offer of the Employer or the Police Bargaining Unit. The City argues that the Arbitrator

should employ the statutory criteria to determine the reasonableness of the Union residency proposal.

Both the Union and the City acknowledge in their arguments that the statutory criteria of the cost of living 6(e), overall compensation 6(f), and changes in any of the foregoing circumstances 6(g), do not serve to distinguish between the final offers of the parties. The Arbitrator agrees.

The Municipal Employment Relations Act does allocate burdens in prohibited practice proceedings through reference at Sec. 111.70 (4) (a) to Sec. 111.07 of the Wisconsin Employment Peace Act. Sec. 111.77, the statutory provision that governs the determination of interest disputes for law enforcement and firefighter personnel of communities of a certain population, does not allocate burdens of proof between the Employer and Union or Petitioner and Respondent. Certainly, a party making a proposal must establish either a need or justification for the adoption of the proposal made. However, the statute provides the following method for the resolution of an interest dispute:

In reaching a decision the Arbitrator shall give weight to the following factors.

The Arbitrator must consider the statutory factors set forth in 111.77(6) in reaching his decision. The statute leaves to the Arbitrator the discretion to accord whatever weight he deems appropriate to each of the statutory factors. With this scope of review in mind, the Arbitrator now turns to determine the issue of residency on the basis of the statutory criteria set forth at Sec. 111.77(6) Wis Stats.

(a) The Lawful Authority of the Employer

The City notes in its brief that the U.S. Supreme Court recognizes the lawful authority of a municipality to maintain a residency requirement for police officers and other employees of that municipality, Detroit Police Officers Association vs. City of Detroit, 405 U.S. 950, 92 S. Ct. 117, 31 L Ed. 2d 277 (1972); Hicks vs. Miranda, 422 U.S. 332, 95 S. Ct. 2281, 45 L Ed. 2d 223 (1975); McCarthy vs. Philadelphia Civil Service Commission, 424 U.S. 645, 96 S. Ct. 1154, 47 L. Ed. 2d 366 (1976). Furthermore, under the

home rule policy set forth in Sec. 66.01, Wis. Stats., the City may establish and enforce a residency rule for its employees.

The Union acknowledges the right of the Employer to establish a residency policy. The residency work rule is set forth in Sec. 1.80 of the ordinances of the City of Green Bay. The Union correctly notes that the Wisconsin Supreme Court in Madison vs. Madison Professional Police Officers Association, supra, recognizes that any provision adopted and included in the collective bargaining agreement through these proceedings would take precedence over the City's ordinance.

This criterion does not serve to favor the selection of the final offer of the City or the Police Bargaining Unit. However, it establishes the legitimacy of a residency requirement. Should the Arbitrator select the final offer of the Police Bargaining Unit and thereby include in the 1994-95 Collective Bargaining Agreement a residency provision, this contractual term would have primacy over the application of the ordinance to the Police Bargaining Unit.

(b) Stipulations of the Parties

There is a stipulation in place. It is quoted above. The stipulation establishes that the residency matter should be decided solely on its own merits. The language of the stipulation is clear and unambiguous. It directs the Arbitrator to address the residency issue independent of agreements reached by the parties on wages and other benefits. The Arbitrator agrees with the Police Bargaining Unit's interpretation of this stipulation. In the analysis that follows, the Arbitrator considers "Such other factors..." status quo-quo pro quo analytical framework, but gives that consideration little weight in light of the stipulation of the parties.

The application of this criterion does not favor the selection of the Police Bargaining Unit's or the City's final offer. However, it together with the factor, "the lawful authority of the Employer," discussed above, sets out the analytical framework and the relative weight to be accorded the statutory factors that do serve as a basis for the selection of either offer.

(c) The Interests and Welfare of the Public

The City argues that the declaration of policy set forth in the residency ordinance should be given great weight by the Arbitrator. The City maintains that it sets out the rationale for the imposition of a residency requirement. The Police Bargaining Unit argues that response time is the only operational need that justifies the imposition of a limitation on residency.

