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Public Employer Bulletin

A review and analysis of emerging developments
affecting public sector employees

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RECENT TRENDS IN PUBLIC SECTOR INTEREST ARBITRATION: RESIDENCY REQUIREMENTS

The Illinois Public Relations Act

Prior to 1997, the issue of residency requirements was not considered a mandatory subject of bargaining. Absent grandfathering, or mutual agreement to do so, it could not be arbitrated if the parties were unable or unwilling to successfully negotiate the issue during collective bargaining.

In 1997, Section 14 of the Illinois Public Relations Act was amended to specifically add residency requirements as a condition of employment as an issue subject to mandatory arbitration for firefighters, police officers and other related public employees. The amendment specifically excludes municipalities with a population of 1,000,000 or more. Moreover, residency requirements cannot allow residency outside of Illinois.

A residency requirement is a non-economic issue, so if the parties cannot agree, the arbitrator must implement the "conventional arbitration" analysis. This requires the arbitrator to either select one of the parties' final offers or to devise a compromise. See *City of Kankakee & Fraternal Order of Police Labor Council*, No. S-MA-9-137 (2000) (LeRoy, M.) (rejected the City's and Union's proposals and creating an intermediate compromise – see I.B.1(b) (2) and II.B.2(a)).

Under Section 14(h) of the IPLRA, an arbitration award must be based on:

- ⚡ "(3) The interests and welfare of the public...;
- ⚡ (4) Comparison of the...conditions of employment of the employees involved in the arbitration proceeding with the...

conditions of employment of other employees performing similar services and with other employees generally (A) in public employment in comparable communities...[and]

- ≈ (8) Such other factors...which are normally or traditionally taken into consideration in the determination of... conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration, or otherwise between the parties, in the public service or in private employment."

Factors to Consider When Bargaining with Unions about Residency Requirements

Length of Time Status Quo Requirement Has Been in Place.

Arbitrators will typically maintain the status quo between the parties unless the party challenging the status quo meets its burden of showing a significant justification for change. The longer the status quo has been in place, the higher the burden. See, e.g., *Village of Maywood and Illinois Firefighters' Alliance, Maywood Council*, No. SMA-92-102 (1993) (Wolff, A.) ("Maywood I") (upheld 18-year status quo of requiring residency within village limits); *Maywood Firefighters, SEIU, Local 1, and Village of Maywood*, No. S-MA-95-197 (1995) (Malin, M.) ("Maywood II") (Union did not meet its "heavy burden of justifying the proposed change" to a "long-standing contractual term" that had been in place for 20 years); *City of Nashville, Illinois and Illinois Fraternal Order of Police Labor Council*, No. S-MA-97-141 (1999) (McAlpin, R.) (fact that the status quo of in-town residency was based on current practice and had not been reached years ago as a result of a voluntary written agreement weighed in union's favor to change status quo).

However, arbitrators have changed the status quo when the party wishing to change the status quo realistically addressed most, if not all, of the concerns of the other party in its new proposal, offering somewhat of a compromise. For example, in *City of Nashville* (see II.A.1.), the City fought to keep the status quo in-town residency requirement, citing its concerns about emergency response times and children staying in the same school district. The Union countered with a proposal to allow the police to live within a six-mile radius of the center of the City, an area which did not include any other major towns or school districts. The arbitrator found this proposal reasonable because the officer's desires to explore alternative housing opportunities in the immediately surrounding areas balanced the City's concerns over emergency response times. The arbitrator said that if the Union proposed to get rid of the residency requirement altogether, his

decision would have been different.

Safety Concerns

Safety of the Public. Arbitrators are obliged to consider the impact on public safety engendered by varying response times.

Legislative History: Floor debate on 3d Reading contains Rep. Schakowsky's limited expression of legislative intent with respect to the residency. Examples:

City of Highland Park and Teamsters Local Union No. 714, No. S-MA-98-219 (1999) (Benn, E.) – found unreasonable the Union's proposal for residency anywhere in the state of Illinois. The City's proposal of a large area encompassing the north side of Chicago and the north and northwest suburbs of the Chicago metropolitan area, as well as rural areas towards the Wisconsin/Illinois border, was more reasonable, because it allows officers to live in a large area while "at the same time be[ing] available for service if needed [in emergency situations] to protect the lives and property of citizens of Highland Park." Arbitrator Benn dismissed the fact that the City could rely on other communities in emergencies, finding that the City's primary source is its own officers who, under the Union's proposal, could be several hours away.

