

THERE'S NO PLACE LIKE HOME:
A POLICE UNION'S STRUGGLE AGAINST
THE RESIDENCY REQUIREMENT IN DETROIT

by

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ABSTRACT

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During the last decade municipal employee unions have emerged as a powerful new force in city politics. They have gained some influence over public policy matters as well as over the traditional union concerns - wages, hours, and conditions of work. One reason for this development is that in the public sector the traditional bargaining subjects, particularly conditions of work, often overlap issues which city officials have normally viewed as "policy decisions." Thus, collective bargaining combined with political activities (e.g. lobbying and electoral politics) enables public employee unions to play a major determining role in the lives of our cities.

A primary purpose of this study is to examine specific aspects of this newly achieved union influence and to consider some of its consequences. The examination proceeds through a case study which analyzes the struggle of a single union, the Detroit Police Officers Association (DPOA), against a particular city policy requiring Detroit employees to live within the city's limits.

Although some of the facts of the Detroit police residency dispute are unique, the union's resistance to a residency policy is not uncommon. The Detroit controversy is part of the larger debate in many cities today about whether there should be residency requirements for city employees. The strongest opponents to such rules are municipal employee unions. The case presents the arguments both for and against police residency rules, in particular, and city employee residency rules, in general.

To date the DPOA has failed to abolish Detroit's residency requirement, but it has succeeded in blocking enforcement of the policy as well as achieving other related goals. In analyzing the outcome of the case and the forces contributing to it, the study identifies and explains the union's impacts, the sources of its power, and the limitations on its influence. A major source of the union's strength is collective bargaining. Thus, the paper also looks at a few more general issues about public sector labor relations. Finally, it considers the specific consequences of the DPOA's opposition to Detroit's residency requirement and also suggests a few of the broader policy consequences of the growth and activities of public employee unions.

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Chapter 1

INTRODUCTION

The Unions vs. City Policy

On May 28, 1968 the Detroit Common Council passed a law requiring all city employees to live within the corporate limits. The ordinance categorically denied police the right to apply for waivers despite the fact that it allowed that privilege to virtually all other municipal workers.

Detroit's residency legislation soon became one of the most controversial topics in local government and was well-known nationally. The conflict over the ordinance is part of the larger question of whether there should be residency requirements for municipal employees, an issue in many parts of the country today. The strongest opponents to such rules are public employee unions. Detroit's residency requirement became the focus of an eight-year struggle between the city and the Detroit Police Officers Association (DPOA), the union representing the city's approximately 4,000 police officers. The controversy became a major test of that particular union's influence in city politics.

Municipal employee unions, of which the DPOA is one, emerged from the drive to organize the public sector during the fifties and sixties. Over the past decade these unions have asserted themselves as a powerful new force in the social, economic, and political lives of metropolitan areas. They influence the operation of municipal governments, the delivery of public services, and the distribution of resources and power in urban America. Because of their success in achieving substantial economic gains, these unions

currently are being blamed for some of the fiscal problems plaguing our cities. Moreover, public employee organizations have also succeeded in gaining a degree of control over personnel matters and policy determinations.

A major purpose of this study is to explore and analyze specific aspects of this newly established union influence, particularly as it relates to public policy and other nonmonetary issues. By examining the DPOA's struggle against the residency legislation, I will attempt to identify and explain several of the union's impacts, the sources of its power, the limitations on its influence, and the consequences of its activities.

Although to date the DPOA has failed to eliminate the residency requirement, it did succeed in blocking enforcement of the city's policy for over eight years. How, why, and under what conditions did the union achieve this end? What, if any, other goals did the DPOA accomplish? Have the union's activities also influenced related issues such as personnel recruitment, minority hiring, and the delivery of police services? Is the DPOA interested in affecting the distribution of police jobs? If so, why and how? Who benefits and who loses from the union's activities?

A major source of union power is collective bargaining. Thus, the case also raises several issues about police labor negotiations and the broader currents of public sector labor relations: Who was responsible for bargaining? Was the scope of bargaining subjects affected, and if so, how? What impact, if any, does this have on public policy? What is the relationship between arbitration and city policy making, and what are the implications for the unions and the cities? What is the relationship between the bargaining system and institutional decision makers such as the courts?

What role did the judiciary play in the outcome of the case?

I have chosen the case study technique to probe these questions. The state-of-the-art for measuring union impacts is not well developed. The most sophisticated methodological research to date involves only quantitative models concerning the influence of unionization on wages. Exploring impacts which cannot be translated into monetary terms necessitates a more qualitative form of analysis, and an understanding of nonmonetary consequences is particularly important in the public sector where union activity often involves public policy questions. In relating the "story" of the DPOA's struggle against Detroit's residency policy, a case study approach provides an opportunity for an in-depth investigation of the way various forces, conditions, individuals, and organizations interacted to produce a particular outcome. It is flexible enough to explore many issues, and, at the same time, it is focused enough to develop an understanding of the relationships among several factors. The study should also provide some useful insights to a few of the policy implications of the growth of municipal employee unions.

The remainder of this chapter contains background information about the DPOA, passage of the residency ordinance, and reasons for the controversy. Chapter 2 outlines the DPOA's first legal attack against the ordinance based on constitutional grounds. Chapter 3 describes an alternative challenge through the bargaining system. It began as an unfair labor practice charge and eventually proceeded through the courts by appeals. The fourth chapter discusses the arbitration proceedings as a continuation of the bargaining process and culmination of the union's eight-year struggle.

The epilogue presents the important variables which shaped the outcome

of the case. It assesses the overall impact of the DPOA on Detroit's residency policy and on related issues and also considers the reasons for the union's failure to eliminate the requirements. This chapter also briefly looks at some of the broader policy consequences associated with the activities of the DPOA and other public employee unions. But before discussing the details of Detroit's residency policy, it is useful to understand something about the general background and purposes of such requirements.

Residency Requirements: Background and Theory

The practice of requiring city residence of public employees originally developed from the political machine tradition of late nineteenth-century America. A primary function of the machine and source of power for ward leaders was the distribution of jobs. By requiring city residence of municipal employees, machine leaders could ensure patronage positions for voters, and, by so doing, they could enhance their own control.

The first concerted efforts to abolish residency requirements developed along with the municipal reform movement during the first third of the twentieth century.¹ In keeping with their goals of eliminating corruption and increasing efficiency, the reformers sought to upgrade the caliber of civil service recruits by removing "politics" from work assignments. They reasoned that the abolishment of residency rules and the expansion of recruitment boundaries would improve the available labor pool, would make appointments more selective, and would upgrade the general quality of personnel.

Police reformers, especially after 1930, pushed for elimination of residency requirements as an important condition for "professionalizing" the police and improving their reputation for corruption and inefficiency.²

However, they encountered enormous opposition. City residents and elected officials favored residency rules for public safety workers based on the need they perceived for the immediate availability of police and firefighters in emergencies. In addition, the rank and file vigorously opposed the suggested residency reforms. Especially during the depression years, public service jobs were quite desirable because they provided a degree of economic security. Thus, police departments had far more applicants than positions, and their problem was one of selection. Eliminating residency requirements would force city residents into competition for obtaining scarce jobs, whereas several groups, particularly the police, still depended on patronage as a major source of employment.³

After World War II a series of changes caused public employees and some employers to modify their positions on residency. With the rapid growth of cities and conditions brought about by urbanization, public service jobs became more demanding at the same time that living and working conditions became worse. Police work in particular became more difficult as public awareness of crime increased and racial tension in large cities intensified. Along with other employee groups, police began to prefer living in the suburbs where housing was more readily available to whites and racial unrest was virtually nonexistent, largely due to de facto segregation. Improved transportation and communications facilitated commuting to work in the metropolitan areas.

At the same time, the ethnic turnover in the cities presented a serious threat to the job security of municipal employees. Elimination of residency requirements would allow the already-employed public workers to move to the suburbs while they maintained their city jobs. On the other hand, retention

of the requirements would force public employees to live in the urban centers unless they were prepared to forfeit their jobs by choosing to move to the suburbs, thus opening job access to inner-city minorities. These pressures motivated the rank and file to join the reformers in pressing for repeal of the residency rules.⁴ The movement gained further support during the period of full employment in the fifties when cities allegedly were having difficulty attracting enough qualified civil service workers. Police administrators along with other public employers urged abolishing residency rules to aid recruitment and retention.

The combination of all these factors resulted in the elimination of residency rules for police in most major cities by the early sixties. Dallas abandoned its police residency requirement during World War II due to manpower shortages. During the fifties, Los Angeles followed suit, largely in response to housing shortages which cropped up during the war years. The Seattle Civil Service Commission waived police residency requirements in the late fifties, and a 1960 charter amendment in Portland eliminated the residency requirement there for all city employees. During the sixties the state legislatures repealed police residency rules in New York and Boston.⁵

Thus, the DPOA's campaign to remove Detroit's police residency rule came at the end of a general trend to liberalize or repeal such requirements. At about this same time, increasing pressure primarily from central city minorities resulted in the first attempts to reimpose residency restrictions in a few major cities.⁶ After the race riots of the sixties, minority groups took up the banner for reasons of job access and community control over public services.

To understand why Detroit's Common Council responded to the DPOA's nonresidency demand by restricting rather than liberalizing the existing rule, it is necessary to understand something about the background of the DPOA, the history of Detroit's residency policy, and the political and social climate of the city around 1968.

Fact Finding and the Detroit Police Residency Issue

In July 1965 Michigan passed the Public Employment Relations Act (PERA) which allowed public employees to select a collective bargaining representative and to enter into negotiations with their employer.⁷ About six months later Detroit recognized the Detroit Police Officers Association (DPOA) as the exclusive bargaining agent for all the city's police officers. Originally founded in 1944 as a fraternal and benevolent association, the DPOA in 1966 included approximately 3,000 of the police department's 3,300 officers as members.⁸

In March 1966 the DPOA and the city began extensive collective bargaining which continued, with interruptions, until 1968 without resolving several issues. Much of the delay and confusion resulted from unanswered questions concerning procedures and authority for bargaining in the public sector. Frustrated by the process, the DPOA engaged in a ticket slowdown and blue flu epidemic in May and June 1967.⁹ This militance helped tremendously to solidify the union's strength.

A month later, Detroit experienced serious racial riots which were to have an immense impact on the police labor dispute.¹⁰ Following the civil disturbances, a fact-finding panel was established to make recommendations

on the unresolved bargaining issues, among which was the DPOA's demand that the residency requirement for police officers be abolished.

At this time, police residency was regulated by a department rule which was formalized in 1944 after many years of informal effect.¹¹ The regulation simply reads, "All members of the department shall reside within the city limits."¹² The personnel department often recruited outside the city, but department policy required new officers to move to Detroit within a year of their appointments. Although the rule does not provide for exceptions, over the years a custom developed whereby police commissioners waived the requirement in hardship cases and in situations of unusual necessity.

Somewhat unusually, police officers in Detroit are not members of the civil service and, accordingly, are not governed by civil service regulations, including its residency requirement.¹³ This allowed the police department to control its own residency policy. The Civil Service Commission, unlike the police department, only granted waivers for job-related reasons such as location and nature of work when it deemed such exceptions necessary to the public interest.¹⁴

When, in 1964, dissatisfied civil service employees filed a legal suit against the civil service residency rule based on constitutional grounds, the police still seemed satisfied with their department's waiver policy which was liberal enough to accommodate the needs of both the city and the rank and file. In fact, residency was not a major issue at the time the police labor negotiations began in 1966. But by 1967 changing conditions modified the desires of the police and prompted them to pursue more seriously their nonresidency demand.

Increasing demands and pressures resulting from the city's tense racial situation caused more and more officers to choose homes in the suburbs as a

source of relief. Although the police commissioner at this time, Ray Girardin, favored a liberal policy of exceptions, union members may have wanted to ensure their future freedom to move by formally liberalizing or eliminating the requirements. Reliance on the unpredictable discretion of the commissioner, a political appointee, could be risky.

Another factor very likely contributing to intensified DPOA concern with the residency rule was Mayor Jerome Cavanagh's campaign for minority hiring in the police department. Elected in 1961, Cavanagh had earned a strong national reputation as a liberal. In the post-riot days liberals and civil libertarians charged the police department, approximately 95-percent white,¹⁵ with brutality and racism and advocated integration of the force. According to the conventional wisdom, a residency requirement as a precondition of employment would facilitate minority hiring by forcing the police department to recruit its officers from city residents, the majority of whom are black. Even if residency were not a recruiting requirement but only a continuing condition of employment, many nonresident officers probably still would choose to remain in the suburbs and therefore would have to quit their jobs. In this way job opportunities would be opened to inner-city residents. Thus, Cavanagh's minority hiring campaign combined with a strictly enforced residency requirement seriously threatened the primarily white police union.

In February 1968 the fact-finding panel issued its report and recommended that the DPOA's nonresidency demand was not unreasonable.¹⁶ The panel noted that the police department was facing a severe manpower shortage. The turnover rate was excessive and recruitment inadequate. It reasoned that

elimination of the residency requirement would help recruitment and retention. Panel members were especially concerned about ensuring the adequacy and reliability of the police force in the face of future racial disturbances.

Although the fact-finding recommendations were not legally binding, for Mayor Cavanagh they were binding politically. In the aftermath of the riots, the administration was anxious to make some concessions to the police as acknowledgement for their performance during the disturbances and as insurance for cooperation in the event of other civil outbreaks. Therefore, as recommended by the panel, the city did approve police salary increases. However, the mayor could not afford, as the panel also suggested, to abolish the residency requirement entirely, especially in the wake of post-riot sensitivity to police-community relations.

There was strong sentiment among city residents, especially blacks, that police officers should be residents of the community they served. Conservatives and frightened citizens were demanding more police protection. For many of them the importance of the residency requirement was driven home during the riots which occurred during the summer at a time of particularly low manpower. Many officers had to be called in from residences, including summer homes, which were located long distances from the city.¹⁷ People expected police to live in the city where they could respond quickly to emergencies.

As Cavanagh stated, "I would have departed from my senses politically if I had agreed to abolish the requirement."¹⁸ However, he did believe strongly that the issue was administrative and should remain a discretionary prerogative of the police commissioner. During March, Detroit's Labor

Relations Bureau and the Mayor's Office, through Controller Bernard Klein, agreed that the residency requirement should be modified in a manner which would continue to leave waivers to the police commissioner's discretion.

Basically, the agreement was to maintain the same police department rule but to liberalize and formalize the rule of exceptions which, from the administration's point of view, served a no-cost political function.¹⁹ By making this concession and offering the union a few hundred dollars above the fact-finding panel's \$10,000 salary recommendation, the city bargained informally with the DPOA to delay implementation of its wage increases until July, the beginning of the new fiscal year. This agreement helped the administration hold the line on raises and avoid reaction from other city unions.²⁰

The residency provision was part of a "package agreement" contingent upon adoption in totality by the Detroit Common Council and ratification by the DPOA membership. Shortly after the union ratified the package but before its approval by the Common Council, Commissioner Girardin issued waivers to approximately thirty police officers. Presumably these exceptions were to help boost morale after the riots and to aid retention.²¹

This newest round of waivers sparked sharp criticism from several sources. Civil service employees, whose challenge to their residency rule was pending in the courts, objected strenuously to the police exceptions. The police residency policy was an especially sore point with firefighters who, as public safety officers, traditionally demanded parity with police. In addition, many blacks as well as whites fearful of crime opposed the waivers.

Several complaints, particularly from firemen, came to the attention of the Common Council as did word of the agreement between the Mayor's Office,

the Labor Relations Bureau, and the DPOA. In spite of or perhaps because of its awareness of this agreement, the council went ahead and initiated its own more stringent residency legislation which covered both police and civil service workers. The orientation of the nine-member council at the time was basically conservative, although the DPOA could usually depend on several council allies, including one former police detective inspector. Thus, it was somewhat curious that the legislation was passed so quickly and unanimously despite the objections of the DPOA.

The Residency Ordinance

John McKinlay, Assistant Corporation Counsel at this time and drafter of the ordinance, has suggested that the pending challenge to the civil service rule and stepped-up complaints from civil service employees, especially firemen, motivated the council to begin thinking about the residency legislation.²² The majority of council members favored residency rules, although the specific reasons for support varied among individuals. McKinlay claimed that when the council heard of Cavanagh's informal agreement with the DPOA, it became seriously concerned about pressure from other city employees to liberalize or eliminate the policy. Consequently, in early April, it formally requested that the city's lawyers draft a residency ordinance.²³ The council then notified the director of the Civil Service Commission and asked him to attend a meeting to discuss the matter. No similar notification was sent to the police commissioner.