Arbitrators recognize the sociological, political and economic impact that public employees have on the communities in which they work and live. Arbitrators McAlpin and Johnson in their awards in the Milwaukee Public Schools and in the City of LaCrosse (Police Department), respectively, set out the evidence presented in their proceedings pertinent to this criterion.

"The interest and welfare of the public" factor is identified by Arbitrator McAlpin in Milwaukee Board of School Directors, Dec. No. 27833-A (1994) as the basis for his award in which he rejects the union proposal to eliminate the residency requirement for the public school teachers employed in the Milwaukee Public Schools. He states at pp. 54-55 of his award that:

While the economic impact on the community would be limited and certainly less than predicted by the Board, the Arbitrator finds that it is the sociological impact on the community that would be significant if the requirement were removed. It is likely that a substantial portion of those teachers who are now subject to the requirement would move from the city probably during the first five years after the requirement was eliminated from the contract. These teachers are among the best and brightest of our society. They make significant additions to their communities. They tend to be involved as leaders within their communities. They are a group which is organized for positive change. Milwaukee would be a poorer place without these teachers as residents. While the economic impact would be in the moderate range, the cultural impact would be significant. So significant as to override the individual hardship on teachers. Milwaukee is the

key community in Wisconsin. If Milwaukee does not work then the consequences for the area and state will be dire. Therefore an award will issue accordingly.

In the City of LaCrosse (Police Department), Dec. No. 28069-A (1995), Arbitrator Johnson summarized the evidence presented in his case on this statutory factor. He states at p. 12 of his award that:

The Association also presented convincing evidence and argument on the subject of officer participation in community activities. In response to the City's position that residency promotes greater interest and participation in community activities by police officers, which redounds to the benefit of LaCrosse, the Association presented witnesses and argument showing that much of the activity and participation that the City considers desirable takes place even though officers live outside the City and that many of the activities that are promoted and advantaged by police officer participation are functions that are county-wide or at least not restricted by city limits.

There is little evidence in this record concerning the sociological, economic or political impact that the Green Bay residency requirement has on the fiscal, sociological, and political life of the City. Consequently, the Arbitrator does not weigh this consideration in his decision to select either final offer.

The former personnel director of the City of Green Bay, who is now its Mayor, Paul Jadin, testified to the domino effect that a determination in favor of the Police Bargaining Unit would have on other units and employees of the City. Other City employees would insist that they be treated in the same manner as the police unit. The Mayor expressed concern about how the loss of residents with stable employment and incomes, such as police officers and other City employees, would affect the City. However, neither the City nor the Unit presented hard evidence or statistical studies on Green Bay or other municipalities on this point.

Since the burden falls to the Arbitrator to apply the statutory criteria to the matter at issue, the Arbitrator addresses some themes often raised in

the context of a residency dispute. Residency of police officers relates to response time; it may also relate to Police presence in the community. When police officers are off duty, their presence may provide assurance to the citizens of Green Bay. Oftentimes police departments have rules about police officers "on duty" 24 hours per day. However, such police presence takes its toll on police officers. It is difficult to live in the public eye, "on duty", 24 hours per day. There may be an unspoken barrier between law enforcement and non-law enforcement friends. A police officer residing in Green Bay, after all, may be called upon to exercise arrest powers vis a vis a neighbor. Residence outside the City provides the officer an opportunity to go off duty to a location outside the jurisdiction in which he may exercise his arrest powers. The rules of 1908 give expression to the Department's concern with police presence in the community, even when officers are off duty in its provision that:

. . . no member shall leave the City without permission of the Chief of Police.

No expert testimony or studies were presented on the issue of the impact of police officers residing in a particular neighborhood or locale, nor was evidence presented on the strain that results from living in the community that is policed.

The Unit presented evidence of a police officer of the City of Green Bay who was married to a firefighter in the City of De Pere. The residency requirements of both municipalities severely limited the area in which this couple could live and comply with both residency requirements. The City responds to that example by noting that the police officer, the employee of the City of Green Bay, did not request an exemption from the application of the residency requirement. If a municipality in the Green Bay metropolitan area other than Green Bay adopted a residency requirement identical to Green Bay's, a public employee would be required to reside in that municipality. It would work a severe hardship on such couple. However, the City's point is well taken in that the Personnel Committee has not been confronted with this issue. It has not had the opportunity to administer the residency ordinance under this hardship example.

