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COMPULSORY ARBITRATION

ARISING UNDER ACT NO. 312

MICHIGAN PUBLIC ACTS OF 1969

In the Matter of Arbitration between:	)	
LOCAL NO. 1383, WARREN FIREFIGHTERS ASSOCIATION	)	RESOLUTION OF ISSUE #19 (RESIDENCY)
-and-	)	
THE CITY OF WARREN, MICHIGAN	)	

8/27/71 Harry Edwards

INTRODUCTION

An arbitration hearing between the parties was held on July 16, 1971 at the offices of the Michigan Employment Relations Commission, 7310 Woodward Avenue, Detroit, Michigan.

APPEARANCES

For the Union:

Gordon A. Gregory, Esq.,
Gregory, VanLopik and Higle, Counsel
William J. Karpinski, Bargaining Committeeman
James Ward, Vice President, Local 1383
Archie McKay, Chrm. of Bargaining Committee
William Blondheim, Treas., Local 1383
Sam Sunman, Sec'y, Local 1383

For the City:

Brian M. Smith, Esq., Dykema, Gossett,
Spencer, Goodnow and Trigg, Counsel
Richard Parker, Personnel Director
Glenn E. Thom, Fire Commissioner
William Collin, Assistant Controller

Edwards, Harry T.

Arbitration Panel:

Nancy Jean VanLopik, Union Delegate
Earl R. Boonstra, City Delegate
Prof. Harry T. Edwards, Impartial Chairman

BACKGROUND

This arbitration matter has been conducted pursuant to Act. No. 312, Michigan Public Acts of 1969. This matter was originally initiated on August 12, 1970, when Mr. Boonstra (for the City) and Mrs. VanLopik (for the Union), by separate letters, requested that the Chairman of the Michigan Employment Relations Commission appoint an impartial chairman to hear and resolve the matters then in dispute.

Twenty-eight issues were submitted, by stipulation (Jt. Ex. 2), to the Panel for resolution at the initiation of this arbitration proceeding in 1970. On January 20, 1971, the Panel rendered a unanimous decision on all of the issues before them on the original submission.

In the original submission, Issue #19 (Residency) was framed as follows (Jt. Ex. 2):

> "Present Practice -- All city employees are required to live within City of Warren.
>
> Union Demand -- No residency requirements to be in effect.
>
> City Position -- Present practice to be continued."

In its Opinion and Award, the Panel resolved the Residency issue by remanding it to the parties for further negotiations (Opinion, p. 50):

> "For reasons which must be obvious, the Panel has decided that this issue should be remanded to the parties for further negotiations subject, however, to the condition that if, after ninety (90) days, it is not resolved, the Panel will, upon request of either party, determine the issue on its merits."

On April 21, 1971, after the parties had failed to resolve this issue by further negotiation pursuant to the aforementioned

remand, the Union submitted to the Impartial Chairman a request for a determination of Issue #19 (Jt. Ex. 3).1/

The Impartial Chairman, by letter dated April 27, 1971, subsequently reconvened the parties for a hearing in this matter. In addition to the hearing held on July 6, 1971, the parties submitted pre-hearing and post-hearing briefs which have been reviewed, along with all relevant evidence, by the panel in its consideration of this matter.

This Opinion has been written by the Chairman of the Panel. Concurrence by either member of the Panel in the Award does not necessarily indicate agreement with everything stated in the Opinion.

POSITION OF THE PARTIES

Union Arguments:

1. A residency rule is clearly a "condition of employment" which can be changed pursuant to negotiation or arbitration under Act. No. 312.

2. Since the matter of "residency" was originally submitted to the Panel by stipulation of the parties, the City argument here that the issue is not arbitrable is without merit.

3. Children of firefighters, living in the Warren Consolidated School District, are required to attend school outside of the City limits of Warren (Tr. 487-488).

4. At least eleven firefighters do not own property in the City of Warren and therefore do not pay property taxes to the City (Tr. 511).