The original request to McKinlay was to prepare an ordinance without disturbing the existing residency exemptions.²⁴ The council later requested

a provision that the Civil Service Commission submit its recommendations for waivers to the legislative body for approval. Councilman Mel Ravitz raised the question of whether the police and fire commissioners should also be required to seek council approval of their waivers.²⁵ However, there is no indication that this matter was ever resolved.

While the draft of the ordinance was being prepared, a public hearing was scheduled for May 17 to discuss the proposed legislation. This was a period of intense polarization in the city, and the hearing proved to be highly emotional.²⁶ Among those attending the meeting were six members of the Common Council, representatives of the Corporation Counsel's Office, the Police Department, and the Civil Service Commission, the DPOA, the Detroit Firefighters Association (DFFA), and a few private citizens.

The strongest opposition was presented by Carl Parsell, President of the DPOA. Parsell cited the February 1968 recommendation of the fact-finding panel and reiterated the belief of the Mayor's Office that modification of the rule was necessary to aid recruitment and promote the city's best interests. He reminded the council that the police department was still 400 officers below its authorized and budgeted strength. Parsell maintained that the fact-finding report had bolstered police morale tremendously and claimed that passage of the ordinance would again lower morale because it would impair the "professional" image of police which the panel sought to establish.

The DPOA leader also pointed out that adoption of the ordinance would undermine the confidence of police and other city employee groups in the collective bargaining and fact-finding processes. As far as the union was

concerned, passage would be a flagrant example of unilateral conduct on the part of a public employer in violation of PERA. Parsell maintained that the residency agreement was part of a total package resulting from good faith bargaining by the mayor and his staff. He threatened that if the council intended to "pick and choose" items from a negotiated package agreement, the union would insist on renegotiating not only residency but all other matters in the package.²⁷

Notwithstanding DPOA opposition, a little more than a week after the hearing the Common Council adopted the residency ordinance to become effective on June 6.²⁸ In large part, the vote seemed to be reflective of the times. Council members were subject to increasing pressure from blacks, who now constituted over 40 percent of the population, and whites fearful of crime to maintain the residency policy. Following the riots, the topics of community control and improved police-community relations received considerable attention. A residency policy was regarded as one important means to help achieve these ends. In addition, the council argued that residency rules would improve the performance of public employees since paying city taxes would encourage interest in their neighborhoods and commitment to their communities.

Councilman Nicholas Hood, a black clergyman and one of the strongest supporters of the ordinance, addressed some of the racial implications of the policy. First, he identified black resentment to the feeling among whites that they could escape the growing black population by moving outside the city.²⁹ The residency ordinance would prevent white flight to the suburbs where blacks cannot move as readily. Hood also expressed the concern of the black community that if the police, most of whom are white, were allowed

to live outside the city, the force would become an "army of occupation." He commented on the internal roadblocks to hiring in the police department and alluded to the conventional wisdom that residency requirements might facilitate ethnic turnover on the police force. He said, "...if the police department had a truly open recruitment policy...where members of the black community could get these jobs, there would be no problem at all."³⁰

The councilman was quick to point out that a residency policy was vital to the preservation of the city not only for social and racial reasons but for financial considerations as well. City residents pay a 2-percent income tax whereas nonresidents pay only .5 percent. Hood estimated there were approximately 300,000 suburbanites working in Detroit, taking income outside the city and thus contributing to its fiscal plight. He stressed Detroit's dependence on the middle-class city employees to provide support:

We cannot afford in the town to lose those in the 8, 10, thousand dollar income brackets. These are the people who give stability to a community, whether they be policemen or some other kind of public servants... a town is built off the middle-class.³¹

Hood's basic feeling was that people paid by the city should support it by spending their money in and paying taxes to the city.

These financial arguments had broad appeal to conservatives who constituted the majority of the council. Interestingly, post-riot conditions were such that financial, social, and racial considerations led to a coalescence of interests among conservatives and liberals which contributed to the unanimous passage of the ordinance. Council members agreed the legislation had the functional import of backing the civil service rule and the moral import of declaring a position crucial to the effective operation of Detroit.³²

However, consensus about the desirability of a residency policy does not explain its ultimate rigid application to police officers as distinguished from civil service employees.

For no clear reasons, the approved legislation did not include the originally discussed proposal for Common Council approval of civil service waivers. Instead, the ordinance specified that the Civil Service Commission had the authority to grant exceptions to general city employees. Its only responsibility was to report the waivers to the mayor and the Common Council. No mention was made of police residency exceptions. In light of the complaints about police waivers, there was a growing feeling among council members that the police commissioner was abusing his discretion. Enactment of an ordinance gave the city a degree of control over the residency enforcements which it did not have previously. However, there is no evidence that the council ever clearly resolved the question of if and how police waivers should exist.

According to John McKinlay, exclusion of police residency waivers was a conscious decision by the Corporation Counsel's office. McKinlay said the ordinance was basically modeled after the civil service residency rule which only allows exceptions for job-related reasons which would promote the city's best interest (see n. 14). The city's lawyers argued that police have no authority outside Detroit, and, therefore, they would have no legitimate work-related reasons for residency exceptions. In addition, the prevailing view was that the special nature and visibility of law enforcement work made residency even more important for police than for general city employees.³³

Following passage of the legislation, council members claimed

upon questioning to be less clear about their own intentions and understanding of the ordinance. When Councilman Hood was asked what considerations, if any, had prompted the distinction between police officers and other city employees, Hood replied that he did not know since, as far as he was concerned, police officers were not intended to be singled out. Hood maintained he understood that the ordinance gave the police commissioner or the council the power to issue police residency waivers.³⁴

When similarly questioned, Councilman Ravitz stated:

It's my understanding that this ordinance does not in any way alter the longstanding right of the Commissioner to grant a waiver for specific reasons as had been the case before...So far as I am concerned, when I supported this [ordinance], I assumed that the waiver in the special, the unique case, would be still carried out by the Police Commissioner and it is written here that the Civil Service Commission may waive the residency requirement upon a finding that such waiver would serve the best interest of the city. I thought that all employees were, therefore, taken care of.³⁵

Councilman Philip Van Antwerp, the former police detective inspector, maintained that it was not until after the legislation was approved that he realized the discrepancy between the civil service and police waiver policies. At that point, he claimed to withdraw his support of the ordinance, arguing that it should apply equally to all city employees.³⁶

Whether the council actually intended to exclude police residency waivers is hard to say. City attorneys suggested that this probably was the case. DPOA lawyers hinted that council members seeking reelection made the exclusion to gain support of those blacks and whites who favored strict police residency rules.³⁷

Committed to the general need for a city residency policy, the council

may have wanted to avoid a situation whereby other city employees, especially firefighters, could argue for nonresidency based on the police case. Because they could not control the police commissioner's discretion to grant waivers, the council may have decided to eliminate this option entirely. Or perhaps, as suggested by the city's lawyers, the members did not feel there were legitimate reasons for police residency exceptions.

For whatever reasons the exclusion was made, intentional or not, once the matter became a public issue, it was politically awkward for council members to admit to the omission of police waivers. The ordinance incurred the wrath of the DPOA which, by this time, had established itself as perhaps the city's most militant and powerful public employee union. The DPOA expected to use its newly achieved leverage to alter Detroit's residency policy. Immediately following passage of the legislation, the union undertook the first of what was to become a long series of attacks against the city's residency requirements.

Chapter 2

THE CONSTITUTIONALITY CHALLENGE

The Legal Issues and Arguments

On July 26 the DPOA initiated a legal attack against the city, challenging the constitutionality of the residency ordinance. Despite the fact that courts in most public jurisdictions have upheld the right of municipalities to adopt and enforce residency requirements, the union, guided by its competent lawyer, Winston Livingston, was optimistic about winning the case. It felt that the particulars of the Detroit situation provided compelling arguments against the legislation: 1) the ordinance denied police due process of law by unreasonably restricting their right to choice of residences; 2) by failing to provide police the same conditional waivers granted to other city employees, the legislation created an arbitrary and unreasonable classification in violation of the Equal Protection Clauses of the United States and Michigan Constitutions; and 3) the ordinance conflicted with the City Charter which gives complete authority over the police department to the police commissioner.¹

Due Process: The United States and Michigan Constitutions both provide that no person shall be deprived of life, liberty, or property without due process of law.² The DPOA argued that the liberty safeguarded by these clauses guarantees an individual the right to live where and as he or she pleases, and that the residency ordinance infringed on this right.³

The city did not deny this but asserted that the ordinance validly limited this right in that it bore a rational relationship to the achievement

of a legitimate state purpose. The use of this criterion inevitably raised the question of the purposes of the ordinance which, as discussed earlier, were not entirely clear. Its language simply stated that it was "necessary for the preservation of the peace, health, safety and welfare" of Detroit citizens.⁴ The city argued several ways in which it believed the legislation promoted these goals. First, it claimed the residency requirement would help improve the quality of services rendered by city employees. It argued that resident police officers would perform their jobs better as a result of commitment to the community, greater interest in work, and increased accountability and honesty. City officials reasoned that officers subject to the complaints of neighbors would carry out their tasks more carefully. Furthermore, they argued that home ownership was an important way of ensuring interest in local affairs.⁵

Proponents of the ordinance also claimed that police should reside within corporate limits to be readily available for emergencies. Closely related to this rationale was the argument about the value of off-duty officers. Police are required to be armed at all times and technically are on duty twenty-four hours a day. Therefore, the city claimed, residents benefit from the presence of off-duty officers who have a deterrent effect on crime.⁶ In addition, it argued that police-community relations are improved by citizen encounters and informal associations with off-duty patrol members.

The DPOA vigorously denied that the ordinance reasonably promoted the public's health, safety, or welfare. It further asserted that even had the legislation any relationship to a valid government objective, it was so nebulous as to be an insufficient basis for denying a fundamental right to

police.⁷ Furthermore, it maintained that a city residency rule was meaningless because police officers do not serve areas or territory; they serve people. Suburban residents work, shop, and attend entertainment in the city; city residents do the same in the suburbs. On this ground, the union argued that officers serve the entire metropolitan area.⁸ The DPOA used this same argument to refute the city's contention that municipal employees would take greater interest in their work than would nonresidents.

Concerning the availability of officers for emergencies, the DPOA noted that a police officer living in a Detroit suburb could conceivably live closer to his place of work than if he lived in some areas of the city. The union suggested that if availability for emergency calls was the major purpose of the police residency rule, a more reasonable approach would be to require officers to live within a certain number of miles of their assigned beats.⁹ This is the policy practiced in Washington, D.C. and a few other jurisdictions.

The union also argued there is no empirical evidence which proves that law enforcement is enhanced by residency or impaired by nonresidency. In particular, it pointed out the lack of hard data to support the contention that off-duty police have a deterrent effect on crime. One officer commented:

They feel if I live in the city I'm gonna do a better job. And that's strictly a big lie...That we'll curb crime more? If I'm here, I do the best I can for eight hours, but if I go home, I want to feel I drop the job and just be the guy next door.

This ain't the type of job you take because of hours or money. A guy who's gonna be a good policeman is gonna do a good job whether he lives here or not.¹⁰

To buttress its arguments, the DPOA called on former Police Commissioner Girardin who testified that in his opinion there was absolutely no relation between city residency and performance of regular police duties.¹¹ DPOA

lawyer Win Livingston argued, if anything, the residency rule could have a negative effect on police performance by lowering morale.

Although during the hearings the city placed heavy emphasis on the improved job performance rationale, it also offered the financial and racial reasons which motivated the council to pass the ordinance. The DPOA argued that to the extent the ordinance was designed to solve economic and racial problems, it was unauthorized by law. It charged that, in effect, the city had attempted to disguise a revenue measure as an enactment under its police power and that it had no right to do so. In response, the city claimed police were asking for a tax break by requesting residency waivers since nonresidents only pay .5-percent income tax whereas residents pay 2-percent.

Concerning the racial overtones of the ordinance the union argued that, in theory, the nation's laws provide blacks and whites with equal opportunities for employment, education, and housing. According to the DPOA, a city government has no authority to limit the rights of the white population because equality does not exist in fact for black people:

If the purpose of the ordinance is to hold white people in the city by law because black people must live there by practice, the purpose of the ordinance not only contravenes the law of our land, but has no reasonable relation to the health, safety, and welfare of the community as those terms are used to delineate the areas in which police powers may be exercised.¹²

As far as the union was concerned, the police residency requirement simply constituted an arbitrary restraint which accomplished nothing except to deter officer recruitment.

The city maintained the requirement was not arbitrary because it only

concerned individuals choosing employment as police officers and city employees of Detroit.¹³ It regarded the residency rule as a reasonable condition of employment. Furthermore, it argued there is no constitutional right to live where one pleases and at the same time insist upon public employment. In fact, there is no constitutional guarantee to government employment. The city concluded this argument by criticizing the police for wanting the residency rule abolished and by speculating on their real motives. Among these were avoidance of city taxes and social status reasons including "keeping up with the Joneses;" avoidance of contacts with certain racial and religious groups; and escape from city tensions.¹⁴

Equal Protection: The DPOA argued that if residency was determined to be unrelated to job performance, the ordinance should be held invalid in that it discriminated against nonresidents by opening police jobs to city residents only. The union also maintained that by excluding police from residency waivers, which were allowed to civil service employees (see Chapter 1, n. 28), the ordinance furthermore discriminated against officers. It complained that the city failed to specify a reasonable basis for making this distinction. The DPOA contended that the council's reasons for police restrictions should be equally applicable to civil servants -- firefighters, water and power maintenance crews, and snow-removal workers -- who also provided "vital" public services. The union concluded that this biased treatment of police rendered the ordinance unconstitutional.¹⁵

Conflict with City Charter: The union's third point was that the ordinance infringed upon the powers delegated to the police commissioner by the City Charter and, to this extent, should be declared void. The DPOA pointed out

that if the court found the ordinance invalid because it violated the Charter, a determination of the constitutional questions would not be necessary. As it was stated in Williams v. Detroit Civil Service Commission, 15 Mich App 55 (1963), "As a general proposition, courts will not reach a constitutional question if they can decide the case on nonconstitutional grounds."¹⁶

To support its position, the union cited portions of the Detroit Charter pertinent to the police commissioner's authority. It claimed that none of the sections governing the appointment, promotion, and termination of police officers makes such activities subject to the Common Council's control or to city ordinances.¹⁷ It also relied heavily on the section which provides that

The powers and duties of the commissioner, which shall be exercised and performed as herein provided and in accordance with the laws of the state and the ordinances of the City, shall be as follows:

(a) He shall assume and exercise supervision over the police department and make all proper rules for the government and discipline thereof;...

(d) May change the titles of police officers and employees under him, except deputies, designating such titles as he may see fit, creating whatever offices and positions he may deem necessary for the proper organization and conduct of the department.¹⁸

The union pointed out that paragraph (d) above had been construed in Slavin v. City of Detroit, 262 Mich 173 (1933), by the Michigan Supreme Court which stated:

While it is true that the council may indirectly control the number of officers and employees by limiting the appropriation, the right of appointment and removal, increase and decrease of the force still remain in the hands of the police commissioner and the board of fire commissioners respectively.¹⁹

The DPOA claimed that through the residency ordinance the council was

effectively assuming responsibility for firing police by instructing the commissioner to discharge nonresident officers. The union concluded that in this sense the ordinance was an attempt to govern the police department, and, as such, it conflicted with the Charter.²⁰

The union further pointed out that for years the police department had handled its own recruitment and personnel problems without outside interference. The police commissioner established height, age, and educational requirements. The council's control over the department was limited to the purse strings. Now, the union claimed, because of social pressures, the council was attempting to assert control over certain aspects of the department for which it had no authority.

The city asserted that the broad powers of the Common Council did give it authority to enact the residency legislation. According to the City Charter, the council's legislative powers include the rights

To enact ordinances to carry into effect the powers conferred and the duties imposed upon the city by the constitution and the laws of the state, to make operative the provisions of this charter and to promote the general peace, health, safety, welfare and good government of the city...²¹

To execute all legislative powers of the city including the power to adopt, continue, amend and repeal city ordinances...²²

To "enact such ordinances as may be necessary to carry out the provisions" of specified chapters dealing with the powers and duties of various executive officers and departments, one of which is the chapter dealing with the office of Commissioner of Police.²³

As the union had done, the city also cited the section which said that the powers and duties of the commissioner should be exercised in accordance with the state laws and city ordinances.²⁴ Unlike the union, though, the

city interpreted this to mean that the police commissioner's authority was clearly subordinate to the residency ordinance.