If an officer were forced to resign due to marriage, the administration of the ordinance in that fashion would have an impact on this interest arbitration proceeding. That is not to suggest that the outcome would be other than it is. The ordinance provides standards for the application and provision of exemptions for interjurisdictional services and unusual hardship. The record does suggest that as of the date of the hearing, the Personnel Committee has not provided for any permanent exemption from the operation of the residency ordinance, despite the existence of paragraph (7) and (8) of the residency ordinance.

On the basis of the evidentiary record presented in this proceeding, this statutory criterion does not serve to distinguish between the offers of the parties for inclusion in the 1994-1995 Agreement.

(d) Comparability

There is no dispute over the comparables suggested by City Exhibit Nos. 11 and 12. The City lists Fox River Valley communities, as well as, the larger cities in Wisconsin. The comparables listed in City Exhibits 11 & 12 range from the City of Milwaukee with a 1992 population of 628,088 to Menasha with a population of 14,857. The 21 cities listed as comparable to Green Bay in order of population size from the largest to the smallest are: Milwaukee, Madison, Racine, Kenosha, Appleton, West Allis, Waukesha, Eau Claire, Oshkosh, Janesville, LaCrosse, Sheboygan, Wauwatosa, Fond du Lac, Wausau, Beloit, Manitowoc, Neenah, Stevens Point, Wisconsin Rapids and Menasha. Of the 21 cities identified as comparable to Green Bay, 11 have no residency requirement. Five maintain the same residency requirement as Green Bay. Each of the following cities require police officers to reside within its corporate city limits: Eau Claire, LaCrosse, Milwaukee, West Allis, and Wisconsin Rapids. The remaining five require that an officer reside within the county in which the city is located, such as Kenosha and Portage (Stevens Point). Menasha requires its officers to live within a 20-mile radius of the city limits. Waukesha requires that its officers reside within 20 minutes of the Waukesha police station. In Madison some employees are subject to residency limited to the corporate limits of the City.

The above external comparability criterion provides strong support for the Police Bargaining Unit proposal to expand residency. Fifteen of the

twenty-one comparables either have no residency requirement or the requirement permits officers to live outside the corporate city limits of the particular municipality.

From the evidence presented at the hearing, it appears that the City of De Pere, which is a part of the Green Bay metropolitan area, maintains a residency requirement that extends beyond its corporate city limits.

Based on the above evidence, the Arbitrator concludes that this factor provides strong support for the selection of the Police Bargaining Unit proposal for inclusion in the successor 1994-95 Agreement.

Such Other Factors - status quo- quid pro quo

The decision to submit the residency issue to arbitration is beneficial to both the City and the Police Bargaining Unit. Mayor Jadin testified that a timely resolution of the Agreement avoided the administrative headache entailed by the payment of backpay. Similarly, Attorney Parins, speaking as chief negotiator for the Police Bargaining Unit, testified to the benefit gained by the Police Bargaining Unit to resolve the residency issue independent of all other matters raised in bargaining with the City.

Consequently, the Police Bargaining Unit offers no quid pro quo for the inclusion of the expanded residency requirement it proposes for inclusion in the Collective Bargaining Agreement. The maintenance of the status quo favors the adoption of the City proposal. However, in light of the stipulation of the parties, this criterion is accorded little weight by the Arbitrator.

Such Other Factors - Internal Comparability

All employees, those represented and not represented, must comply with the residency ordinance of the City of Green Bay. Mayor Jadin testified that should the Arbitrator determine this issue in favor of the Police Bargaining Unit, other units would request similar treatment. The Arbitrator finds that the arguments favoring a relaxed residency requirement for police officers in some respects are the same as for other City employees. However, in significant respects, the argument in the law

enforcement setting, is unique. Other City employees do not possess arrest powers and the insularity among police officers that often accompanies that power. Not all City employees are subject to emergency call-outs in which response time is a significant factor, as in law enforcement.