5. Two firefighters will soon be displaced from their homes and forced to move when the new junior high school is built in the VanDyke school district (Tr. 523);

1/ In the interim, apparently after it became clear that the residency issue would not be resolved by negotiation, the Warren City Council passed a Resolution on April 6, 1971, which read in part: "...all employees in the city service including policemen and firemen shall be required to maintain a bona fide residence within the corporate limits of the city during the period of their employment." (Ex. A, attached to Jt. Ex. 3).

two or three other firefighters may soon be forced to relocate because of highway expansion through the City of Warren (Tr. 539-540).

6. Many of the homes on the north side of Warren are presently selling in the range of $30,000, which is too high for the average firefighters (earning $11,585 per year) to purchase (Tr. 520-522, 553).

7. One firefighter testified that he has found that homes for sale in the adjacent cities of Madison Heights and Sterling Heights are $4,000 to $5,000 cheaper than the same house for sale in Warren.

8. Homes for sale on the south side of Warren are less desirable, older and require (in many instances) substantial repairs and renovations before occupancy (Tr. 548-549).

9. Firefighters nearing retirement are foreclosed from moving to desirable farm land located in cities near Warren (Tr. 564).

10. Existing highways and proposed new highways would permit firefighters residing outside of Warren to return easily and quickly to their fire stations on call (Tr. 562-563).

11. Under present circumstances, even with a residency rule, there is no guarantee that fire fighters will be near home if called in an emergency (Tr. 584, 592).

12. Most firefighters, when called back in an emergency, do not report to the fire, but rather they man the spare pumpers in the stations vacated by the on-duty firefighters responding to the fire call (Tr. 500, 511, 592).

13. There is no concrete evidence to demonstrate that "somehow a firefighter is a better firefighter if he resides within the City of Warren" (Tr. 516). Firefighters have demonstrated equal (or greater) skills when responding to fire calls outside of the City of Warren, pursuant to mutual aid pacts, as when responding to fires within Warren (Tr. 514, 594).

14. There is no evidence to suggest that if the residency rule is relaxed there will be a mass exodus of firefighters from the City of Warren (Tr. 595-596).

15. Firefighters in the adjacent cities of Roseville, Frazer and Madison Heights are not bound by a residency rule (Tr. 563, 578).

16. If the residency rule was relaxed, some firefighters in Warren could live in adjacent cities and travel to their stations faster than they can from their present homes within the City of Warren (Union post-hearing brief, p. 5).

17. "The City cannot deny that the right of an individual to live where he pleases is a fundamental personal liberty. ... and that its residency rule infringes this liberty" (Union post-hearing brief, p. 4).

City Arguments:

1. The matter of residency is not a proper subject for arbitration under Act No. 312 (Tr. 472).

2. The City Council resolution (see footnote #1) is an "indication of the feeling of the City of Warren on this issue. ... The passage of that resolution ... constitutes simply a clear-cut statement, a unanimous statement on the part of the City of Warren that residency as a requirement of employment in the Warren Fire Department must continue and should continue" (Tr. 473).

3. The City of Warren has no jurisdiction over the school districts or school boundaries. The schools are financially and politically independent of the government of the City of Warren (Tr. 488-489).

4. Off duty firemen are usually called back only in an "emergency" and, therefore, it is imperative that they respond promptly (Tr. 498-499).

5. With the recently negotiated overtime equalization plan in effect, the procedure for calling back firefighters is already too cumbersome. The overtime equalization provision coupled with a liberalized residency rule would seriously hamper the call-back procedure (Tr. 502-507, 583).

6. One of the arguments heretofore advanced by the Union in support of its recently won wage increase and cost-of-living allowance was that firefighters needed more money to offset the high cost of living in Warren (Tr. 586). Now the Union argues that employees should be allowed to live outside of Warren because of the high cost of living.