The city relied in part on the decision of the New Jersey Supreme Court in Kennedy v. City of Newark, 148A (2d) 473, which said it was not for the judiciary to entertain and resolve such issues as the wisdom and justice of a residency requirement. The court concerns itself with the exercise of power: "appeals relating to policy must be addressed to the local legislative body or to the legislature itself."²⁵ Similarly, Detroit officials claimed that where grievances of citizens stem from an authorized government policy decision, any redress must be in the legislative or political forum.²⁶ The city maintained that by restraining enforcement of the residency ordinance, the Michigan court would seriously flaunt the separation of powers doctrine.

Circuit Court Decision

In October 1969, more than a year after the union's suit was initiated, Wayne County Circuit Court Judge Thomas Roumell held that the residency ordinance was defective in two respects:

[I]t attempts to regulate the internal rules and regulations of the police department in contravention of the City Charter which places this power and authority in the police commissioner.

[O]n its face, the ordinance discriminates arbitrarily against police officers as contrasted with all other city employees by making a residency requirement an absolute condition of their employment, and in so doing, denies them the equal protection of the law.²⁷

The lower court declined to rule on whether the ordinance deprived police of due process of law, but answered "no" in dicta in a footnote:

The court does not find it necessary to reach or decide the issue of the constitutionality of residence requirements for public employees... Even so, and for the purpose only of this footnote, though it be obiter dictum, the court can see no inequity or injustice to the objective of the ordinance here in question had it but applied evenly and equally to all employees of the city. This court would agree that a residency requirement alone would not necessarily make a better city employee. The court would allow, however, that a residency requirement assumes to create the opportunity of employment and employment benefits to its own citizens who help, in the final analysis to finance its public services through taxes, purchasing power and other such involvements and can be therefore said to be instilled with a keener civic and proprietary interest in the dispensing and fulfillment of public services. Moreover, such a requirement can be also said to produce for citizens of any government entity the insulation of public concern for the general welfare and creates on the part of public employees a motivation for exemplary performance on duty.²⁸

Concerning the proper source of authority for residency requirements, the court stated that the language of the Charter, as cited by the DPOA and the city, did not make explicit the power limits of either the police commissioner or the Common Council. According to the circuit court's interpretation, although the Charter did direct the police commissioner to obey the city's laws, it did not authorize the council to reorder or restructure the police department's internal organization. The court noted, as the union had pointed out (see p. 24 above), that the commissioner was responsible for making "...all proper rules for the government and discipline..." of the police department. It concluded that the residency requirement, if any, is the kind of regulation for which the charter delegates responsibility to the police commissioner.²⁹

In deciding that the ordinance discriminated against police, the

court noted that the city failed to offer any reasons for distinguishing police from other city employees concerning residency waivers. In the court's opinion, if any valid reasons could be presented for requiring unconditional residence of police, they would have to apply equally to other city employees.³⁰

Members of the DPOA hailed the decision as a tremendous victory. Angered city officials immediately launched an appeal.

Appeals

In late February 1970 the Michigan Supreme Court agreed to review by direct appeal the circuit court decision. This time the city was careful to respond to the DPOA's equal protection argument. It claimed the ordinance merely recognized the facts of a policeman's employment which, in its normal course, is never outside city boundaries. Therefore, the city maintained since residency waivers are only allowed for work-related reasons, there was no basis for permitting police exceptions.³¹ The city concluded that the ordinance did not violate equal protection because a policeman's presence in the city is so closely identified with his work that, unlike other city employees, he would have no justifiable need for waivers.

To buttress its original argument that there was no reasonable basis for distinguishing police from civil service residency waivers, the union cited testimony relevant to the issues of recruitment and personnel shortages. It called attention to the city's admission that in situations of personnel shortages, for instance in nursing, the residency requirement could be waived.³² The union claimed such a shortage existed in the police department. Former Police Commissioner Girardin testified that just prior to the enactment

of the ordinance, the department had had difficulty recruiting new officers. He went on, "We have never filled our authorized strength, and our authorized strength, in my opinion, has never been adequate to meet the needs of the city." ³³ He also testified that the department would lose a substantial number of men -- approximately 1,700 -- in the next few years and that the residency rule hampered recruitment. Robert Quaid, Director of Personnel, testified that, from January through July 1969, seventy-two men had resigned from the department, and 58 percent gave the residency requirement as a reason. ³⁴

In deciding the case, the Michigan Supreme Court defined three issues: 1) whether the council can legislate a residency requirement for city employees which includes police, or whether any residency requirement for police is the exclusive authority of the police commissioner; 2) whether the council has the legal authority to legislate a residency requirement for city employees; and 3) whether the unconditional provision requiring police to live in the city while permitting waivers for other city employees is unconstitutional. ³⁵

The court decided against the union. The justices again looked to the City Charter for a definition of the powers and duties of the Common Council and the police commissioner. In particular, it noted the section providing that:

In addition to the rights, powers, duties and liabilities of officers prescribed in this Charter, all officers, whether elected or appointed, shall have such other rights, powers, duties and liabilities, subject to and consistent with the provisions hereof as the common council may deem expedient and shall prescribe by ordinance. ³⁶

The court construed this clearly to mean that the police commissioner's

powers and responsibilities are subject to validly enacted city ordinances. Thus, it ruled, "if a residency requirement for most city employees is within the legislative powers of the Common Council granted by the Charter, police officers as well as other city employees are subject to the requirement."³⁷

Relative to the council's authority to enact such an ordinance, the court decided that establishing a residency requirement for city employees to promote the "general health, safety, welfare, and good government of the city" was the kind of policy determination a legislative body is empowered to make.³⁸ In further support of the ordinance's validity the court cited Williams v. Detroit Civil Service Commission, 383 Mich 507 (1970), which upheld the civil service residency rule. However, as previously mentioned, that requirement allows waivers when they serve the city's best interest, as determined by the Civil Service Commission. The court in Williams said:

...the question of whether or not to make residence within a city a condition of employment is one which must be largely addressed to the legislative branch of government. This is not to say that under all circumstances such a requirement would be reasonable and valid.³⁹

Hence, the supreme court in the DPOA case concluded that, under the Charter and subject to the equal protection limitations discussed below, the Detroit residency requirement was a lawful city ordinance with which the police commissioner had to comply in exercising his authority.⁴⁰

The court divided five to two on the equal protection issue. The majority held that the test for validity under the Equal Protection Clause of the Constitution was not that there could be no selectivity in applying ordinances, but that the classification of employees subject to or exempt from the ordinances had to be based on natural distinguishing characteristics.

In addition, the classification had to bear a reasonable relation to the object of the legislation.⁴¹

Holding the ordinance valid in its totality, the majority concluded that a policeman's job does have "natural and distinguishing characteristics" from all other city employees, a distinction based largely on the perception of police as a semi-military organization always subject to immediate mobilization. Concluding that the "natural distinguishing characteristics" of the police were reasonably related to the aims of the Detroit residency ordinance, the court addressed the unique value of resident officers to a community:

There is a special relationship between the community policed and a policeman. A policeman's very presence whether actually performing a specified duty during assigned hours, or engaged in any other activity during off-duty hours, provides a trained person immediately available for enforcement purposes.

Policemen are required by the department to be armed at all times, and why is this? Simply because by such requirement they are, no matter where they are or what they are doing, immediately prepared to perform their duties. They are charged with law enforcement in the City of Detroit, and obviously must be physically present to perform their duties. The police force is a semi-military organization subject at all times to immediate mobilization, which distinguishes this type of employment from every other in the classified service.⁴²

The minority view was stated as follows:

The enactment of the residence requirement represents a decision by common council that certain benefits are acquired for the city by requiring most city employees to reside within the municipality. It then, by allowing a waiver of the residence requirement when waiver is in the best interest of the city, implicitly states that, in an individual case, the benefits attained by allowing a waiver outweigh the assumed detriment of an employee's outside residence.

By asserting that even when a waiver is in the best interest of the city and that even when it is allowed to an employee in the classified service under the same circumstances, a waiver will be denied to a police officer

solely because he is a police officer, the ordinance is self-defeating. Such a classification is devoid of rationality. Any legitimate governmental purpose must be in the best interest of the city. By denying that which is in the best interest of the city to police officers the classification foregoes any claim it might have to a reasonable relation to a legitimate governmental purpose.⁴³

The minority also took issue with the city's argument that the ordinance did nothing more than recognize the facts of a policeman's employment which, in its normal course, is never outside the city boundaries. They felt that policemen, in relation to their work locations, are substantially similar to firemen who are civil servants and have an opportunity for residency waivers. Both work primarily within the city, but both may be called upon to perform their duties outside the city as a result of the mutual aid pact between Detroit and several nearby municipalities.⁴⁴

The minority claimed that even were the city's view of a policeman's peculiar locational work requirements accepted, the ordinance could not be read as narrowly as the city suggested. Location of employment is only one of several factors considered in making determinations about civil service waivers. In addition, the commission takes into account the nature of the employee's work and all other facts concerning employment (Chapter 1, n. 28). According to the minority, these criteria allowed the commission broad discretion in deciding individual cases. The ordinance denied police officers the same kind of determination. Thus, the minority concluded the residency legislation deprived police of their lawful equal protection.⁴⁵

Justice Thomas E. Brennan disagreed with the minority's major premise that the ordinance invidiously discriminated against police. According to Brennan, the classification simply amounted to a legislative determination

that the nature of police work is such that officers should be city residents. Interpreting the purposes of the classification, Brennan addressed some of the policy implications of the police residency requirement, including the conventional wisdom that residency rules would facilitate ethnic turnover in the police department:

One of the most sensitive problems in law enforcement today is the relationship between the police and the black community. Over 40% of the people of Detroit are black. Less than 10% of the population of suburban Wayne, Oakland and Macomb Counties is black.

The Common Council of the City of Detroit has made a difficult legislative judgment, weighing the desirability of having a resident police force on the streets against the detriment of losing many experienced, dedicated and courageous officers who choose to live in the suburbs.

The common council has chosen a course which will make it more difficult to recruit policemen and keep them. But it has also chosen a course which will make recruitment of black officers more imperative. [emphasis added]

The residency requirement is not designed solely to assure that the officer has a greater stake in the city. It is also intended to bring about a more cooperative attitude among the citizenry with whom the police are in daily contact.⁴⁶

Thus, consistent with legal precedents, the Michigan Supreme Court upheld the validity of the Detroit residency ordinance, even with the peculiar details of the case. Because responsibility for police officers and civil service employees is separate in Detroit and because the residency ordinance specified different waiver provisions for these two classes, the nonconstitutional question of the proper authority for residency requirements became a key issue. In making its decision, the court exercised traditional restraint according to the separation of powers doctrine and deferred to the legislative branch. Although the court was heavily concerned with questions of legislative policy-making powers, it also decided the constitutional question of equal protection based largely on its interpretation of the policeman's special

role in a community.

Three long years after the DPOA's constitutionality challenge was begun, the Michigan Supreme Court's decision came as a major blow to the union. Determined to pursue all possible tactics, the DPOA filed an application for rehearing. The request was made only on behalf of the approximately thirty officers who had been granted permission to live outside the city just prior to the enactment of the ordinance. As the DPOA lawyer Winston Livingston commented, these men had been granted legitimate permission to move outside the city, and they acted accordingly. "We feel it works an undue hardship on them to sell their homes, uproot their families, and move back to Detroit."⁴⁷ Within weeks after the application was filed in mid-September 1971, the request was denied.

The union also filed an appeal to the United States Supreme Court on the broader ruling upholding police residency. As defined by the DPOA, the issue was whether there is a constitutional right to live where one pleases while working for a municipality.⁴⁸ Arguing that the questions raised by the appeal were substantial, the union claimed the case presented a recurrent and important issue to the millions of people employed by state and local units of government.

In late February 1972 the United States Supreme Court, by a unanimous vote, dismissed the DPOA appeal "for want of jurisdiction" and with no further amplification. Thus, the U.S. Supreme Court completed a four-year chain of legal arguments on the constitutionality issue that wound from Detroit to Lansing to Washington, D.C., and back again.

Enforcement

The years of legal limbo resulting from the constitutionality challenge prevented any systematic enforcement of the residency policy. Several officers took advantage of the confusion to move outside the city, especially following the 1969 ruling which declared the ordinance invalid. Throughout the challenge, estimates varied as to the actual number of police living outside Detroit. At the time of the original complaint, the DPOA estimated at least 400 officers were already living in the suburbs and another 500 wanted to move.⁴⁹ Of those living in the suburbs, the city claimed twenty-eight were doing so with permission granted by the police commissioner. It said about seventy-nine unconfirmed officers with less than one year service were also legitimately living outside Detroit.⁵⁰ (Until recently, new recruits were given one year after appointment to establish city residence. A new rule requires city residence at the time of appointment.)

The residency requirement was applied somewhat more rigorously to civil service employees after May 1970, when the Michigan Supreme Court in Williams upheld the validity of that commission's regulation (see p. 30 above). The original challenge to this rule had been filed in 1964, before the residency ordinance was passed. Because the appellate court declined the appellants' request for it to pass on the ordinance's constitutionality, the final decision was limited to the soundness of the civil service requirement. Following the supreme court's ruling, ninety-five civil service workers were discovered in violation of the commission's regulation. Most of these were reported by department stores requesting credit references.⁵¹

In regard to the police residency requirement, Mayor Roman Gribbs, who

succeeded Cavanagh in 1970, made it clear that he wanted strict enforcement. However, confusion and delays resulted from unresolved legal issues, one of which concerned retroactive enforcement of the ordinance. As mentioned previously, approximately thirty officers had been granted special permission by former Police Commissioner Girardin to move outside the city just before the legislation was passed. Now the question was whether they could remain there legally.

The second group of officers affected by the ordinance's enforcement consisted of individuals living outside Detroit without any permission. The police commissioner at this time, John Nichols, estimated they numbered roughly 600-1,000 and included at least 130 who had suspect plural residences, having established Detroit addresses while their families maintained suburban homes.⁵² With the help of friends or relatives, these officers typically shared apartments in the city and claimed to have separated from their spouses. The relevant question pertaining to them was the legality of this "dual residency."

Before these matters were resolved, in March 1972 Commissioner Nichols established a special "residency unit." Its purpose was to investigate the residential location of officers believed to be living outside the city and to judge each case on its merits. City officials gave nonresident police until September 15 to move into the city or face suspension.

By July, enforcement of the residency ordinance had become one of the most controversial issues in Detroit government. Approximately 500 officers admitted to outside residency. By the September 15 deadline, Nichols estimated about 125 of them had moved into the city, another forty officers

had quit the police force, and an estimated 300-400 were expected to appear before the residency unit's trial board.⁵³

During the summer of 1972, Nichols held to his hard-nosed enforcement policy. By December, however, after several cases had been reviewed, he was convinced that "there are those instances where some latitude should be afforded for either medical, compassionate, or economic reasons."⁵⁴ Though labeling himself a strong supporter of the intent behind the ordinance, the commissioner admitted that he felt it was too strict.

In a letter to the Common Council, Nichols recommended that an appeals board be established to review cases in which employees requested special waivers. He suggested that by composing the board of the secretary of the Civil Service Commission, the police and fire commissioners, a representative of the Mayor's Office, and members of the Common Council sufficient balance and standardization could be achieved to avoid arbitrary decisions. He did not think this would affect the essence of the ordinance but rather would allow some latitude for legitimate exceptions which he believed existed.⁵⁵ Before leaving office in 1969, Mayor Cavanagh made a similar recommendation suggesting that an amendment to the statute providing police residency exceptions would be more expeditious and cheaper than lawsuits.