But see *City of Kankakee* (see I.C.) – found response times to be a non-factor because the welfare and public interest of the City involves much more than off-duty response to emergency calls. Arbitrator LeRoy found evidence of the City's high crime rate, racial diversity and focus on community policing persuasive in rejecting the status-quo, but not so compelling as to warrant adoption of the Union's proposal to allow residency within 10 miles of the City limits. Rather, he preferred giving greater weight to the fact that the neighboring communities of Bradley and Bourbonnais, along with Kankakee, created a cohesive geographic community sharing similar traits. He accordingly rejected the proposals of both parties and compromised by providing that bargaining unit employees could reside in Kankakee, Bradley or Bourbonnais.

Where there is little or no evidence that off-duty personnel are used to primarily assist in an emergency, some arbitrators have discounted the impact residency has on safety, agreeing with the unions that residency and safety are not related. See, e.g., *Maywood II* (see II.A.1.) (residency has little to do with ability to fight fires); *Village of University Park and I.A.F.F. Local No. 3661, No. S-MA-99-123 (1999) (Finkin, M.)* (issue of faster recall for off-duty personnel "significantly mitigated" by the fact

that with the joint emergency system in place, no emergency had ever materialized in which the Village was left unprotected); *City of Nashville* (see II.A.1) (only 11 overtime hours were worked the prior year as a result of an emergency call-back). The actual facts concerning response time should impact an arbitrator's decision. See, e.g., *City of Nashville* (see II.A.1) (Union's proposal adopted where residency area proposed was so small that maximum response time was 10 minutes, which was clearly less than what may occur in big cities or counties, even, e.g., when on-duty personnel are responding from within the city limits).

Where the parties don't consider safety an important issue when they were bargaining with one another, an arbitrator is not likely to consider safety to be a major factor. See *Village of University Park* (1999) (see II.B.1.c).

Safety of the Individual Employees. Arbitrators also consider evidence that bargaining unit employees have received threats to their safety and the safety of their families. In *City of Kankakee* (see I.C.), Arbitrator LeRoy based his award in significant part on the fact that evidence showed a "disturbing pattern of criminal victimization and intimidation" of officers and their families. "Since the record demonstrates a clear linkage between the residency requirement and personal safety concerns for employees and their families, which in turn has caused the City to lose the services of valuable employees in positions of leadership, the public interest and general welfare of the City is no longer being served by the residency requirement." Several key employees had resigned to accept positions elsewhere in the county, often for lower pay, because, as one stated, the residency requirement was holding his family "hostage." Arbitrator LeRoy therefore rejected the City's proposal to keep the status quo requirement of residency within city limits.

Despite evidence of concern among bargaining unit members that they fear for their children's education and safety due to below-average schools and the high crime rate, gangs, drugs and prostitution, the Union could not overcome the Arbitrator's feeling that the status quo should be maintained, especially where there have been recent improvements in the financial security of the village. *Maywood II* (see II.A.1).

External Comparability

When determining which communities should be considered "comparables," arbitrators will look at the following factors:

- a. Population

- b. Size of the bargaining unit
- c. Geographic proximity
- d. Major sources of revenues (*e.g.*, similarity of property values)
- e. Occupational similarity
- f. Employer similarity
- g. Past comparability groups utilized by the parties

When external comparables have been adopted previously for the same jurisdiction, they will often be adopted again, assuming there are no significant or substantial changes to the data previously relied upon.

To do otherwise would undermine the stability brought to the parties' relationship. *City of Nashville* (see II.A.1) (used comparables adopted in 1997 award).

Once a determination has been made as to which communities are comparable, evidence that a majority of those communities favor a residency requirement (or the absence of one) can be persuasive. See *Town of Cicero, Illinois and Illinois Association of Fire Fighters, Local 717*, No. S-MA-98-230 (1999) (Berman, H.) (Arbitrator Berman found the fact that most cities of comparable population in the metropolitan Chicago area do not have city-limit residency requirements "relevant, if not critical to [his] decision").

Internal Comparability

Social and Economic Upheaval. Municipalities often justify an in-town residency requirement by arguing that employees paid with taxpayer dollars should live in the town that pays them. However, to date, some arbitrators have found this argument unpersuasive. See, *e.g.*, *City of Nashville* (see II.A.1) (noting many governmental employees in Illinois do not live in the town in which they work).