7. The residency rule has been in existence and continuously enforced in Warren since 1957 (Tr. 580).

8. All persons living within the City of Warren, either directly or indirectly, pay property taxes (Tr. 512).

9. Eighty-seven (or more than half) of the firefighters already live in the allegedly "high rent" district in north Warren (Tr. 87).

10. According to the 1970 census figures for Macomb County, there are 41,803 "year round" housing units in Warren; there are 40,994 "owner-occupied" housing units, 22,126 of which are valued at less than $25,000 (Un. Ex. 24).

11. The "average" firefighter earning $11,585.00 per year should be able to afford a home worth about $27,000.00 to $28,000.00 (Tr. 571).

12. Between Ten Mile Road and Twelve Mile Road in Warren, there are about 16,000 homes which average about $25,000 (Tr. 572-573).

13. Usually there are about 250-300 homes for sale[2/] in Warren at any given time, half of which are probably selling for under $25,000 (Tr. 576-577). This real estate market is adequate to serve the needs of a firefighting force which numbers 165 employees (Tr. 576-577).

14. The housing market is Warren is roughly comparable to the housing markets in other cities in Macomb County (Tr. 577).

15. Turnover among firefighters is very low, averaging only 1-2 men (or 1.2%) per year (Tr. 584).

16. There is no paucity of applicants for firefighter jobs (Tr. 584).

17. Several cities adjacent to Warren, including Sterling Heights, Hazel Park, East Detroit, Detroit, and Center Line, all enforce a residency rule for firefighters and other city employees (Tr. 577-588).

18. There is no paucity of vacant land for new homes in Warren; presently there are 1800 acres, which could accommodate up to 7,200 new units, available for development within the City (Tr. 600).

2/ The 1970 census listed "117" housing units as "vacant for sale" and "599" as "vacant for rent" (Un. Ex. 24).

19. The residency rule applies uniformly to all city employees in the City of Warren (Tr. 601).

20. At most, no more than 3-5 firefighters presently desire to move out of Warren (Tr. 595).

21. The residency rule was not an issue at the last negotiation between the parties (Tr. 603-604).

22. According to one Union witness, "the availability of homes in Sterling is almost as bad as the City of Warren" (Tr. 554).

23. Finally, Fire Commissioner Thom testified that (Tr. 587-588):

> "One of the essential things to making a good fire department is the spirit de corps, which could be construed as brotherhood or love of your fellow man; which is a faculty which grows in the fire service.
>
> And as time goes on, he begins to think more and more of his job and his position; and that is brought out by the fact that he is so closely associated with the men that he is surrounded by and the inherent dangers he faces -- the spirit of the feeling of protecting a City in which he is a resident, the thought that he is a part of that City, that he's a voter in that City, he pays taxes in that City I think makes him a better type of employee.
>
> One of the things that has been brought out continually in our discussions relative to improvements in the fire service as far as wages and working conditions is the morale of the men. And I'm sure that it could be a factor, if we have a group of men in the Fire Department who just come there to get their paycheck, that they're not particularly interested in the City as such, that they live twenty-five miles or fifty miles.
>
> And to try to establish a boundary line of where one can live only establishes something for contention at a later date; that today five miles is good and tomorrow ten miles is good, next day twenty-five or fifty. And I don't think you could enforce it anyway, any more than you can enforce some of the things that are existent in the fire service today.
>
> And these are -- I think, part of the reasons that a person should be a member of the community in which he serves."

DISCUSSION

I.

The first issue to be resolved here concerns the City's contention that the subject of residency is not arbitrable under Act. No. 312 and "that the question of whether firefighters in the City of Warren should be required to reside in Warren must be dealt with solely by the citizens of Warren" (City's post-hearing brief, p. 2). For the reasons hereinafter stated, this position must be rejected.