For reasons which are not entirely clear, the council never took action on such proposals. At the time of Nichols's suggestion, it did consult Charles Meyer, Chief of the Civil Service Commission. After studying the court opinions on the residency ordinance's constitutionality and consulting with the Corporation's Counsel's office, the commission concluded that a change allowing individual exceptions in special cases would be inconsistent with the City Charter and therefore illegal. As Meyer pointed out, the Charter

states (in Title IV, Chapter 4, section 11) that "limitations as to residence shall be uniform with respect to each job or occupation."⁵⁶

This opinion most likely had a serious impact on the council. Given the controversy surrounding the issue, no one was willing to take the political and legal risks involved in defining a waiver policy which would prevent arbitrary and excessive exceptions.⁵⁷ Thus, the residency trial board proceedings continued without authority to grant waivers but with responsibility to order dismissals. Civil service employees challenged the fairness and effectiveness of the residency review unit because police officers were charged with the responsibility for disciplining other police. Nonetheless, by late November 1973, seven officers had been fired for nonresidency and approximately seventy-five had been charged with violations and were awaiting trial board action.⁵⁸

In December the board issued a controversial decision in an important case focusing on the knotty issue of "dual residency." Eugene Caviston, a sergeant at the time of the original proceedings, was the first of twenty-one supervisory officers scheduled to be tried for nonresidency. Caviston and his family had moved from Detroit to Farmington Hills in June 1970 after the 1969 circuit court ruling invalidating the residency ordinance. When the Michigan Supreme Court reversed this decision, Caviston sought to satisfy the residency requirement by renting an apartment in Detroit beginning in December 1972. His family maintained their suburban home, and he visited them on weekends.

The board found Caviston guilty of violating the city ordinance based on its determination that the sergeant's "social life and domestic activity centered around his family in Farmington Hills rather than his Detroit

residence."⁵⁹ The board fired Caviston but gave him sixty days to comply with the residency requirement by moving his family back to Detroit or divorcing his wife and establishing separate residences.

Caviston's family refused to move to the city. Declaring he would never believe it was a condition of employment to divorce his wife, Caviston appealed the decision to the Wayne County Circuit Court. The hearing was delayed indefinitely. Accordingly, the police department agreed to postpone action on Caviston's case until the court made its decision. In addition, the seventy-five nonresidency cases were also adjourned.

The city did not confront the question of retroactive enforcements until February 1973 when it finally ruled that the ordinance also applied to the "special waiver" cases. The police department immediately ordered these officers to move to the city within sixty days or face trial board action. The Lieutenants and Sergeants Association (bargaining agent for police department supervisory personnel) successfully sought an injunction against the department's action while it appealed the city's decision. Although a circuit court decision upheld the city's ruling on retroactive enforcement, in November 1974 the Michigan Court of Appeals finally held it would be "unreasonable and unconstitutional" to apply the ordinance retroactively.⁶⁰ This decision was a welcome win for the police, for as the next chapter describes, the union was engaged in still larger battles at this time.

As the dual residency and retroactive enforcement issues illustrated, the question of police residency enforcements in Detroit was far from settled. The DPOA successfully exploited these "loopholes" to circumvent the ordinance's application, despite the Michigan Supreme Court's ruling on its constitutionality.

Chapter 3

THE BARGAINING ISSUE

At about the same time the DPOA began its constitutionality challenge in July 1968 it also filed with the Michigan Employment Relations Commission (MERC - the agency responsible for administering PERA) an unfair labor practice complaint against the city. As the union had threatened to do during the public hearing (see Chapter 1, pp. 13-14), it charged the city with refusal to bargain in good faith by unilaterally and without negotiations imposing residency as a condition of employment for Detroit police.

Although the administrative labor proceedings were being carried on at the same time as the constitutionality challenge, it was not until after the decisions of the Michigan and United States Supreme Courts were issued that the bargaining question received much attention. By this time, it had reached the courts as an appeal from the MERC proceedings. The union redirected its resources to this new legal battle. To understand what was involved in the labor challenge, the development of the matter must be traced from its inception as an unfair labor practice charge.

MERC - Decision and Order

The problem presented by the union to MERC was stated as follows:

Did the City of Detroit have the duty to bargain with the DPOA, regarding residency requirements for policemen? If so, did the City of Detroit violate this duty to bargain by enactment of a residency ordinance?¹

PERA requires public employers to bargain with representatives of their employees over "wages, hours, and other terms and conditions of employment"

which the private sector also considers "mandatory" subjects for negotiation.² In the public sector, however, the scope of the mandatory bargaining subjects has not been more precisely defined in law, so that it is often difficult to isolate "terms and conditions of employment" from overlapping public policy issues. The DPOA considered residency an unequivocal condition of employment over which the city was obliged to bargain, a determination originally agreed upon by the city.

In its complaint, the union argued that the Common Council's failure to approve the residency agreement made by the mayor and its enactment of the ordinance breached the city's duty to bargain. The city responded that it had bargained through its labor relations director, the police commissioner, and the mayor and that the Common Council's refusal to ratify the agreement was legitimate. It claimed there are two ratifying authorities designated by the City Charter to act - the Common Council and the mayor. One of the two (the Common Council) legitimately failed to approve the informal agreement.³ The issue, as stated by the city, pointed up a general area of confusion in public sector bargaining. Which branch is the actual employer and which is responsible for bargaining, the executive or the legislative?

The MERC trial examiner reviewing the case, Joseph Bixler, said the sole issue to be determined was whether negotiations had taken place in accordance with the bargaining rules mandated by PERA. He commented:

We are not concerned with whether residency is meritorious or not, but only with the question whether the city has conferred in good faith with respect to wages, hours, and conditions of employment.⁴

Bixler stressed this point because the city argued in its brief that a residency requirement has merit, and the union argued that the residency

ordinance conflicted with PERA.

The trial examiner held neither argument was to the point or had merit. He claimed that even if, from the city's view, a residency requirement were meritorious, it would not excuse the obligation to bargain on the subject. Bixler likewise disagreed with the DPOA argument that the city ordinance conflicted with PERA, and therefore PERA, a state statute, would prevail. He argued that PERA does not diminish the authority of a Home Rule city, such as Detroit, to act regarding city personnel. However, it may circumscribe the council's authority by demanding that the city meet at reasonable times and confer in good faith with respect to mandatory bargaining subjects.⁵

According to Bixler, the central problem involved an interpretation about the authority of the city's negotiators. In the original memorandum of agreement concerning residency, the parties recognized the Common Council's power to approve their agreement:

This agreement is contingent upon its adoption as a "package agreement" by the Common Council and ratification by the membership of the Detroit Police Officers Association.⁶

Based on this, the trial examiner concluded that the Common Council's rejection was legitimate and that the city had not violated its duty to bargain.

However, Bixler also concluded that the subject matter (residency requirements) was one that is a mandatory bargaining item. Therefore, the Common Council would be obliged to negotiate over residency upon future demand by the DPOA.⁷ The council's passage of the ordinance did not alter this conclusion. The examiner repeated that, as stated in the City of Saginaw, 1969 Labor Opinions 293, it did not seem proper that a

legislative body could veto the actions of its authorized negotiators on principle without discussing the matter with the bargaining agent. He conceded that this course of action might be taxing on the Common Council. However, he concluded, in a situation such as Detroit's, with a strong mayor and strong Common Council which has the right to approve or reject contracts, no other course of action would provide meaningful collective bargaining.⁸

Bixler issued his decision in August 1969 and recommended that the charges be dismissed. The DPOA promptly filed exceptions to the decision. In accordance with MERC procedures, the entire case was then reviewed by the full Employment Relations Commission.

The commission's decision hinged in part upon determining whether the Common Council was required to bargain directly with the union before a legitimate impasse was reached. At the time the Detroit residency ordinance was passed, the public sector, like the private, recognized an employer's right to take unilateral action after impasse.⁹ Based on its conclusion that an impasse had been reached in the 1968 police bargaining the city claimed that the Common Council's unilateral passage of the residency legislation was valid. The DPOA, on the other hand, vigorously denied a legitimate impasse because the council had failed to bargain directly with the union.¹⁰

The commission, noting its decision in an earlier case that direct participation by the municipal governing body was not a condition precedent to a bargaining impasse,¹¹ decided that a bona fide impasse had been reached in the police labor negotiations when the Common Council rejected the informal residency agreement. Although the council did not instruct

the labor relations bureau or the Mayor's Office that it had turned down the tentative agreement, the commission concluded that such rejection was implicit in the council's adoption of the residency ordinance, which it deemed valid.¹²

In mid-March 1971 the full commission issued its decision and order, concurring with Trial Examiner Bixler that the city had not violated PERA. As Bixler had done, it also ordered that the residency issue be dismissed.

The DPOA was concerned that the passage of the ordinance removed the question of residency requirements from the arena of collective bargaining. The commission denied this and repeated that residency requirements are indeed conditions of employment under PERA. The Common Council could not change that by adoption of an ordinance or by any other means.¹³

Appeals

MERC grievance procedures specify that parties may petition to have the commission's decision reviewed by the Michigan Court of Appeals. Interestingly, it was the city, not the union, which appealed part of the commission's order, challenging the ruling concerning the bargainability of residency requirements.

The city claimed that it had erred in originally agreeing that residency is a condition of work. It maintained that at the time the negotiations began, collective bargaining was new to Detroit and its representatives were naive. The city was now suggesting that residency is a continuing recruiting requirement like minimum height, vision, or good health.¹⁴ If the court accepted this reclassification, Detroit would be relieved of

its duty to negotiate over residency in light of MERC's ruling in another complaint that recruiting requirements are not mandatory bargaining items.¹⁵ With a favorable ruling on the validity of the residency ordinance secured, the city wanted to eliminate any future possibilities of having to bargain with the union over changes in the policy.

To the city's delight, the court of appeals reversed MERC on the bargainability of residency requirements.¹⁶ It based its decision on the Michigan Supreme Court opinion in DPOA v. City of Detroit, 385 Mich 519 (1971), even though this case did not address any questions concerning the scope of public sector bargaining (see Chapter 2, p. 29 above). The appellate court reasoned that because the supreme court upheld the city's constitutional right to impose residency requirements, the issue was no longer mandatorily negotiable.¹⁷ The court did not even address the city's argument concerning the reclassification of residency as a recruiting requirement.

This decision, an unexpected and major setback to the union, was issued in July 1972, only months after the United States Supreme Court rejected the DPOA's constitutionality appeal. The prospects for the union were quite bleak. Although the legitimacy of dual residency was still unresolved, the only major hope for the DPOA was to appeal this most recent decision to the Michigan Supreme Court.

On appeal in November 1972, the union argued vehemently that residency clearly described a condition to which officers were subject if they were to remain employed by the police department.¹⁸ The requirement was an absolute one from which there were no exceptions for police. In addition,

the union claimed that even though the residency ordinance was constitutional, residency requirements were still negotiable under the terms of PERA.¹⁹

The union pointed out that the duty to bargain does not compel either party to agree to a proposal or require either to make a concession. Fulfillment of the statutory obligation is measured by the good faith of the parties in conferring with each other rather than by the results produced or not produced by negotiations.²⁰ Thus, if the supreme court held that residency is a negotiable subject, the ordinance would not be nullified automatically. The net effect would be to place the issue on the bargaining table along with other items.

In further defense of its new position the city again maintained, as it had during the constitutionality challenge, that the enactment of the residency ordinance was fundamental to the basic direction and purpose of municipal government. It reasoned that passage of the legislation was not an attempt by the Common Council to regulate or administer municipal employment but rather an effort to fulfill its responsibility to promote the public's health, safety, and welfare. The city concluded that such a policy decision was beyond the scope of bargaining.²¹

MERC also participated in the appeal to the supreme court, although throughout litigation it sided with neither party. It neither approved nor disapproved of the ordinance, nor did it have an opinion on the propriety or impropriety of police residency regulations. Its sole concern was the administration of PERA. Agreeing with the DPOA that residency was a term and condition of employment, it held that the requirement was a mandatory bargaining item under PERA.²²

MERC also agreed with the union that a Home Rule city enacting a valid ordinance is not relieved of its duty to bargain on the subject matter of that ordinance. The commission noted that although the Michigan Court of Appeals had affirmed MERC's finding that the adoption of the residency ordinance did not violate PERA, the court's conclusion was based upon its opinion that the DPOA constitutionality decision (385 Mich 519 (1971)) in some way barred future negotiations over residency. MERC maintained this conclusion was entirely unwarranted.²³

At the outset of its discussion, the supreme court clarified its holding in the 1971 DPOA constitutionality case, specifying that, contrary to the opinion of the court of appeals, it neither considered nor decided in that case any question concerning the scope of the duty to bargain. The decision simply was that the Common Council had the authority to enact a residency ordinance.²⁴

The supreme court defined one of its main tasks to review MERC's classification of the residency requirement as a mandatory bargaining subject. The court was not persuaded by the city's argument that a residency requirement which regulates the conduct of police officers throughout their years on the police force can be correctly labeled a "continuing recruiting requirement." It claimed that recruiting requirements focus on the point in time at which a candidate is hired and do not continue to regulate employment thereafter.²⁵ The court noted that although the city claimed residency was a recruiting condition, it allowed new officers one year after their appointments to establish city residence.

Thus, the Michigan Supreme Court affirmed MERC's decision, upholding the

bargainability of residency rules. Concerning the details of the 1968 passage of the residency legislation, the court also agreed with MERC that good faith bargaining had taken place and that an impasse situation had ensued when the proposed agreement was rejected by the Common Council. Thereafter, unilateral action, namely the passage of the ordinance, was permissible. The court further concluded, though, that collective bargaining cannot be avoided through the enactment of an ordinance. It spoke with finality in February 1974 when it said that in future negotiations, "the city will again be required to bargain in good faith on the residency requirement if it is proposed as a bargaining issue by the DPOA."²⁶

After a convoluted six-year cycling through various administrative and judicial channels, the question of the duty to bargain over residency requirements in Detroit was finally resolved. The DPOA applauded the decision as a major "legal and moral" victory.²⁷

1974 Contract Negotiations

The union wasted no time in following up on the court's decision. On February 20 it formally demanded that the city "meet and bargain in good faith regarding the residency of police officers."²⁸ Other aspects of the DPOA's noneconomic contract were not scheduled to expire until June 1976. However, expiration of its economic contract was approaching on July 1, 1974. During the 1972 police labor negotiations, the union and the city had made a gentleman's agreement concerning the residency issue. Recognizing that residency could not be properly considered due to the pending legal challenges, the city agreed that, if the Michigan Supreme Court ruled the matter negotiable, the union could bring it up when its economic contract expired in July 1974 rather than waiting for its noneconomic contract to

run out in 1976.²⁹ However, the consideration of residency along with the economic items was to complicate negotiations considerably.

Coupled with its nonresidency demand, the union requested a 9-percent hike in base pay plus 100-percent compensation for any inflation occurring through the upcoming year. It also asked for a major series of improvements in the pension plan, health care, and other fringe benefits. Not including the cost-of-living escalator Gary Lee, DPOA President at this time, estimated the cost of the package at \$8.3 million. City financial experts estimated the actual cost could easily double the \$8-million figure given the inevitable costs of similar demands from other city employee groups.³⁰

As is always the case in public sector labor relations, economic and political factors significantly influenced the course of the 1974 police bargaining. During a time of serious economic instability, city officials regarded the union's nonresidency demand as an irresponsible and offensive way of avoiding taxes. This resentment was further punctuated by the DPOA's simultaneous request for wage increases. The city controller and budget director forecast that even modest pay hikes could not be financed without layoffs and cuts in services.³¹

The political importance of residency at this time can hardly be overstated. A community-based police department was the cornerstone of Mayor Coleman Young's political philosophy, and police residency was viewed as a major means for achieving this goal. Elected in November 1973 former State Senator Coleman Young became Detroit's first black mayor. He defeated former Police Commissioner John Nichols who was fired by Mayor Roman Gribbs after ignoring suggestions that he resign upon

announcement of his mayoral candidacy. Nichols's defeat was a disappointing blow to the DPOA.

Predictably, crime and the police department had been the major campaign issue. While Nichols advocated crime prevention, Young emphasized law enforcement and police-community relations. He was especially interested in effecting a black recruitment campaign to reach his goal of a 50:50 ratio between black and white officers.

In addition to his concern with the residency policy as it related to the police, Young was also sensitive to reservations expressed by citizens about the perceived consequences of nonresidency for all public employees. They feared a scenario which started with a massive white flight to the suburbs. They worried that this would exacerbate an already depressed housing market and cause real estate values to collapse. Detroit income taxes would also drop, and the burden of making up the deficit would fall to the remaining residents, further accelerating the exodus from the city.