Nonetheless, internal comparability provides strong support for the retention of the status quo. Presently, no collective bargaining unit has a contractual clause pertaining to residency. Rather, the residency requirement is established through Section 1.80 of the City ordinances. Accordingly, the Arbitrator concludes that this criterion provides strong support for adoption of the City offer.

Such Other Factors - Comparative Reasonableness The Residency Ordinance Versus the Proposed Residency Contractual Provision

The Police Bargaining Unit argues that the ordinance is unreasonable. The City ordinance does not relate to response time. The Employer responds to the Unit's reliance on the decision of Arbitrator Talarico in Potomac Edison Co., supra. Potomac Edison concerns a public utility. In that case, the arbitrator denied a grievance protesting the employer's change, without bargaining, from a geographic residency requirement to one tied to response time for a specified group of employees. In the public sector, arbitrators recognize factors other than response time as a legitimate basis for retention of a residency requirement. The Arbitrator finds that Potomac Edison provides little instruction for the "interest" question whether residency should be expanded as proposed by the Police Bargaining Unit.

The geographic aspect of the City ordinance and the Union proposal are not so different as to make one unreasonable and the other reasonable. The City residency ordinance establishes the maximum distance that an employee may live from the police station. Under the Unit's offer, that distance serves as the minimum distance from the police station that the City may require an employee to reside. The Union proposal then contains a response time element. The City's ordinance contains no such requirement. The absence of a response time dimension does not make the City ordinance unreasonable. Although the record is clear that one may reside outside the City corporate limits and respond much more quickly than an

officer that resides on the far west side or northeast corner of Green Bay, there is no evidence in this record that officers must respond any quicker than the response time permitted under the City's residency ordinance.

The City's plan to contract with surrounding communities to provide those communities with police service presents a strong argument for the expansion of the residency requirement, to at least those communities with whom the City contracts. Certainly, the political, sociological, fiscal and response time arguments that underlie and justify a residency requirement for police officers in the City of Green Bay would extend to those communities with which the City contracts to provide police service. Mayor Jadin testified that any such contractual arrangements would not occur in the immediate future, certainly not during the term of the 1994-95 Agreement. However, this factor serves to provide strong support for the Union proposal to expand the residency requirement.

The Arbitrator now turns to compare the City of Green Bay ordinance with the Union proposal to include a residency provision in the 1994-1995 Agreement. The City ordinance specifically sets out the geographic boundaries in which a police officer must reside. It is the corporate city limits of the City of Green Bay. The Police Bargaining Unit proposal describes a circle the radius of which is equal to the distance from the police station to the outermost city limit. This circle not only includes the outermost city limit from the point furthest from the police station in the City of Green Bay but it will also include communities such as Allouez, De Pere, and the Village of Howard that fall within the geographic circle described by the Police Bargaining Unit proposal. If geographic location were the sole basis for the Police Bargaining Unit proposal and it extended the boundaries of the area in which police officers must reside, it could be ascertained with certainty. However, the Police Bargaining Unit proposal is tied to the report time requirements of the Department. This report time requirement is not defined in the Unit's proposal. The determination of "what is a reasonable timeframe" shall be established through collective bargaining. Under the Unit's proposal, the City may establish the reasonable report time within the geographic residency rule described by the radius of the circle from the police station to the outermost City limits of the City of Green Bay.

The Police Bargaining Unit proposal is based on response time. The City ordinance accepts officer response time from the outermost city limit to the police station. Consequently, the reasoning underlying the Police Bargaining Unit proposal assumes that any distance from the outermost city limit to the police station meets the operational need of the City for quick response time. The Unit proposal leaves to future negotiations the articulation of the specifics of appropriate response times. Presumably, anyone establishing residency within the circle described by the radius from the police station to the outer limits of the city's boundary would be in compliance with any response time requirement established through negotiations.

The Arbitrator finds that the reasoning underlying the Union proposal with regard to response time is sound. It is sufficiently specific so that police officers may know whether the purchase of a specific home in a specific location meets the contractually proposed residency requirement. Certainly, the ordinance meets the specificity element of reasonableness. An officer can readily identify whether a specific piece of property lies within or outside the corporate city limits of the City of Green Bay.