Section 9 of Act No. 312 states that:

> "Where there is no agreement between the parties, or where there is an agreement but the parties have begun negotiations or discussions looking to a new agreement or amendment of the existing agreement, and wage rates or other conditions of employment ... are in dispute, the arbitration panel shall base its findings, opinions and order upon the following factors. ..."

The central issue here is whether a residency rule is encompassed by the term "conditions of employment" in Section 9. If so, then the City's contention must fall.

Although the term "conditions of employment" is not defined in Act No. 312, definitional guidance may be gleaned from Section 14, which declares that Act No. 312 "shall be deemed as supplemental to Act No. 336 of the Public Acts of 1947,[3/] as amended ... and does not amend or repeal any of its provisions...." Given this legislative statement, it is interesting that in Section 15 of PERA, the duty to bargain is defined, in part, as follows:

> "...to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment. ..."

3/ Act No. 336 is the Public Employment Relations Act hereinafter referred to as PERA.

Since the term "conditions of employment" as originally used in PERA is adopted in Act. No. 312, and since Act No. 312 is merely supplemental to PERA, the meaning given this term under PERA should appropriately be followed in cases arising under Act. No. 312.

In this regard, the Michigan Employment Relations Commission has recently held that a residency rule is a condition of employment and thus a mandatory subject of bargaining under PERA. City of Detroit and Detroit Police Officers Association, Case No. C68 G-73, 1971 Lab. Op. 237 (Feb. 10, 1971). The Commission also ruled that after an impasse in negotiations had been reached on the residency issue, the City could, by unilateral action, implement a residency rule.4/

In its post-hearing brief, the City urges that City of Detroit, supra, must be distinguished here because it "does not deal with the issue of whether after a city and union have bargained to an impasse, the issue of residency can be decided by an Act. 312 arbitration panel." In the opinion of the Chairman, this is a specious argument because the City of Detroit does rule that "residency" is a "condition of employment" which is a mandatory subject of bargaining, and Act. No. 312 gives the arbitration panel express jurisdiction over "wage rates or conditions of employment" which are not resolved by voluntary negotiation between the parties.

Furthermore, as previously noted, the parties to this proceeding stipulated that the residency rule was one of the twenty-eight issues in dispute to be resolved by the arbitration panel (Jt. Ex. 2). In the original stipulation, the City did not urge that residency was not a proper subject for arbitration.5/

The Resolution passed by the Warren City Council on April 6, 1971, does not change the result here. Section 13 of Act No. 312 makes it clear that "during the pendency of proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other. ..." Thus, the resolution pertaining to residency recently passed by the City of Warren is a nullity since it cannot serve to negate the jurisdiction of this arbitration panel to resolve a question presently pending before it. "Residency" is a "condition of

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4/ The City of Detroit case did not involve a dispute arising in compulsory arbitration under Act No. 312.

5/ By contract, on Issue #15 (Retirement), the City position in the joint statement of issues was that the Union "demand not proper subject of bargaining and thus not a proper subject of arbitration."

of employment" and the question of residency was, on April 6, 1971, still pending before this arbitration panel and, therefore, the resolution was nothing more than self-serving reaffirmation of the status quo. If it was designed to be more, than it would seemingly violate the mandate of Section 13 of Act No. 312.

In its post-hearing brief, the City relies on the Michigan Supreme Court decision of Williams v. Civil Service Commission of the City of Detroit, 383 Mich. 507 (1970), in an attempt to give weight and meaning to the City Council resolution and to displace the jurisdiction of this arbitration panel. It is clear though that reliance on Williams is surely misplaced. There the Court did nothing more than to rule that a residency rule, if properly enacted, is not of itself unconstitutional. The Court further held that although the residency rule before it was not unconstitutional, "this is not to say that under all circumstances such a requirement would be reasonable and valid." Id. at 517-518. See, e.g., State, County and Municipal Employees Local 339 v. City of Highland Park, 363 Mich. 79 (1961) (cited at p. 518 in Williams).