By the time of the 1974 contract negotiations the police residency question consequently had become a key symbolic issue for both Mayor Young and the DPOA. To Young's mind, the union's opposition to the residency rule was an economic and racial slap in the face to the city. From his perspective, the DPOA challenge raised a fundamental issue of control:

...one of the issues at stake here is who in the hell runs this city: civilian authority or the police department?³²

Young felt strongly that the residency rule was a "basic policy question" and not negotiable:

I'm not surrendering to the DPOA. The Supreme Court won't be negotiating with the DPOA. I will. If Mr. Lee or anyone else thinks I'm giving this one away, they have another thought coming.³³

The DPOA was equally adamant in its demand that the residency rule be eliminated. The union argued that it should be accorded the basic right to choice of residence, especially when discretionary residency waivers were available to members of the civil service. President Gary Lee declared:

It will be very, very difficult to settle this contract without a clause abolishing the police residency ordinance adopted by the City Council.³⁴

Given the hard-line positions of both sides, most observers expected the negotiations to end in binding arbitration as all police contracts had done since 1969 when Michigan passed a compulsory arbitration act for police and fire departments.³⁵ Indeed, as the weeks progressed the parties were unable to resolve the residency dispute nor could they agree upon the terms for a new economic contract. Consequently, on June 14, 1974 the DPOA requested binding arbitration.

Months were to pass before the proceedings finally began. Frustrated by the deadlock, around 350 off-duty police and their relatives demonstrated at the City-County Building in late July. In response to the demonstration, Young reasserted his firm intentions concerning residency:

I gather they're complaining about lack of progress in negotiations. I don't understand that. The city has offered to match the economic package given to other city workers and the economic package that the UAW won.

If they want to go beyond that into noneconomic matters, that's another question. We're not giving up the right to set policy within the Police Department.³⁶

By mid-August Young's police chief, Philip Tannian, announced an end to the nine-month moratorium in disciplinary action against nonresident police, which had been invoked in December 1973, in response to the court's delay over Lieutenant Eugene Caviston's dual residency appeal (see Chapter

2). Tannian, claiming he had been unaware of the discontinuation of the residency trial board hearings, reinstated them as soon as the situation was brought to his attention, even though still no action had been taken on the Caviston case.³⁷

Two factors may have prompted the city's interest in stepping up nonresidency investigations at this time. The Detroit Free Press had just disclosed indications that DPOA President Gary Lee, antagonistic to the mayor, may have been living in a Detroit suburb.³⁸ Additionally, the difficulties in negotiations and the likelihood of arbitration may have motivated Young to try to strengthen the city's bargaining position.

In October the mayor submitted to the union a list of twelve possible neutral arbitrators to consider for heading the arbitration panel. The structure and functions of the tripartite body are such that the impartial chairman is essentially responsible for casting the deciding vote on all matters. It is assumed that the two representatives will vote on behalf of their respective parties. The third-party neutral is expected to make a well-informed decision based on the arguments presented by the opposing sides. As chairman, he is responsible for writing the opinion and the order which is binding on both parties and enforceable in circuit court.

Until 1972 the panel had authority to compromise awards. Then a "last best offer" amendment, applicable only to economic issues, was passed which specified that the panel must adopt either the city's or the union's last proposal.³⁹ For example, if the city's last offer on salaries was a 3-percent increase and the union's last proposal was a 9-percent increase, the panel was required to award either the 3-percent or the 9-percent suggested increase, but not something between the two. The panel is still free to make compromise awards on noneconomic issues as it deems proper.

The chairman has the authority to remand any items to the parties for further collective bargaining if he considers it beneficial.

With this background in mind, the critical importance of the choice of the chairman for the police-labor dispute panel becomes apparent. Not only was he to become the one responsible for choosing between the city's and the union's salary offers, but in addition, after years of debate among many parties over the controversial residency issue, this single individual would now be empowered to establish Detroit's policy on the matter, a decision with far-reaching consequences for the allocation of the city's resources. The residency policy has both direct and indirect impacts on such factors as access to public jobs, income tax revenues, costs of government, and the quantity and quality of police services.

The new DPOA president, Ron Sexton, rejected Mayor Young's list of neutral arbitrator candidates, claiming that none of the suggested individuals had sufficient arbitration experience for the important position.⁴⁰ Furthermore, the candidates were all city residents, and the union disagreed with the choice of a city resident as the impartial chairman. Accordingly, it also offered its own list of third-party neutrals for consideration.

By November the other two panel members had been chosen. They were Allan Davis, former Director of the Detroit Labor Relations Department, as the city's delegate, and Jack Wood, President of the Detroit Building Trades Council, representing the union. Still unable to agree on a chairman, the two parties asked MERC to step in and appoint the neutral arbitrator.

The extreme delicacy of the chairman's role in the police residency arbitration complicated and delayed even MERC's choice of a third-party neutral. The tremendous emotional and political weight attached to the

issue dictated that a highly experienced and reputable individual be chosen for the position.

During the delay, the disputed residency issue remained very much alive and visible. Emotions ran high between the union and the city. Sexton charged that no progress had been made in negotiations because the city had taken "a fixed and unreasonable position" on economic matters until the DPOA agreed to surrender the right to bargain residency.⁴¹ Partly because the history of arbitration settlements in Detroit was very favorable to the unions, the city originally tried in the normal course of collective bargaining to "buy off" nonresidency demands with wage increases. Sexton angrily responded to this tactic:

We do not think we should divorce the two issues, nor do we feel we should give up one to get the other.⁴²

Although this strategy on the part of the city failed with the DPOA, it eventually succeeded in the city's negotiations with two other public safety unions, the police Lieutenants and Sergeants Association (LSA), and the Detroit Firefighters Association (DFFA).

Toward the end of October 1974 the LSA ratified a new three-year contract which contained an amended residency clause. It stipulated that the supervisory officers would agree to live in Detroit, but that their agreement would be voided if the residency rule were outlawed. At first the union rejected the contract because of the residency requirement. Two weeks later, however, it reversed its position and accepted a new salary agreement providing for a 5-percent pay increase the first year and 4-percent increases for each of the next two years.⁴³ The officers also received a cost-of-living increase of 9-percent for the first year and 6-

percent for each of the two following years.

Besides the usual economic considerations, a major reason the LSA was willing to trade off nonresidency for higher wages was that, on the average, the LSA membership is significantly older than that of the DPOA. Thus, LSA members are more concerned with wages and pensions, and less concerned with trying to raise young children in the city. For the most part, the LSA members are well established in their Detroit homes and are not likely to want to move to the suburbs before retirement. In contrast, the majority of the DPOA members, being younger, are just investing in homes. For them, the nonresidency demand was even more important than the wage issue.

Like the lieutenants and sergeants, the Detroit firefighters also eventually signed a new contract containing an amended residency clause. In March 1974 the DFFA vowed an all-out fight to end the residency requirement for firemen. By January 1975 the firemen reversed their position and approved a three-year contract providing the same wage increases and cost-of-living benefits contained in the LSA agreement and extending the city's residency requirement.⁴⁴ Concerning the union's changed position on residency, DFFA President Earl Berry said:

...problems in the economy forced us to a different position. We think there is a possibility of wage and price freezes and we didn't want to be locked out.⁴⁵

At about the same time the firemen's contract was settled, a chairman for the police dispute panel was finally appointed by MERC. Harry Platt, a seventy-two-year-old veteran Detroit arbitrator was the Commission's carefully selected neutral party. MERC agreed with the city on the importance of requiring the chairman be a Detroit resident. Not only was Platt a lifelong city resident, but he also had earned a national reputation

as an outstanding arbitrator. Seventeen of his forty years of experience were spent umpiring disputes between Ford Motor Company and the UAW. In addition, he headed two presidential commissions to settle railroad labor crises, arbitrated labor-management disputes in the airline, steel, and newspaper industries, and in 1974 became the first arbitrator to hear a baseball contract.⁴⁶ He also chaired the Michigan arbitration panel which in 1971 maintained parity between Detroit policemen and firemen.

Harry Platt certainly had the necessary respectability and clout to put weight behind a settlement of the controversial residency question. Nonetheless, the case was loaded with political dynamite, and the final decision would be a tough one.

Chapter 4

ARBITRATION

After the long delay, both sides were anxious to begin arbitration. The disputed wage question and other unresolved economic matters were submitted along with the residency issue.

The city argued that the residency and wage questions should be considered simultaneously because police compensation is based on the premise of twenty-four-hour duty. It claimed that eliminating the residency requirement would create an economic windfall for officers who chose to live outside the city. On the other hand, Chairman Harry Platt concurred with the union that the two matters could and should be handled independently. Midway through the hearings he perceived that the parties could resolve the economic issues alone, without an order from the panel, so he remanded these items for further collective bargaining.

The city and the union eventually settled the economic matters themselves and signed an agreement retroactive to July 1, 1974 and extending through June 30, 1977. Although not entirely satisfied the DPOA ultimately settled for the same salary increases and cost-of-living adjustments the ISA and DFFA had received. In addition, the parties agreed to extend their noneconomic contract one year past its June 1976 expiration date. Thus, they could devote full attention to the residency issue, the only one remaining before the panel.

As defined by the panel, the question to be decided was whether the parties' collective bargaining agreement should contain a requirement that

Detroit police officers be city residents.¹ It conceded this was essentially legislative public policy which was normally determined by elected officials unless the Act 312 impasse provisions were applicable.² In this respect the panel's authority contrasts sharply with that of the courts which cannot substitute their judgment for legislative decisions.

The panel, in resolving such a dispute, is instructed to base its conclusions on the pertinent factors set forth in Section 9 of Act 312. Those applicable to this particular case, as decided by the panel, were as follows:

- (a) The lawful authority of the employer...
- (c) The interest and welfare of the public...
- (d) Comparison of the ... conditions of employment of the employees involved in the arbitration proceeding with... conditions of employment of other employees performing similar services and with other employees generally:
 - (i) In public employment in comparable communities...
- (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 service or in private employment.³

The panel was free to uphold the residency rule, to abolish it, or to devise its own compromise. For the union, any compromise in the residency dispute would be at least a partial victory, whereas for the city, any compromise would mean defeat. And everyone, including Harry Platt, was fully aware that the city's residency policy had become for Detroit's first black mayor an important issue of control. Because the DPOA was challenging a long-standing city policy, Platt felt the burden of proof fell on the union to show that continuing the residency requirement

was unjustified. At the same time, the city was obliged to justify its continuation as a reasonable condition of work within the framework of Act 312.⁴

The panel conducted hearings between February and the beginning of May 1975. The city was represented by George C. Edwards III, Special Counsel to the Mayor and Attorney for the City (son of former Detroit Police Commissioner George Edwards). Gordon A. Gregory and Nancy Jean Van Lopik, of the law firm of Gregory, Van Lopik and Higle, represented the DPOA.

Many of the substantive arguments raised during these proceedings were very similar to those presented during the constitutionality challenge in 1968-1971. Different now was the social, economic and political climate. Thus, the relative importance of certain arguments changed, as did the form of their presentation in response to the different criteria of the arbitration forum.

The DPOA Position

Despite the 1971 ruling upholding the validity of the residency ordinance, the union still maintained that its rights of travel, relocation, and choice of residence were being unlawfully restricted. The DPOA urged the application of the "compelling state interest" standard to test the validity of the ordinance: a state classification restricting a fundamental right or a suspect classification (e.g., race, sex) creating invidious discrimination is unconstitutional unless it supports a compelling state interest.⁵ The courts must consider if means other than the curtailment of a fundamental right are available to meet the compelling interest.

Technically, this standard is stricter than the equal protection rational basis test which allows classifications in the application of ordinances as long as they are based on natural distinguishing characteristics and bear a reasonable relation to the object of the legislation.⁶ (This equal protection test was applied by the Michigan Supreme Court in deciding the constitutionality of the Detroit residency ordinance [see Chapter 2].⁷)

The union claimed that public employment was not a sufficiently compelling reason to deny police their fundamental rights.⁸ It did concede that the city is justified in desiring that its employees get to work on time, that police respond quickly to emergency calls, and that residential location does not interfere with duty performance. However, it maintained these objectives could be satisfied without requiring police to live within corporate limits. One suggestion was to allow officers to live within a twenty-five-mile radius of the City-County Building.

The union offered testimony from several witnesses who enumerated diverse personal reasons for wanting the freedom to choose their place of residence. Reasons cited were desires for raising animals, gardening, location of family and friends, and circumstantial reasons like health, inheritances, and marital relationships. The DPOA claimed that this myriad of personal reasons highlighted the fundamental nature of the right to freedom of travel and relocation, thereby demonstrating the rationale for repeal or relaxation of the residency rule.⁹ The union's emphasis on personal desires as valid reasons for modifying the requirement contradicted the civil service criteria which specify that exceptions are only allowed for work-related reasons.

The union also claimed that the unique strain of a policeman's work should be alleviated by allowing him to retire to a peaceful and stable home during off-duty hours, which might require geographical as well as psychological distance. To deny police the opportunity for outside residency could prove counterproductive for both police and city residents since an officer's inability to escape from his job could seriously affect his duty performance.

In support of its stress argument, the DPOA relied heavily on expert testimony from Dr. George L. Kirkham, Assistant Professor of Criminology at Florida State University, who, it maintained, was uniquely qualified to testify because of his academic training as a research criminologist and his first-hand experience in a participant-observation research project. Kirkham had gone through a law enforcement training program and had served as a Jacksonville, Florida police officer living in a small inner-city apartment for approximately five months.

Kirkham testified that he found police work extremely demanding and that his inability to leave the scene of his job during off-duty hours was especially frustrating. He concluded that a police officer's performance could be enhanced by living outside the city in which he is employed. According to Kirkham:

...[a] residency requirement imposes a clearly unreasonable psychological and social burden on people [police], a class of men and women from whom we already demand too much for far too little.¹⁰

Kirkham's testimony was supported by two prominent Detroit psychiatrists. Dr. Bruce Danto maintained that police residency requirements are psychologically objectionable because they can cause an officer to feel he is

captive in a community where he has become highly stigmatized and is often the target of hostility.¹¹ Dr. Edward C. Dorsey claimed that such a requirement has a negative psychological impact on the concept of a "home." He argued that when the choice of a home is dictated and secondary to one's job, it becomes something that only serves the biological need for sleep and nutrition.¹²

In addition to the expert testimony, the DPOA claimed there is ample evidence from working police officers that choice of residence relieves stress and tension. Carl Parsell, former president of the DPOA, and Los Angeles police officer Antonio Amador both testified to this effect based on their own experiences. The union also cited a study, "Job Stress in Policemen," conducted by the National Institute for Occupational Safety and Health which concluded and recommended:

Thus, police work becomes one of the few jobs which has a potent adverse effect on the total life of the worker. That is, the policeman's job affects his own personal social life, his family's social life, his children's perception of him as a father, etc.... So, from the point of view of the effective functioning of the police department, as well as the effective functioning of the policemen, serious attempts at reduction of specific job stressors are warranted.¹³

Comparing other jurisdictions, the union pointed out that only three of the ten largest cities other than Detroit (Chicago, Philadelphia, and Indianapolis) still require residency within city limits.¹⁴ The remaining seven cities have variations including no rule, reasonable distance, contiguous counties, and a mile radius. In Michigan itself some smaller towns and cities have abolished or modified their residency rules.

The union called attention to the fact that Wayne County employees are permitted to live within the "Detroit Metropolitan Area" which includes

several counties. Eugene C. Mathivet, Jr., Director of the Wayne County Civil Service Commission for approximately twenty-five years, cited the traditional civil service philosophy underlying a liberal residency rule: the largest possible pool of applicants will yield the greatest number of qualified candidates from which to make the best selection of employees.¹⁵ The county residency rule, the union further argued, is more consistent with the notion of a Detroit metropolitan area and emerging concepts of regionalization embodied by organizations such as SEMTA (Southeast Michigan Transit Authority) and SEMCOG (Southeast Michigan Council of Governments).¹⁶

"Other factors" mentioned by the union in support of eliminating the residency rule were savings from costs of residency investigations and litigation and the retention of trained personnel who would quit without the basic right to choice of residence. Although the DPOA bore the burden of proving the unreasonableness of the residency requirement, it only introduced two major arguments -- the rights to travel, migration, and choice of residence and the right of relief from stress -- to support its position. The rest of its case consisted primarily of rebutting the city's arguments and will be discussed in more detail in the following section. The union's general charge was that the city had failed to prove its allegations that:

1. A "mass exodus" of police officers from the city would occur if the residency rule were relaxed or abolished.
2. The city would suffer irreparable financial damage due to lost income and property tax revenues if police officers moved to the suburbs.
3. Continuation of the residency requirement is necessary for stable community relations.
4. Police department operational considerations (such as twenty-four-hour duty and emergency mobilization) necessitate continuation of the requirement.