In many cases, municipalities have argued that allowing broad residency requirements, or no requirements at all, sanctions so-called "white flight" from the area and have argued that residency within the town is necessary to preserve the middle class, because the employees at issue are often some of the highest paid residents. Often this argument helps support the municipality's

position.

See, *e.g.*, *Maywood II* (see II.A.1) (noting evidence indicated that the Village's financial problems had recently improved so that it might be a more desirable place in which to live).

Arbitrator Goldstein in *Village of South Holland and the Illinois Fraternal Order of Police Labor Council*, No. S-MA-97-150 (1999), readily found that issues like "white flight" were within his jurisdiction and highly relevant because they affect the interest and welfare of the community. Contrariwise, Arbitrator Finkin did not want to consider such issues. He branded as "imponderables" important issues such as the impact on the community resulting from the firefighters moving out; the desire to have employees manifest good citizenship to counter the perception that the residents "aren't good enough to live next to"; the need to live in-town in order to promote public confidence; the desire to have employees contribute to the local economy; the employees' desire to have freedom of choice as a resident; and the desire to stay close to family and schools. *Village of University Park* (see II.B.1.c).

However, a municipality should be able to support its broad allegations of social upheaval with facts or at least anecdotal evidence. For example, in *Village of University Park* (see II.B.1.c), the Village argued that the public welfare would be better served by the residency requirement because it would provide a greater chance of achieving a racially-diverse fire department in a strongly African-American community. Yet Arbitrator Finkin found that the record lacked any indication as to how this would be done. He found it "counter-intuitive that a narrowing of the applicant pool, by eliminating those who do not wish to move, including the elimination of potential African-American applicants, will increase the number of qualified African-American applicants." Similarly, in *Village of South Holland* (see II.D.1.c), although most of the police officers were in favor of expanding the current residency requirement, Arbitrator Goldstein found that such dissatisfaction had not adversely affected applicant flow or caused current officers to leave the department. One arbitrator accepted a union's proposal for residency outside the community, thereby signaling his agreement with the argument that the social and economic problems of the community may be hopeless. See, *e.g.*, *Town of Cicero* (see II.C.2) (summarizing the critical underlying issue of the case to be "the classic political choice between personal liberty and social welfare").

Cicero argued that eliminating the in-town residency requirement

would be economically devastating to the community, in part because the firefighters were some of its highest paid residents.

However, Arbitrator Berman found that "67 firefighters in a town of 67,000 cannot be expected to carry the burden of economic viability and social cohesion of the town," and that it would be futile to ask them to do so when they have little, if any, control over the Town's problems.

Comparison with Other Occupations Within Municipality.

Arbitrators often will consider the existence (or lack thereof) of similar residency requirements for other municipal employees.

If there are dissimilar requirements for various types of municipal employees, there is more likelihood for dissent and dissatisfaction among employees. See *Maywood II* (see II.A.1) (agreeing that the Village would come under "tremendous pressure" from other Village employees were it to eliminate the residency requirement only for firefighters); *Town of Cicero* (see II.C.2) (Cicero argued that if firefighters were allowed to move, all 450 other municipal workers would likely push for similar treatment, which would cause "extreme economic and social upheaval").

The concern for uniform application of residency requirements to various municipal union-represented employees, such as police officers and the telecommunicators who work alongside them, was highly persuasive to Arbitrator Goldstein in *Village of South Holland* (see II.D.1.c). The telecommunicators had negotiated a "3/20/20" (a three-mile radius requirement for all employees during their first 20 years, and a 20-mile radius for employees after their 20th year) radius requirement a few years before, and Arbitrator Goldstein agreed with the Village's concern that residency requirements be uniformly applied without a very compelling reason for the difference.

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Vedder, Price, Kaufman & Kammholz is a national, full-service law firm with approximately 180 attorneys in Chicago, New York City and Livingston, New Jersey.

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Vedder Price has one of the nation's largest employee benefits practices, with ongoing responsibility for the design, administration and legal compliance of pension, profit sharing and welfare benefit plans with aggregate assets of several billion dollars. Our employee benefits lawyers also have been involved in major litigation on behalf of benefit plans and their sponsors. Our clients include very large national corporations, smaller professional and business corporations, multi-employer trust funds, investment managers and other plan fiduciaries.

Whether or Not the Issue Constitutes a "Break-Through" Item.