The Court in Williams did not rule that residency was not a "condition of employment" under PERA or Act No. 312. Thus, Williams says nothing which in any way alters or dilutes the obligation arising under Section 13 of Act No. 312. Therefore, the conclusion must stand that the Resolution of the Warren City Council did not divest this arbitration panel of its jurisdiction to decide the issue of residency on its merits.

Finally, the City points out that the Firemen and Policemen Civil Service Act, Act 78 of Public Acts 1933 (1935), as amended, M.C.L. 1948, Section 38.501 et seq., M.S.A. 5.3351 et seq., makes it mandatory that a person applying for admission to any firemen's Civil Service Examination, must file a statement under oath that he has been a resident of the city for at least one year prior to his application. On the surface, there would appear to be a conflict between the residency requirement imposed by Act 78 and the duty to bargain over conditions of employment imposed by PERA.

On March 1, 1971, the Michigan Supreme Court, in Wayne County Civil Service Commission v. Board of Supervisors, 384 Mich Mich. 363 (1971), dealt with an analogous problem created by the apparent conflict between portions of the Civil Service Act, P.A. 1941 No. 370, M.C.L.A. 38.401 et seq., and PERA. There, the plaintiff Civil Service Commission contended that Act No. 370 made it the exclusive bargaining agent for all employees of Wayne County. The County Board of Supervisors contended that PERA, to the extent it places rates of pay, hours of work and other conditions of employment of public employees into the area of collective bargaining, superceded pro tanto those provisions or parts of Act No. 370 dealing with

the same subject matters. The Court rejected the Commission's position and ruled that the provisions of Act No. 370 which were in specific conflict with the provisions of PERA were "diminished pro tanto" by PERA (id at 373-374).

The decision in Wayne County Civil Service Commission can be taken to mean that the residency requirements here in issue are superseded by the duty to bargain under PERA. Thus, even though the City of Warren has passed a residence requirement and even though Act No. 78 appears to require a one-year residency for all applicants for employment to the fire department, it can be argued that both of these enactments have been superseded by the obligation to bargain over a mandatory subject of bargaining pursuant to the Public Employee Relations Act, and the related duty arising under Section 13 of Act No. 312.

However, while it seems clear that the residency rule promulgated by the City of Warren is a "condition of employment" and thus is a proper subject for both negotiation and arbitration, the same cannot be said about the residency rule arising under Act No. 78. Act No. 78 requires one-year residency for persons seeking employment in the fire service; thus, it is a condition of hire and not a condition of continued employment. In City of Detroit, supra, the MERC ruled that (p. 249):

> "A Union need have no part in the arrangements made only by a public employer to hire employees in order that the hiring system may be established or operated. In Michigan, the hiring of employees has traditionally been a function of public employers, generally under the aegis of a civil service agency.
>
> We do not read Section 15 of the Public Employment Relations Act as a requirement that the public employer bargain on the standards or criteria it establishes for initiation of the employment relationship. We read 'other terms and conditions of employment' as those items which affect employees after they have become employees."

Since the cited portion of Act No. 78 deals with conditions of hire, it does not seemingly involve a "condition of employment" which is cognizable under PERA or Act No. 312 as that term has been defined by the MERC in City of Detroit. Thus, there is merit to the observation made by City's counsel in his pre-hearing brief (p. 7), that "to abolish the residency requirement would require an applicant to be a resident to apply for the job but enable him to move on his first day of employment."

In the light of the above considerations, it must be concluded that a residency rule which requires firefighters to reside in the City after employment is a "condition of employment"

under Act No. 312; that the issue of residency is properly before this Panel to be resolved on its merits; that the action of the Warren City Council on April 6, 1971, did not divest this Panel of jurisdiction in this matter; and that, therefore, the City contention that the residency issue is not arbitrable must be rejected.

II.