5. Off-duty officers living in Detroit have a major deterrent effect on crime.
6. Cities with police residency requirements have better law enforcement and community relations than the majority of cities which either have no rules or modified requirements.
7. The residency issue is a matter of real concern or importance for Detroit citizens.¹⁷

The City Position

From the city's point of view, the major question to be decided was not simply whether a police officer is entitled to choose his place of residence, but whether an individual may live where he wishes and at the same time insist upon government employment.¹⁸ The city argued emphatically (and correctly) that no such right to public employment is expressed in the U.S. Constitution, nor have the courts created such a substantive right.

The city stressed the point that the constitutionality of the residency requirement was not an issue before the panel. It claimed this matter was firmly resolved by both the Michigan and United States Supreme Courts. It interpreted the U.S. Supreme Court's dismissal of the DPOA case for want of a substantial federal question as tantamount to a decision on the merits that the ordinance does not violate either the right to due process or of equal protection.¹⁹ To buttress this conclusion, the city cited Ahern v. Murphy, 457 F2d 363 (7th Cir 1972), in which a Chicago policeman challenged the constitutionality of a Chicago residency ordinance. The U.S. Court of Appeals for the Seventh Circuit, in dismissing the case, found the U.S. Supreme Court's dismissal of the DPOA appeal (see Chapter 2) not merely persuasive, but,

indeed, "dispositive" of the matter:

Although it is well established that the denial of a petition for writ of certiorari by the Supreme Court carries no precedential weight whatever, ...the dismissal of an appeal for want of a substantial federal question stands on an entirely different basis. It is a decision on the merits of the case appealed.²⁰

The city pointed out that several other courts throughout the country have also upheld residency ordinances and state statutes on the grounds that they have legitimate and rational purposes and further compelling state interests. It made special note of Krzewinski v. Kugler, 338 F Supp 492 (D NJ 1972), in which the court applied the stricter "compelling state interest" test, not the rational basis test, in a suit on behalf of police and firefighters challenging a similar residency requirement.

Balancing the constitutional rights of the public safety workers to travel and migrate against the interests of the city, the Krzewinski court, echoing the Detroit police case, found three compelling reasons it felt legitimated the residency restriction. In light of the New Jersey riots, the court concluded the rule was important to help improve police-community relations. Additionally, it recognized the deterrent effect of off-duty police and the value of chance associations and encounters resulting from local residence, which led to important sources of information. In considering the popular contention that police should reside in the cities to respond quickly to emergencies, the court concluded that the state could satisfy this interest, not by an infringement of a fundamental right, but alternatively, as proposed by the DPOA, by the use of time or distance computations.²¹

The city acknowledged that the rights of travel, migration, and choice of residence had been upheld on constitutional grounds in other cases, but

it pointed out that the facts and circumstances were vastly different from the police residency case. Among other things, most of these cases involved and invalidated durational residency requirements (requirements that an individual maintain the status of a resident for a minimum period of time before he is eligible for certain benefits or services).²²

The city concluded that not only is the Detroit residency requirement valid, but also its continuation is constitutionally mandated, albeit indirectly, to avoid the promotion of de facto residential segregation. It argued that the requirement is no less justified for police than for other city employees. To the contrary, it claimed there are a number of rational reasons particularly applicable to police (e.g. list pp. 63-64, nos. 3-6) that make the requirement even more important for them than for general city employees.

The city claimed elimination of the residency rule would have catastrophic social and economic consequences. The expected flight of middle-class whites from Detroit would result in a loss of tax revenues and thereby the city's fiscal balance would deteriorate. This would necessitate layoffs and lead to a simultaneous increase in demands for more and better services within the city.²³ These concerns, along with the police department operational considerations, were the major issues discussed by the city in addressing the impact of police residency on the public interest.

Among the operational considerations, the city placed heavy emphasis on the need for quick mobilization in emergencies. Officials wanted to ensure the immediate availability of police during civil disturbances such as the 1967 riot and the 1968 assassination of Martin Luther King.

The DPOA rebutted that an officer living in a suburb may actually be

living closer to his station than if he lived in certain areas of the city, particularly since officers are not required to live in their assigned beats. In fact, the distribution of police residences throughout the city is heavily skewed to the northeast and northwest regions referred to as "Copper Canyon" for this reason.²⁴

The city conceded that some officers with suburban homes may be closer to their work than if they lived in certain parts of Detroit. As a general rule, however, it claimed more officers would be nearer to their duty stations if they all lived in the city.

The DPOA also argued that situations necessitating full mobilization are rare. It noted that the troubles of 1967 and 1968 were the only times in over twenty-eight years that the police force had been completely mobilized.²⁵ (Ironically, on the night of July 28-29, 1975, only days before the union submitted its post-hearing brief, a civil disturbance erupted in the city which required a modified police mobilization. This involved calling shifts in early and holding others late. At this time, no special mention was made of the speed of response, although an estimated ninety-three officers were believed to be living outside Detroit.²⁶)

The union also objected to the city's argument that the residency requirement is necessary to uphold the twenty-four-hour duty policy. As it had done during the constitutionality case, the DPOA challenged the effectiveness of round-the-clock duty by pointing out that no empirical evidence exists to support the relationship between off-duty police action and law enforcement. The police department does not compile statistics pertaining to the frequency of off-duty activities. Contrary to the city's belief, the union claimed police not on duty are wary of performing law enforcement

functions lest they be sanctioned by the department for improper conduct,²⁷

In contrast, Police Chief Tannian testified about three occasions when his off-duty interactions helped maintain community peace. Based on other similar experiences, the city claimed an officer's mere presence in a community resulted in a degree of trust and familiarity with neighbors which opened new sources of information and led to off-duty arrests. It argued that the chief's experiences, multiplied by the number of police officers, provided a compelling social rationale for continuing the residency requirement.²⁸ The city concluded that in this way the rule contributes significantly to neighborhood stability. In response, the union claimed that resident officers run the risk of losing some of their effectiveness as a result of overidentification with the community.²⁹

Lacking hard data concerning the number of off-duty arrests or assists made, the administration tried to support its case by introducing a series of maps and charts intended to show that crime rates are lower in neighborhoods where large numbers of police live. The city pointed out that in 1974 "Copper Canyon" in the 16th precinct had the lowest crime rate in the city even though it was the second most heavily populated, which "...demonstrates that the continuing presence within the community of police officers, even those off duty, acts as a significant deterrent to crime."³⁰

In arriving at this conclusion, the city did not argue a direct casual relationship between police presence and reduced crime. The situation described was more complicated. Officials feared if police and thousands of other municipal employees moved outside Detroit, income levels would drop and racial balance would deteriorate even further. Since crime is higher in neighborhoods having lower median incomes and higher percentages of blacks,

the city assumed it would spread were the residency stipulation completely eliminated.³¹

Attacking the city's charts and conclusions, the union pointed out that an examination of rates of increase as opposed to overall crime rates revealed a different picture. Although the 15th and 16th "Copper Canyon" precincts have among the lowest overall crime rates, crime is increasing more rapidly in these areas than in all but two of the city's eleven other precincts. While crime increased citywide in 1974 by 15.8 percent over 1973, it increased 21.8 percent in the 15th northeastern precinct and by 21.1 percent in the 16th northwestern precinct.³² Especially in light of the inherent biases and inaccuracies of reported crime rates, the union argued that a consideration of the reasons for crime or lack of it should take into account a variety of factors including race, income, median income, geographical area, population, and home value.³³

Overall, then, it is virtually impossible to evaluate independently the impact of residency in deterring crime. Most likely, the city's real concern over the twenty-four-hour duty requirement was not so much its actual deterrent effect on crime but rather its perceived impact: fearful middle-income residents would derive a sense of security by the mere presence of police. The city feared that a loss of this feeling would contribute greatly to the remaining middle-class residents' loss of confidence in Detroit, thus encouraging their flight to the suburbs.

In addition, the city argued that police salaries reflect the special risks and responsibilities inherent in the twenty-four-hour duty requirement. In previous arbitrations, it pointed out, the DPOA had argued for and was

granted higher wages based partially on this logic.³⁴ Thus, the city claimed eliminating the residency requirement would provide an economic windfall for officers choosing to live outside the city because they would be paid for twenty-four-hour service they were not giving to Detroit citizens. The police denied that their salaries included special compensation for round-the-clock duty, as evidenced by their wage parity with firefighters who are not technically on call twenty-four hours a day.³⁵

Addressing another aspect of the relationship between police salaries and the residency rule, Coleman Young expressed considerable resentment when he said:

Here we are with one of the highest paid police departments in the nation and one of the worst school systems in the area. Police want the best of both -- high salaries and suburban residency to support rich schools.³⁶

Young's attitude was that "if the city isn't good enough to live in, then it's too good to work in."³⁷ He felt strongly that a residency requirement gives officers a "commonality of interests" -- that is, an officer living in and paying taxes to the city would be motivated by a personal stake in the community.

The mayor also claimed the residency rule would improve police-community relations, a topic receiving considerable attention throughout the proceedings. Young argued that the need to develop better understanding between police and the community was among the most compelling reasons for the residency policy. Although the union also acknowledged this need, it maintained the way to achieve interaction and understanding between police and citizens was not with a residency rule, but through increased use of foot patrols and team policing.³⁸ The city, on the other hand, agreed with the riot commissions

and task force reports which recommended reducing hostility between white police and urban blacks by recruiting a higher proportion of black officers to more accurately reflect their racial mix in the inner-city population.

During the time the residency ordinance was passed and its constitutionality challenged, an alleged police department personnel shortage was among the major union arguments for repealing the legislation. The shortage occurred just after the civil disturbances of 1967 and 1968, and the union claimed the department was having difficulty recruiting qualified applicants (see Chapter 2, n. 33).

By 1974-75 the situation was reversed. The depressed economy made police jobs more attractive because of their decent pay and relative security. The availability of federal funds encouraged minority recruitment, and entrance requirements, such as height and education, had been modified by changes made during the Cavanagh administration to urge more police candidates. The department was now receiving far more qualified applicants than it could afford to hire. In 1974 the department received 10,585 applications: 3,787 white and 6,798 black.³⁹ Of these 450 were deemed qualified candidates.⁴⁰ However, due to budgetary constraints, the department was only able to hire 274 new officers: 143 white and 131 nonwhite.⁴¹ This still left the department below its authorized strength, not because of an inadequate pool of qualified candidates, but because of insufficient hiring funds. Thus, the city concluded it was meaningless to argue that elimination of the residency requirement would result in more applicants since no benefits would be derived to the department from having to reject even more candidates.

In light of restrictions on hiring and institutional barriers to black employment, Coleman Young claimed that abolishing the residency rule would

destroy any future possibilities of having a truly representative police force. At the beginning of 1975 more than 50 percent of Detroit's population was black, but over 80 percent of the city's police were white.⁴² Commenting on the low proportion of black officers in the nation's major cities Young said:

.. I think we ought to lay this thing right on the line. We're dealing with a racial situation here. We are dealing with racial problems.⁴³

The question before us after all these years of talking about people's police departments is this: As the black people take over and begin to control the community, are we going to change the rules?⁴⁴

He went on to insist, "There is no more important issue facing the people of this city -- and indeed the people of this nation -- than the issue of police residency."⁴⁵ Emphasizing the objections of the blacks to being ruled by a "white army of occupation" the mayor declared:

No black community is going to stand to be pushed around by a predominantly white police department that doesn't even have enough respect for the community to live in the city.⁴⁶

Thus, city officials maintained that eliminating the residency requirement would increase tension between blacks and white police. The ramifications would heighten the likelihood of physical danger to police. In short, the city concluded that stress would be intensified rather than relieved by abolishing the residency rule.⁴⁷

The administration further challenged the validity of the union's stress argument by bringing in Professor Jerome Skolnick (Chairman of the Center for the Study of Law and Society at the University of California at Berkeley) to criticize the methodology and conclusions of DPOA witness Dr. George Kirkham. Skolnick testified that Kirkham's analysis was unsound -- he generalized from a personal situation which was not applicable to most other police. In

particular, Skolnick criticized the artificial stress introduced into Kirkham's personal life during his experience as a police officer by his separation from his pregnant wife and children. Furthermore, his prior experience had not prepared him for living in a small apartment in a deteriorating inner-city neighborhood.⁴⁸

In concluding its arguments on operational considerations, the city also mentioned a few more mundane ways officers' nonresidency would hamper the police department's efficient administration. It claimed that suburban police residency would increase costs of verifying illnesses at officers' homes and of delivering notification of duty-related deaths and disabilities.⁴⁹ The union responded that any extra operational costs would be more than offset by savings on residency investigations which had cost the city \$670,000 in a two-and-a-half-year period.⁵⁰

Based on his experience as Chief of Police in New York City, former Detroit Commissioner Patrick Murphy suggested another way police nonresidency might impair the department's effectiveness: a suburban officer dependent on scheduled public transit or car pools might be reluctant to make arrests at the end of his shift for fear of missing a ride home.⁵¹ (The department ignored this same possibility for resident officers who live at one extreme of the city and work in another.) In summary, the city reasoned that the above-mentioned operational factors promoted the public interest by improving the police department's administration and contributing to its efforts in deterring crime.

Social and economic conditions in 1975 made the city's financial and racial arguments even more compelling than they had been when the ordinance

was passed. Officials were extremely concerned about Detroit's population loss of more than a half-million people in the past twenty-five years. During the same period the percentage of blacks in the city has jumped from 16 to more than 50 percent. Meanwhile, the suburbs have been growing as quickly as Detroit has been declining, contributing to the development of a metropolitan region with a largely black urban center and largely white suburban ring.⁵²

The administration in its racial and economic arguments assumed that eliminating the residency rule would cause a "mass exodus" of white employees. It claimed the persistency with which the DPOA had challenged the residency rule suggested that large numbers of officers wanted to leave Detroit. In an attempt to predict the size of the exodus, an outside planning consultant was hired to interpret the data on population trends and job distributions which the City Planning Department had prepared.

Planner Yale Rabin's analysis of Detroit's population loss supported the city's presumption that a large number of police would move as soon as convenient if given the chance. According to Rabin the past annual rate of departure of Detroit's white citizens had been approximately 4-5 percent.⁵³ He claimed the residency restrictions had created a situation of "pent-up demand" for relocation that would amount to 20 percent of white city employees leaving during the first year after relaxation of the residency rule. Following the release of "pent-up demand" he predicted a decline to the 4-5 percent annual departure rate.⁵⁴ Rabin intentionally made his estimates in terms of all city employees because he assumed removal of residency restrictions for police would make it impossible to maintain such rules for other city workers.

Objecting that the departure estimates should have been restricted to DPOA members, the union challenged the accuracy of Rabin's projections. It claimed the city planner's "pent-up demand" argument was exaggerated in regard to police. The union noted that about 89 percent of police are home owners. The tight economy and the high costs of home mortgages would inhibit their movement. Furthermore, the "pent-up demand" of police had already been relieved to a certain extent due to an estimated ninety-three officers living outside the city at the time of the hearings.⁵⁵

Even assuming, for purposes of argument, that Rabin's figures were accurate, the DPOA estimated that, at most, within a year after the elimination of the residency rule, 600 white police officers (3,000 [low estimate white DPOA members] x 20 percent) would move. The next year approximately 100 (2,400 x 4.5 percent) would leave and less each year thereafter.⁵⁶ The union claimed this could hardly be characterized a mass exodus.

In another attempt to quantify the expected employee departure the city paid Market Opinion Research, Inc. \$7,000 to conduct a survey of residency attitudes among Detroit's public safety officers.⁵⁷ In early November 1974, the firm interviewed a random sample of 500 police officers, firefighters, and their spouses from the city's 7,019 public safety households.⁵⁸

Overall the survey results showed little difference in attitudes between firemen and policemen but reflected significantly divergent views among blacks and whites. The findings reinforced Mayor Young's position that residency is largely a racial issue. Three out of four persons interviewed said they did not favor residency rules. Only 24 percent of blacks expressed this view as compared with 83 percent of the whites. Fifty-three percent of the total respondents said they would choose to move outside the city if the

residency rule were lifted. This attitude was shared by 60 percent of the whites and only 13 percent of the blacks.⁵⁹ Extrapolating from these figures, the city estimated 3,700 public safety officers and their families would choose to live outside Detroit were the residency rule abolished.⁶⁰

The union complained that the inclusion of firefighters and supervisory police made the sample of white DPOA members too small to yield reliable statistical results. It objected that lieutenants and sergeants biased the findings because their higher incomes offer greater opportunities to move. Being older, they have had more time to accumulate assets and are also beginning to contemplate retirement. The union also contended that firemen are more interested in outside residency than police although statistics did not bear out this conclusion. Moreover, the police claimed inaccurate responses resulted from conditional questions which attempted to gauge preferences for moving rather than actual intent.⁶¹

Coleman Young admitted that some middle-income black officers, as well as white, probably wanted to move from Detroit. He identified the city's problem as one of class, not only race. According to Young, the city could not sustain the direct loss of income tax revenue or the indirect loss of commercial activity which would result if many middle-income residents moved. He emphasized that economic considerations necessitated a residency requirement for all city employees, not only police.