Arbitrators in Illinois interest arbitration cases do not rush to upset the delicate balance of bargaining with respect to major issues. Neither party should expect to "roll the dice" and win major changes in an interest arbitration hearing unless, *e.g.*, the party requesting the change has previously offered to exchange a significant concession for the new change and the opposing party is unjustifiably intransigent. See, *e.g.*, *Village of Western Springs and Teamsters Local No. 714*, No. 91-095 (Goldstein, 1992) (fair share clause granted over Village's philosophical opposition). See also *Maywood I and II, supra*.

Contra: City of Country Club Hills and Teamsters Local No. 726, Case No. S-MA-98-225 (Larney, 2000) (Union gains very slight change in City's residency clause; and the Arbitrator opines that "breakthroughs" ought to be achievable).

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Arbitration Offer Summary
(in order of appearance above)

City of Kankakee & Fraternal Order of Police Labor Council, No. S-MA-99-137 (2000) (LeRoy, M.).

Status Quo: Within city limits.

City Proposal: Keep status quo.

Union Proposal: 10-mile radius of city perimeter.

Award: Compromise – within area of Kankakee and bordering similar communities of Bourbonnais and Bradley.

Village of Maywood and Illinois Firefighters' Alliance, Maywood Council, No. S-MA-92-102 (1993) (Wolff, A.) ("Maywood I").

Status Quo: Ordinance required employees to live in Maywood, with a grandfathering clause for employees employed before 1975.

City Proposal: Keep status quo.

Union Proposal: Residency area to include contiguous municipalities.

Award: City (status quo).

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Maywood Firefighters, SEIU, Local 1, and Village of Maywood, No. S-MA-95-197 (1995) (Malin, M.) ("Maywood II").

Status Quo: Ordinance required employees to live in Maywood, with a grandfathering clause for employees employed before 1975.

City Proposal: Keep status quo.

Union Proposal: 20-mile radius.

Award: City (status quo).

City of Nashville, Illinois, and Illinois Fraternal Order of Police Labor Council, No. S-MA-97-141 (1999) (McAlpin, R.).

Status Quo: Arbitrator McAlpin opined that the employees were required to live in-town.

City Proposal: Within city limits.

Union Proposal: 6-mile radius.

Award: Union (6-mile radius).

City of Highland Park and Teamsters Local Union No. 714, No. S-MA-98-219 (1999) (Benn, E.).

Status Quo: No residency requirement.

City Proposal: An area encompassing the north side of Chicago, the North and Northwest suburbs of the Chicago metropolitan area, and rural areas by the Illinois/Wisconsin state line. [Formally, boundaries are the Wisconsin/Illinois state line on the North; Lake/McHenry County line and Kane/Cook County line on the West; and Route 20 from the Cook County line to Route 64, and Route 64 to Lake Michigan on the South.]

Union Proposal: Residency within the state of Illinois.

Award: City (large area of North/Northwest suburbs, etc.).

Village of University Park and I.A.F.F. Local No. 3661, No. S-MA-99-123 (1999) (Finkin, M.).

Status Quo: No residency requirement for firefighters (10 mile radius for police).

City Proposal: Within village limits.

Union Proposal: 30-mile radius.

Award: Union (30-mile radius).

Town of Cicero, Illinois, and Illinois Association of Fire Fighters, Local 717, No. S-M-A-98-230 (1999) (Berman, H.).

Status Quo: Within town limits.

City Proposal: Keep status quo.

Union Proposal: No residency requirement.

Award: Union (North to Route 22, South to I-80, West to Route 59, and East to Lake Michigan).

Village of South Holland and the Illinois Fraternal Order of Police Labor Council, No. S-MA-97-150 (1999) (Goldstein, E.).

Status Quo: 3/20/20: 3-mile radius for employees for first 20 years, then 20-mile radius for employees after 20 years.

City Proposal: Keep status quo (dropped demand for in-town only).

Union Proposal: 20-mile radius.

Award: City (status quo).

City of Country Club Hills and Int'l Brotherhood of Teamsters, Local No. 726, Case No. S-MA-98-225 (2000) (Larney, G.).

Status Quo: 15-mile radius for employees hired after June 1, 1987, within nine months after completion of probation.

City Proposal: Change to in-town for employees hired after May 1, 1998, per City Ordinance adopted during the negotiations.

Union Proposal: Status quo, slightly modified to permit officers hired under less restrictive residency requirements to maintain the less restrictive benefit. Newly hired officers have one year from date of hire to comply.

Award: Union proposal in tighter wording.

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