The second and final issue to be resolved concerns the merits of the Union's requested abolition of the residency rule.6/

The Chairman is sorely distressed that the parties could not see fit to negotiate a settlement of this issue on remand. The question raised is plainly one which is better left to resolution by the time-tested art of negotiation than by the device of compulsory arbitration under Act No. 312. However, since the parties have been unable or unwilling to resolve this matter, the task unhappily falls in the lap of this Panel.

In deciding this issue, the Panel gleans its Authority and direction from the applicable paragraphs in Section 9 of Act No. 312:

> "...the arbitration panel shall base its findings, opinions and order upon the following factors...
>
> (a) The lawful authority of the employer...
>
> (c) The interests and welfare of the public...
>
> (d) Comparison of ... conditions of employment of the employees involved in the arbitration proceeding with ... conditions of employment of other employees ... in public employment in comparable communities ...
>
> (f) The overall compensation presently received by the employees...

6/ As alternatives to the total elimination of the residency rule, the Union proposed (1) a residency rule permitting firefighters to live within a twenty-five mile radius of City Hall or (2) a residency rule requiring firefighters to live within Macomb County.

(h) Such other factors, not confined to the foregoing, 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 sector or in private employment."

Without intending to do hazard to the City presentation, the Chairman discerns two prime reasons why the City is opposed to the abolition of the residency rule: (1) it would destroy the existing esprit de corps among firefighters and (2) it would make it more difficult to call-back firefighters in an emergency. Secondarily the City has argued that there is no dearth of housing in Warren, the turnover among firefighters is very low, there is no paucity of new job applicants, and only a handful of all firefighters have even expressed a desire to move outside of Warren.

As to the first two points (esprit de corps and call-back), the City arguments plainly are not fully substantiated by the evidence in the record. As the Union correctly urges, there is simply no concrete proof to show that an employee living within the geographic bounds of Warren will be a better employee for the City than one living outside of Warren. For one thing, firemen in particular, already live together (in the firehouse) for long hours while on duty. Thus, if high morale, unity of effort and esprit de corps is to develop at all, it surely can do so during those long hours of togetherness at the fire station. Furthermore, a person who is serious and conscientious about his work will probably demonstrate these traits wherever he is at work. Firefighters accrue certain benefits and rights with accumulated seniority (such as longevity pay and retirement pay) and a firefighter who is derelict in his work would risk loss of job and resulting loss of seniority and associated benefits. This risk would be the same for a resident as well as a non-resident employee. Finally, the notion of esprit de corps as espoused by the City may be an antiquated notion in any event, given the high mobility of the working forces in the United States. In the past 20 years, transportation has improved tremendously, jobs appear in greater variety, and workers are accustomed to movement. Given these factors it is unfair, without some proof on the point, to categorically suggest that esprit de corps, loyalty and worker morale will suffer or disappear with the abolition of a residency rule.

The question of call-back is more troublesome. The City argues that if firefighters live too far outside of Warren they cannot respond quickly in an emergency. The Union counters by pointing out that firefighters are not required to be "on call" when off duty, there is no guarantee in any event that a firefighter will be at home to respond to a call whether or not there is a residency rule, and there are certain locales

in cities adjacent to Warren from which a firefighter could travel to his fire station more quickly than he could if he were living in certain areas within Warren. The points raised by the Union are not insignificant.

On the other hand, it is fairly well understood and seemingly accepted that even though firefighters are not "on call" when off duty, they still are nevertheless frequently summoned at home to come to the aid of the City in an emergency. Given this work reality, it seems evident that an unlimited residency rule -- (i.e., the total abolition of all residency requirements) -- would be particularly inappropriate for firefighters since the call-back procedure surely might be seriously encumbered if Warren firefighters were allowed to live anywhere in the State of Michigan. While the Union is correct in its assertion that there is never any guarantee that any fireman (whether he be a resident or non-resident of Warren) will be at home when called, still it must be recognized that a firefighter who is at home when summoned for call-back will be better able to respond promptly to the call if he lives within a reasonable distance from his work station.