To help document the mayor's claims City Finance Director Dennis Green testified to the precariousness of Detroit's financial situation. He projected a \$91-million deficit for fiscal year 1974-75. For the first time in public, Green predicted the only realistic means to reduce this deficit was

to lay off large numbers of city employees and cut back services.⁶²

Given its unstable financial situation, the city expected to receive police service, not abandonment, for the price it paid in salaries and fringes. The police department was already receiving about 27.5 percent of the total city budget.⁶³ The city anticipated a \$19-million increase for police and fire pension contributions in addition to an increase in wages.⁶⁴ According to actuarial estimates, the city's contribution rate in fiscal year 1975-76 would be around 56 percent of each police and fire salary dollar, as compared with an average rate of 17 percent for other city employees.⁶⁵

Having presented this general background, the city then addressed the direct and indirect economic impacts of relaxed residency. It relied heavily on Wayne State economist Dr. John Mattila who maintained that the overall economic impact of the police movement could be measured by a "multiplier effect" which, in this case, would be double the income of each family. The union questioned the multiplier's accuracy and Mattila's assumption about the amount of resident income spent in Detroit.⁶⁶ Nonetheless, using the old average income of \$15,500 for public safety officers, Mattila predicted if 3,700 (the Market Opinion Research departure figure) such employees left the city, the annual loss to Detroit would be \$114.7 million. Using the lower figure of 3,000 white DPOA families, he estimated the impact would be \$93 million.⁶⁷

The city claimed eliminating the police rule would have a domino effect for all other municipal employees. Using an average annual salary of \$11,500, Matilla projected an additional \$115-million loss if 5,000 city workers moved immediately.⁶⁸

The DPOA again objected that the city's estimated economic losses were overstated because they were based on exaggerated projections of employee

departures. As previously mentioned, the union claimed not more than 600 police families would leave the city if given the opportunity (see page 75 above). Consequently, the city's lowest financial loss estimate (\$93 million) should be reduced proportionately to reflect a more realistic figure. This would yield a total loss to the economy of \$18.6 million (one-fifth of \$93 million).⁶⁹

The union also argued that the city's estimated departure of 5,000 general city employees was inflated because it ignored testimony that 53 percent of the civil service employees were minorities. Several witnesses, including Rabin, predicted that only a small number of blacks would move if residency rules were eliminated. Taking this into account, the union claimed Rabin's 5,000 figure should be reduced to 3,000 at most. Using this estimate the projected effect on the economy would be a \$69 million loss.⁷⁰

These DPOA estimates totaled an \$87.6 million loss (\$18.6 million from police and \$69 million from other municipal employees). The union admitted that, standing by itself, this figure seemed to indicate a substantial impact. However, considered in the context of the entire economy, the figure indicated quite another picture. The 1972 Census of Business revealed that the total Detroit economy, excluding manufacturing, was \$10.17 billion. The \$87.6-million figure was only eight-tenths of one percent of the economy, excluding manufacturing. The \$18.6 million which pertained exclusively to DPOA members was less than two-tenths of one percent of the economy. The union concluded this is de minimis in view of the city's overall economic situation.⁷¹

The city also claimed losses in its own revenues if police established outside residency. Dennis Green, Detroit's finance director, described the city budget's revenue sources.⁷² He identified city income taxes, property taxes, and state and federal revenue-sharing as areas affected by population movements.

Local tax revenues have declined steadily over the past several years despite the fact that Detroit property and income taxes are higher than in any other Michigan municipalities. He attributed much of this revenue loss to the heavy migration of middle- and upper-income families and the resulting reduction in total assessed value of real property.⁷³ The union countered that if officers moved from their Detroit homes, the real property would remain to be taxed. This, however, ignored the probability of abandonment and its impact on real estate values. Green pointed out that since 1969:

... there have been 17,000 residential properties torn down in the City of Detroit. The assessed value of those 17,000 properties is some \$98 million. That represents, to the City of Detroit in taxes, \$7.6 million... Last year, there were only 15 building permits in the City of Detroit for residential construction. It is going down at an annual rate of \$6 million in assessed valuation. So our property taxes are declining because of the abandonment of properties.⁷⁴

Green's testimony was supported by that of Robert Knox, real estate broker and former Detroit housing commissioner who agreed that if 3,700 houses were put on sale, the housing market would be further depressed, and property tax collections would be deflated.⁷⁵

The DPOA maintained there should be no problem regarding the income tax. It agreed that if its officers were allowed to live outside Detroit and chose to do so, they would voluntarily contribute to the city the 1.5 percent difference between the resident and the nonresident tax.⁷⁶ However, the city challenged the legality and binding nature of this voluntary agreement.

The potential impact of population departure on state and federal revenue-sharing was more difficult to estimate. Federal revenue-sharing computations are based on a three-part formula which takes into account tax

effort, property level, and population. Given the ambiguity of the available information, the union argued its case in terms of per capita effect, basing its calculations on Green's own testimony that approximately \$86.49 million of operating budget revenues came from "grants, share taxes, and federal revenue sharing."⁷⁷ For Detroit's 1.5 million population, this comes to \$57 per capita. Thus, if 600 police families of four persons each left the city, the loss would only be \$136,800, an inconsequential amount compared with the \$91-million deficit predicted for the 1975-76 fiscal year.⁷⁸

On balance, the DPOA admitted that a relatively small population movement would have some economic effect, but it would be de minimis in terms of the total economy and budget of the city. It concluded that Detroit's financial problems could not be solved by imprisoning its employees.

In keeping with the traditional bargaining spirit, Harry Platt believed in the necessity and merits of compromise. At one point during the proceedings, he requested that both parties consider and submit possible compromise solutions. The union offered the two previously described proposals -- residency within a twenty-five-mile radius of the City-County Building and a voluntary agreement for nonresident police officers to pay the 2-percent resident income tax. The city, on the other hand, refused to consider any compromises and maintained a strict residency position.

During Mayor Young's testimony, Platt raised the possibility of again granting the power for discretionary residency waivers to the police chief. Young was vigorously opposed. He feared that once the door was opened to exceptions, it would be impossible to close it again. Commenting on problems with enforcement, due process, and legal challenges, the mayor objected that responsibility for such decisions would impose an unfair burden on the police

chief, especially in light of existing tensions and strained morale in the department.⁷⁹ Moreover, for Young, a major issue at stake was control over the police department. He was determined to have his administration exercise complete authority.⁸⁰

Thus, the city refused to relax its rigid stance. As one observer commented, Young and Edwards had narrowed the bargaining position of their panel representative, Allan Davis, "to something smaller than a needle's eye."⁸¹

Opinion and Award

Four months and 2,000 pages of testimony after they began, the hearings were completed in early May. At the beginning of August the parties filed extensive post-hearing briefs. The decision, finally reached on September 5, 1975, upheld the Detroit residency requirement without modification. According to practice, the opinion and findings were written by the chairman, Harry Platt. The other two panel members were not required to agree completely with the order and award, and in fact, Jack Wood, the union's delegate, refused to sign it.

Platt was well aware of the national significance of his decision which was the first time the controversial matter of police residency was settled for a major city through compulsory arbitration. He began by addressing the city's lawful authority to impose residency requirements which, he believed, warranted special attention in view of the extensive litigation on the issue between the city and the union, other similar litigation throughout the country, and the DPOA's continued insistence that police were being unlawfully denied their fundamental rights.

The chairman agreed with the city that its constitutional authority to enact a residency ordinance was settled by the Michigan Supreme Court in DPOA v. City of Detroit, 385 Mich 519 (1971). He also agreed that the United States Supreme Court's dismissal of the DPOA's appeal for want of a substantial federal question had the force of a decision on the merits and affirmed the findings of the Michigan Supreme Court.⁸²

In addition, Platt was heavily persuaded by the fact that other state and federal courts have cited the Michigan case with approval and even quoted its language. Besides Krzewinski v. Kugler, 338 F Supp 492 (D NJ 1972) which upheld a New Jersey police and firemen's statute (see page 65 above), he was convinced by the court's opinion in Wright v. City of Jackson, Mississippi, 506 F 2d 900 (1975). The Wright court rejected the "compelling state interest" test adopted by the Krzewinski court and instead used the equal protection rational basis standard, as the Michigan court had done in the DPOA case, 385 Mich 519 (1971). Citing the Detroit Case with approval, the Wright court furthermore quoted a California Supreme Court opinion summarizing numerous "rational purposes [for residency rules] advanced in various adjudicated cases:"

Among the governmental purposes cited in these decisions ... are the promotion of ethnic balance in the community; reduction in high unemployment rates of inner-city minority groups; improvement of relations between such groups and city employees; enhancement of the quality of employee performance by greater personal knowledge of the city's conditions and by a feeling of greater personal stake in the city's progress; diminution of absenteeism and tardiness among municipal personnel; ready availability of trained manpower in emergency situations; and the general economic benefits flowing from local expenditure of employees' salaries. Ector v. City of Torrance, 10 Cal 3d 129, 514P 2d (1973).⁸³

Thus, Platt concluded there was no question of Detroit's lawful authority

to require police residency. The issue to be determined was:

...whether it is reasonable and justifiable for the City to insist upon the exercise of this right [to impose residency requirements] as a part of the total collective bargain between it and the Association.⁸⁴

Platt did not believe the duty to bargain necessarily required the city to abandon a longstanding condition of employment it considered fair and necessary. The case hinged on determining whether the public interest was better served by police living inside or outside the city. In seeking an answer, the chairman evaluated the impact of residency on three areas -- police department operations, economic considerations, and community relations.

Platt agreed, as the city had argued, that the residency rule is necessary for the police department's efficient operation which serves the public interest by contributing to prudent use of tax dollars and promoting crime control efforts. He considered the relationship of residency to the twenty-four-hour duty policy most important. Acknowledging the lack of hard data concerning the frequency of off-duty arrests, Platt was nonetheless persuaded by Chief Tannian's testimony and the city's arguments (see p. 68 above) that round-the-clock police presence helps to deter crime. Furthermore, he agreed with the city that eliminating the residency rule would create an economic windfall for nonresident officers (see pp. 69-70).⁸⁵

The chairman also gave considerable weight to the importance of emergency mobilizations reasoning that, as a general proposition, the department's response capabilities would be greater if all police lived in Detroit. He did comment that the DPOA's proposal for residency within a twenty-five mile radius would be preferable to an unrestricted policy. However, he felt it would still place some officers further from their duty stations than if the requirement were continued.⁸⁶

As a native of Detroit, Platt was very aware of the city's precarious financial situation. In trying to evaluate the impact of relaxed residency on city revenues, he conceded it was impossible to predict the exact size of the population movement but concluded it would be sizeable given the duration and depth of the DPOA's commitment to the struggle against the requirement. Platt believed his assumption was supported, though not necessarily proved, by the testimony of City Planner Yale Rabin, and he gave credence to the results of the Market Opinion Research survey despite the flaws noted by the DPOA. The Chairman agreed with the city that were residency abolished for police, it would be virtually impossible to maintain the rule for fire-fighters and other city employees.

Assuming a reasonably large population movement, Platt concluded that the city would suffer serious direct and indirect economic consequences as a result.⁸⁷ Although the precise dimensions of the consequences could not be estimated, they would not be de minimis as argued by the DPOA and could not be ignored. He was especially concerned about the likely loss in general economic and commercial activity which would undermine the confidence of businessmen, investors, and the general public.

Platt shared the city's reservations about the legality and binding nature of the DPOA's voluntary proposal for nonresidents to pay the 2-percent resident income tax. City Attorney Edwards had commented on a similar offer made to New York City by the Patrolmen's Benevolent Association (PBA). After the administration had accepted the proposal, the PBA sued New York to lift the tax provision. Among the other concerns raised by the city of Detroit were the following:

Should there be recalcitrant employees who refuse to "execute appropriate forms" what procedure is available to the City to enforce collection? Must the City sue in civil court under the bargaining contract? May the City terminate the employment of an offender found to be living outside the City and refusing to execute the proper forms? If so, may this termination take place outside the grievance procedure?⁸⁸

Platt held that even could the proposal be adopted and enforced, it would at best only be a partial solution to the overall economic problems resulting from the residency rule's abolition. Accordingly, he rejected the DPOA's offer.

In assessing the impact of residency on law enforcement, Platt recognized the conventional wisdom that effective police work in metropolitan areas is dependent upon good police-community relations. He was persuaded by the city that police residency would improve community relations by increasing an officer's knowledge of and sensitivity to community needs. In addition, a residency policy would encourage minority recruitment which, in turn, would help reduce hostility and distrust between black citizens and white police. His conclusion was strongly influenced by the Report of the National Advisory Commission on Civil Disorders and testimony by Professors Skolnick and Albert J. Reiss, Jr. (Professor of Sociology at the Institute for Social Policy Studies and Lecturer in Law at Yale University) who both stated that eliminating the requirement would heighten stress and hostility.⁸⁹

The only DPOA argument addressing how nonresidency would promote the public interest was that the consequent reduction of stress and improvement in morale would enable police to perform their jobs better. Platt said he

...has the highest possible appreciation and respect for the risks and responsibilities inherent in modern police

work, and shares the Association's opinion that everything possible must be done, consistent with the public interest, to reduce the stress which officers undeniably experience.⁹⁰

However, he was unconvinced that merely going home to a suburban residence at night would make a significant difference. Stress was most often a consequence of a police officer's on-the-job experiences, training, motivation and attitude toward the job. Platt reasoned it unlikely that any of these factors would be improved by the mere geographical relocation of an officer's home and felt, as the city had, that nonresident officers might experience more stress as a result of decreased citizen cooperation and increased hostility.

The DPOA had argued that the city had misidentified the source of community tension and hostility by describing it in racial terms. The union had claimed the real conflict was between criminals and law-enforcement agents and further had suggested the city's entire community relations argument was inherently political. As such, it had no proper place in the arbitration proceedings.⁹¹ In response to this charge Platt declared:

No doubt the issue does have political overtones, but this is virtually unavoidable in view of the manner in which it has been thrust into public view through the protracted legal challenges to the residency requirement and other court actions. Indeed, some would say that the entire question of race relations in the City of Detroit, of which hostility between black citizens and the white police officers is only one aspect, is political in character. But, that hardly strips it of practical significance. Nothing could be further from the truth, and one only need look back to the Detroit riots of 1967 to discern the reason why. There, the initial conflict was in fact between "criminals" and the police. But, as matters developed, great numbers of previously law-abiding citizens were swept along in a tide of criminal activity which one must assume, in normal circumstances, would have been completely alien to them. Certainly, anything that heightens hostility between citizens and the police, exacerbates already existing

tensions, or further diminishes public cooperation with the City's law enforcement activities must be said to be harmful to the interest and welfare of the public. In view of the notoriety which the issue before this panel has gained in the past decade, and the public attention it has attracted at this point, it also must be assumed that elimination of the residency requirement for Detroit police officers and the subsequent relocation of a significant number of such officers would have such harmful effects.⁹²

While agreeing that a few officers might experience improved performance with outside residency, the chairman concluded that on balance

...the interest and welfare of the public in alleviating racial tension and improving cooperation between citizens and police officers far outweigh the possible personal benefits which might accrue to some police officers were they allowed to live outside the City of Detroit.⁹³

In accordance with the Act 312 standards (see p. 58), Platt also considered comparisons with other city employees (Section 9d) and other relevant factors (Section 9h). He noted that it was virtually impossible to assess the situation for employees in Michigan communities similar to Detroit because there really are none in the state. A list of other large metropolitan centers in the United States and the status of their residency or nonresidency provisions had been produced (see p. 62). However, comparisons with them were problematic in that there is no evidence that cities with residency rules have more effective law enforcement than cities without such rules; nor is there any evidence to the contrary.⁹⁴

Comparisons with other Detroit public employee groups were much more straightforward since the residency ordinance applies to virtually all city employees, the only major distinction between police and civil service workers being in terms of waivers. Platt pointed out that were the residency requirement completely eliminated for police, they would be the only city employees

exempted from the ordinance. In accordance with the Michigan Supreme Court, there are several reasons why the residency rule is more, not less, justifiable for police than for general city employees (see Chapter 2, pp. 31, 33).⁹⁵

Platt rejected the union's claim that comparing the contracts negotiated between the city and the DFFA and the LSA was not appropriate because the contracts were not the products of meaningful bargaining. The DPOA claimed the other two public safety unions had achieved economic settlements only because they abandoned residency when the city adopted a "take it or leave it attitude."⁹⁶ Noting that the DPOA obtained the same economic benefits as the LSA and DFFA, Platt commented that to eliminate residency for police would give them an unfair advantage.