The Unit proposal sets forth that ". . . all present restrictions are terminated."

No reference is made to any section of the ordinance in the Unit's proposal. The Arbitrator understands that the effect of this proposal is to eliminate the restrictions that follow from the definition of residency in paragraph (2) of the ordinance, the notification requirement in paragraph (3), the method of enforcement set out in the ordinance at (4) and (5), as well as the remaining subsections of the ordinance, (6)-(9). The parties do not address the specific language of the proposal. Much of the argument presented in this case focuses on the impact of the stipulation on the arbitral analysis. The Arbitrator interprets the Unit proposal as set out in the language of its proposal.

The Unit proposal does not define primary residence. Many officers maintain a second residence outside the corporate city limits of Green Bay. The ordinance does not permit a police officer to rent a room or rooms for purposes of establishing residency. The absence of a definition leaves open

the question what constitutes compliance with the Unit's offer. The ordinance notifies police officers of the consequence of the failure to meet the residency requirement. The Union proposal contains no provision concerning discipline.

As a result of the ambiguity in the Unit proposal, the Arbitrator finds that it would be difficult to enforce. The definition of terms and the identification of situations which frequently arise, as the ordinance does in Section 2 of Section 1.80 of the ordinance, permits reasonable enforcement of the rule. Ambiguity, on the other hand, makes enforcement difficult. The Arbitrator finds the City ordinance preferable to the ambiguous Unit proposal to expand residency. It is not the expansion of the geographic boundaries of residency that the Arbitrator finds objectionable. The lack of clarity in defining terms such as primary residence and the failure to anticipate whether the renting of rooms conforms to the residency requirement, as well as, the failure to set out the level of discipline that may be meted out for failure to meet the residency requirement lead the Arbitrator to conclude that the residency ordinance- work rule is preferable to the contractual provision proposed by the Unit in its final offer.

SELECTION OF THE FINAL OFFER

The Police Bargaining Unit proposes the retention of a residency requirement. Its proposal expands the scope of residency. By drawing a circle and prohibiting the City from requiring employees to live any closer than the radius described by a line from the Green Bay police station to the outermost city limits incorporates many communities that are part of the metropolitan Green Bay area and are located geographically closer to the Green Bay police station. The Unit proposal is directly related to response time. Its proposal conforms to the response time that the City presently requires of its police officers. An officer who resides at the outermost city limits from the police station but within the corporate city limits of Green Bay would be in compliance with the ordinance, Section 1.80 of the ordinances of the City of Green Bay.

The comparability criterion- external comparability, strongly supports the inclusion of the Unit proposal in the successor Agreement. Internal comparability provides strong support for the inclusion of the City proposal.

The Arbitrator provides the greatest weight to the comparison between the ordinance and the Unit proposal in accordance with the stipulation of the parties. The Unit proposal fails to define the term primary residence, and it fails to set forth the discipline that may result from the failure to comply with the residency requirement that it proposes to include in the Collective Bargaining Agreement. In this Arbitrator's opinion, if the Unit's final offer were adopted, it would only result in many grievances over the scope of the Unit proposal. If a police officer purchases a home in reliance on the Unit proposal and the issue is litigated, it may result in the discharge of a police officer on the basis of her/his reliance on an ambiguous contractual provision. Accordingly, the ordinance is preferred over the Unit's proposal.

Based upon the criteria "Such other factors" - comparative reasonableness of the residency work rule and internal comparability, the Arbitrator selects the final offer of the City of Green Bay to retain the status quo on the residency issue.

Based on the above Discussion, the Arbitrator issues the following:

AWARD

Under the statutory criteria at Sec. 111.77(6), Wis. Stats., and for the reasons discussed above, the Arbitrator selects the final offer of the City of Green Bay, which together with the stipulations of the parties, are to be included in the Collective Bargaining Agreement between the City of Green Bay and the Green Bay Police Bargaining Unit, effective January 1, 1994 through December 31, 1995.

Dated at Madison, Wisconsin, this 8th day of March, 1996.



Sherwood Malamud
Arbitrator