With these two points at least partially discarded, the essence of the City's position here would seem to be that unless an existing "condition of employment" is shown to be patently discriminatory, grossly inequitable and/or unreasonable, it should remain in effect. In other words, the burden should be on the Union, as the party moving for a change in the "condition of employment," to demonstrate a compelling need or reason to justify an alteration of the residency rule. While this may be an overstatement of principle, since "technical rules of evidence shall not apply" in an Act No. 312 compulsory arbitration,7/ nevertheless the Panel is bound to render a judgment which is grounded on "competent, material and substantial evidence on the whole record."8/ To the extent that such evidence is required, it seems only just that it should be forthcoming in no small measure from the moving party on any given issue.

In this regard, the Chairman is satisfied that there is no convincing evidence on the whole record which establishes a paucity of reasonably priced housing at the present time within the City of Warren. Indeed, the record suggests that the contrary may be true. While it is clear that if the residency rule were to be relaxed firefighters would have greater access to desirable housing, this is not the same as saying that there is insufficient housing in Warren at the present time.

7/ See Section 6 of Act No. 312.

8/ See Section 12 of Act No. 312.

Since the Union has not shown a paucity of available housing in Warren, the primary thrust of its argument must be that a residency rule infringes on the personal liberty of firefighters to live in the place of their choice. Needless to say, this is an attractive argument which cannot be discarded easily in this matter; however, the point raised is diminished by two contrary considerations: first, the Michigan Supreme Court, in Williams v. Detroit Civil Service Commission, 383 Mich. 507 (1970), has ruled that a residency rule is not of itself unconstitutional; and second, even if the Chairman were to accept one of the two alternatives to the existing residency rule suggested by the Union,9/ there still would be a resulting infringement, albeit somewhat less than now, of the right of the employee to live in the city of his choice. The perplexing nature of the problem was aptly summarized by the Court in Williams:

> "Is a residency requirement a mere remnant of feudalism or sound administration to secure from a city employee better performance, community pride, interest and participation in city affairs, payment of city taxes, and so on? ... We conclude that all of these questions are debatable."

Recalling that this is an "interest arbitration," and not a traditional "rights arbitration," and as such, a substitute for collective bargaining, the Chairman, with some reluctance, is satisfied that on balance there is no compelling need or other satisfactory reason shown to requite the amendment of the residency rule at this time. Pursuant to Section 9(h) of Act 312, the Panel cannot be blind to the reasonable expectations of the parties, especially when weighed against the total "package" settlement heretofore ordered by this Panel in its earlier resolution of the other 27 issues.

All things considered, the following weigh most heavily in this determination: (1) the residency rule is non-discriminatory since it applies to all City employees; (2) according to the decision in Williams, there apparently is no constitutional protection against a residency rule of the type presently in force in Warren; (3) the evidence does not indicate a paucity of reasonably priced homes or lots for sale in Warren at the present time; (4) there is no clear pattern for or against the abolition of residency rules in the cities adjacent to Warren; (5) there is no evidence to suggest that there is in fact a greater selection of homes, in quantity or variety, in the cities

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9/ That is, either residency limited to Macomb County or residency limited to the areas within a 25 mile radius of City Hall.

surrounding Warren; and (6) apparently only a handful of firefighters have to date expressed a real desire to move out of Warren. All of these factors, in addition to the others discussed above, militate against the change here sought by the Union.

For the aforementioned reasons, it is the judgment of a majority of this Panel that the existing residency rule covering firefighters should continue in effect for the remaining term of the present (1970) agreement between the City of Warren and Local 1383 of the Warren Firefighters Association.

Harry T. Edwards
Chairman

Concurring on point "I" (arbitrability) and dissenting on point "II" (merits):

Nancy Jean VanLopik /s/
Union Delegate

Concurring on point "I" and point "II":

Earl R. Boonstra /s/
City Delegate

Dated:

August 27, 1971