Other factors considered by the chairman included the supply of reasonably priced housing and the pool of candidates for police jobs. He was convinced by the city that moderately priced homes were readily available in Detroit and that there were more than enough qualified candidates for Detroit police positions. Aware that the department was below authorized strength because of budgetary restrictions, Platt feared such constraints might become more severe if the residency requirement were removed.⁹⁷

In the end the chairman rejected the option he had himself raised giving the police chief power for discretionary waivers. Although his first interest as an arbitrator was to find an accommodation, by the end of the hearings Platt was convinced the case required a strict yes or no decision. He claimed he made this decision partly because the DPOA never expressed much interest in the discretionary waiver option and partly because city officials persuaded him that Detroit's economic and racial problems would worsen if the rule were relaxed.⁹⁸

Concluding there was "competent, material, and substantial evidence" to support the city's position, Platt echoed the courts when he said, "this finding continues a longstanding... policy which bears a reasonable relationship to the valid objects of municipal government..."⁹⁹ The award and order specified that the collective bargaining agreement between the city and the DPOA, retroactive to June 26, 1973 through June 30, 1977 would contain a residency provision for Detroit police.

In arriving at his conclusions, Platt was heavily persuaded by custom, legal precedents, the testimony of academics and other experts, and reports of national commissions. It is interesting to observe that although the city spent enormous time and money trying to quantify the size and economic consequences of a police exodus, Platt's judgment on these matters still relied greatly on common sense, logic, and general propositions. Not surprisingly, the arbitration decision upheld existing city policy. More unusually, this particular policy, if enforced, holds some potential for changing the status quo in the distribution of Detroit police jobs.

Chapter 5

EPILOGUE

The arbitration decision was a stunning victory for the city and a crushing defeat for the DPOA. Coleman Young was optimistic that the ruling would permanently settle the residency issue. He declared, "It's been to court, it's been to arbitration and as far as I'm concerned, it's a closed book."¹ As far as the union was concerned the last chapter had not yet been written.

Enforcement Loopholes

Administration officials sought immediate removal of the court-ordered suspension of residency enforcements which had been invoked again, this time in response to the arbitration proceedings. The city intended to force non-resident officers, estimated to be at least ninety-three, to move to Detroit or be fired.² However, its efforts have been delayed by several developments.

One complication arises from a 1975 circuit court decision which essentially legitimated "dual residency" for police, by effectively upholding the right of city employees, under certain circumstances, to maintain and live in Detroit apartments weekdays while their families keep suburban residences. This was the case involving Lieutenant Eugene Caviston who, in December 1973, was found guilty of violating the residency ordinance because he lived weekdays in a Detroit apartment while his family lived in Farmington Hills (see Chapter 2). Caviston's appeal was delayed for over a year, but in February 1975, at about the same time the arbitration hearings convened, Wayne County Circuit Court Judge Blair Moody, Jr. finally overturned the lieutenant's dismissal. In so doing he commented that the test of a city employee's residence is

whether sufficient presence can be established at the actual domicile of the individual, not necessarily that of his family.³ The determination is not predicated upon with whom the officer lives.

In arriving at his decision, Judge Moody addressed the purpose of the ordinance and the standards of residence. According to his interpretation, the legislation's objective was to assure an officer's availability for duty and to provide deterrence off duty.⁴ The ordinance defines residence as "the actual domicile of the individual where he normally eats and sleeps and maintains his normal personal and household effects."⁵ Applying this standard to the Caviston case, Judge Moody declared:

The undisputed facts of [the] record clearly substantiate the conclusion that Eugene Caviston normally ate and slept at his Detroit residence the majority of the time. Moreover, and of key importance, each week day and night while off duty, he was always present and available on call at the Detroit abode.⁶

The court was particularly impressed by Caviston's off-duty activities. Since moving back to Detroit in 1972, the officer kept such a vigilant log of his whereabouts that when, during his previous trial by the residency unit's trial board, he was accused of not being home early one morning, he was able to prove that he had been with his landlord making an arrest.⁷ According to police and court records, Caviston had not spent one weeknight since September 1972 at the Farmington Hills home and had visited there only twice during weekdays. Records also showed that he is a legal Detroit resident for voting and tax purposes.

Judge Moody cautioned that his decision was based on the unique facts of Caviston's case. He was careful to point out that the court did not address the policy question about requiring city residence of police. He claimed that

whether more or less stringent standards should be adopted is a matter of legislative concern.⁸ In effect, future decisions about the permissibility of dual residency would be made on a case-specific basis.

Although Moody's decision did not directly affect the arbitration proceedings, it had far-reaching implications in terms of residency enforcements. Despite the judge's caution about the narrow applicability of the ruling, the union was determined to at least try to apply the court's standards and criteria to the seventy-five pending nonresidency cases. By the end of February, a second Detroit police officer succeeded in remaining on the force despite owning a home outside the city where his family lived. Sergeant Arthur Majeske's case closely paralleled that of Eugene Caviston. In fact, Majeske was Caviston's landlord. The Majeske decision was the first time a police department trial board ruled in favor of dual residency. In concluding that Majeske's Detroit home was the center of his social activities, the board was strongly influenced by Judge Moody's ruling.

As of fall 1975, the city planned to appeal the dual residency decisions. Whatever the outcome, the course is bound to be time-consuming, and at a minimum it will further prolong confusion over enforcement of the residency rule. In the meantime, additional complications have been raised by the union's decision to appeal the arbitration ruling in an attempt to stay enforcement until new contract negotiations open in 1977.

Under Act 312 the conditions for appealing arbitration orders are that:

1. the panel exceeded its authority in its opinion,
2. the opinion is not supported by the evidence, or
2. the opinion was obtained through some fraudulent means such as bribery or collusion.⁹

The relative vagueness of these standards would seem to make proof difficult. Nonetheless, appealing the residency decision was a political necessity for the DPOA leadership in terms of both reinforcing President Ron Sexton's position within the rank and file of the union and also strengthening the union's position relative to the city administration. Although the review proceedings do not automatically stay the order of an arbitration panel, and the grounds for the DPOA appeal might be weak; the union hoped the procedure would at least delay enforcement until the 1977 bargaining.

The DPOA's appeal requested that the arbitration award be reversed or, alternatively, set aside and another Act 312 proceeding ordered. It based its argument on the following charges:

- A. The Opinion and Award is null because the panel was not established, did not function and did not decide the matter in accordance with the requirements of due process of law.
- B. The Opinion and Award is not the result or product of determinations or written findings of fact by a majority of the Arbitration Panel.
- C. The Opinion and Award is based in part on material which was not introduced into evidence as part of the official record. [The DPOA charged that in his opinion Harry Platt cited a quote from Attorney George Edwards to the city's representative, Allan Davis, about the city's objections to the union's offer that nonresident officers would pay the 2 percent resident income tax. According to the union, this discussion never became part of the official record.]
- D. The Opinion and Award is not supported by competent material and substantial evidence on the whole record.¹⁰

Sexton claimed the evidence did not prove that the public interest is served by requiring police residency. Furthermore, he maintained the ruling failed to address the constitutionality question.¹¹ Although the union's appeal was filed in late September 1975, action on the matter was delayed indefinitely, partially as a result of problems in getting the arbitration record certified¹²

(allegedly because of confusion over the return of some original exhibits necessary to complete the official record).

Even were the union's appeal activated, Harry Platt was confident about having followed the Act 312 standards so closely that his opinion could not be overturned. Indeed, his reputation supported his contention. Of the more than 4,000 cases he has decided, he has been appealed only a handful of times and has never been reversed. The veteran arbitrator commented:

My own feeling is that unless circumstances change -- and I can't conceive of them changing that much -- this [ruling] pretty well decides the issue on the merits.¹³

Platt's comment, however, overlooked the potential problems with enforcement arising from the "dual residency" rulings and from the fact that the residency issue can be raised again during the 1977 negotiations. The union's manipulation of these loopholes has the potential for indefinitely blocking the ordinance's strict application.¹⁴

Institutional Decision Making and Collective Bargaining

Although the DPOA lost on the direct issue of eliminating residency requirements, its success in obstructing enforcement of Detroit's policy is an important influence in itself. Significantly, though, the source of this power was really grounded in the institutional decision-making channels. By working through legal and collective bargaining procedures the union succeeded in prolonging its struggle against a city law. The development of the case was in large measure a product of some of the idiosyncracies of these processes.

Perhaps one of the most obvious characteristics illustrated by the study is the litigious nature of American decision making. The courts provided the

initial forum through which the DPOA sought to attack the residency ordinance. Even after the constitutionality issue was resolved, the courts continued to play a key role through judicial review of administrative labor proceedings. In this way the legal system plays an important role both in shaping the collective bargaining system and in influencing public policy. In light of the overriding importance of the judiciary, the significance of legal counsel as a union resource becomes apparent.

Because the residency question was originally raised as a condition of work in police labor negotiations, the bargaining system offered the union an alternative means through which to challenge the rule. The bargaining issues raised by the Detroit residency case were typical of the kinds of problems which have plagued the developing field of public sector labor relations. One of the first problems to emerge was confusion between the legislative and executive branches over bargaining authority: while the executive branch generally has overall responsibility for the bureaucracy, the legislature appropriates money and generally approves the financial terms of contracts.¹⁵ A result of this fragmentation of municipal decision-making powers is the multilateral nature of public sector bargaining, one of its distinguishing features.¹⁶

By way of example, the original residency negotiations in 1967-68 involved the city labor relations director, the police commissioner, the mayor, the Common Council, and the DPOA. While the mayor, the Labor Relations Bureau and the union came to one agreement, the Common Council made a separate decision and passed the residency ordinance without any discussion with the union. Based on the particular facts of the case at this time, both MERC and the courts ruled that the Common Council had the authority to enact the ordinance. In this

particular instance confusion over responsibility for bargaining and the multiplicity of negotiators worked against the union. Nonetheless, in other instances, this feature offers the unions potential for manipulating multiple access points to work to their advantage.

A second major labor relations issue raised by the case concerned the scope of bargaining in the public sector. This topic has generated considerable public debate. In the private sector the National Labor Relations Act (NLRA) specifies that "wages, hours, and other terms and conditions of employment" are the only subjects on which management must negotiate. In the public sector, however, the scope is less clear; and on the ground that issues previously regarded as policy matters directly affect working conditions, unions have been demanding a voice in their settlement. Public employers claim responsibility to retain sole authority over public policy decisions and therefore argue the scope should be limited. Other critics have objected that an enlarged scope, combined with weak or inept management, could create contractual constraints on public managers, which would bind future generations of policy makers.¹⁷ A more political argument would place limits on subjects to be decided through bargaining because that process affects parties excluded from the decision making. Proponents of this line of reasoning claim the general problem is exacerbated by the strike threat which gives public employees enormous political influence over matters of general community concern.¹⁸

In Michigan the scope of bargainable issues under PERA is identical to those specified in the NLRA. In the public sector, though, the definition of "terms and conditions of employment" is often problematic. As the residency case demonstrated, it is frequently difficult to distinguish among working conditions, public policy issues, and constitutional prerogatives of legislative

and executive authority. Public employers in Michigan can bargain only with respect to those powers vested in them by the legislature. Thus, there are subjects bargainable in the private sector not subject to negotiation in the public sector.¹⁹ Conversely, there are issues such as city residency requirements which are specific to the public sector and therefore without private sector precedent. The definition of bargainable subjects in the public sector has been proceeding on a case-by-case basis through administrative and court interpretations. The way this determination was made relative to residency requirements in Detroit offered a revealing example of how the judicial and administrative systems overlap and sometimes work at cross purposes.

As described by University of Michigan Law Professor Harry T. Edwards, a "tug-of-war" developed between the Michigan courts and MERC over whether municipal residency requirements passed pursuant to the state's Home Rule Cities Act can be excluded from the scope of bargaining.²⁰ The city first agreed that residency is a condition of work therefore negotiable. It later reversed its position and insisted the rules are not bargainable because they come within the managerial prerogatives of local governments under "Home Rule." In March 1971 MERC held that residency requirements are a mandatory bargaining subject regardless of the state Home Rule statute. At about the same time the Michigan Supreme Court, seemingly without considering the effect of its decision on collective bargaining,²¹ upheld the constitutionality of Detroit's residency ordinance and ruled that its enactment was a legitimate exercise of municipal authority.

The Michigan Court of Appeals then had to decide the effect of these decisions on the scope of bargaining. One year later the appellate court reversed MERC, holding that residency requirements were no longer mandatorily negotiable. It was not until February 1974 that the Michigan Supreme Court

finally affirmed MERC's ruling. The court stated definitively that residency is a mandatory bargaining subject, and bargaining cannot be avoided through the enactment of a valid city ordinance.

This decision was pivotal for several reasons. It was believed to be the first time a state supreme court ruled on the bargainability of residency requirements, and, as such, it had potential national significance. Union challenges to residency requirements on constitutionality grounds have lost consistently in the courts. Now, at least in Michigan, the bargainability decision offered the unions a new opportunity to challenge the rules. If a residency policy for city employees was likely, at least the bargaining system would give the unions a chance to negotiate over the terms of the policy.

The ruling revitalized the DPOA's struggle by enabling it to raise the residency issue during the 1974 negotiations. Moreover, the decision makes it possible for the residency topic to be kept a "live" issue, perhaps indefinitely, since either side can raise the matter in future negotiations. In addition, by expanding the scope of bargaining, the decision increased the union's potential influence over managerial decision making and the allocation of public resources. Ultimately, then, the general absence of guidelines in the relatively new public sector bargaining process (especially pertaining to the scope of bargaining) worked to the DPOA's advantage in this particular instance.

Interestingly, the nature of the legal and administrative challenges caused the parties to focus on procedural matters as an important means to promote their interests. The DPOA wanted to define residency requirements as a negotiable item so it could use the collective bargaining process as another channel through which to exert pressure. The city's denial that residency was a condition

of work, especially after its original admission to the contrary, was clearly an attempt to limit the union's bargaining influence. The final decision had nothing to do with the merit of residency requirements but rather with interpretations about bargaining rules and procedures. Nonetheless, as this case vividly illustrated, such procedural decisions have far-reaching policy consequences.

Combined with the bargainability decision, changes in statutory provisions for public safety impasse procedures opened an entirely new chapter in the union's struggle. In 1969 Michigan passed a Police and Firefighters Arbitration Act (PFFA) which requires the parties to negotiate beyond impasse and thus forecloses unilateral action to the employer.²² The notion of a duty to bargain beyond impasse in the public sector has developed largely in response to the strike proscription. The assumption is that restrictions on public sector strikes, which are imposed because of the perceived essentiality of certain public services, deny government employees a powerful economic weapon available to private employees. As compensation, compulsory arbitration (also known as interest or binding arbitration) is increasingly being relied upon as one of the best alternatives for promoting both union and public interests. However, with increased use, arbitration is also beginning to reveal some of its limitations.

Theoretically, arbitrators are expert "neutral" parties expected to act on behalf of the public's interest. In reality, as the residency case showed, their decisions rarely are neutral but rather more often are political in nature, having far-reaching consequences in terms of the distribution of public resources. Thus, a major criticism of arbitration is that it delegates such extensive authority to a single individual, unaccountable to either the public

or elected officials, (While collective bargaining represents a partial delegation of government power, arbitration represents a more nearly complete delegation.²³)

Harry Platt's arbitration award went against the union and presumably in favor of the majority of Detroit citizens. (He reasoned that the possible individual benefits to DPOA members of reduced stress which might result from suburban residency did not outweigh the perceived benefits to the public of requiring municipal police residency.) In general, however, given the problems associated with collective bargaining and compulsory arbitration, there are no guarantees that these processes will always promote the public interest. Difficulties arise not only from limitations inherent in the processes, but from problems in defining the "public interest." Identification of the public good is often complicated by conflicts among the goals and interests of the various groups affected by public sector labor relations. As the residency case showed, the most pervasive conflicts sometimes arise not between labor and management but between the unions and the "public." (For instance, the original salary increases demanded by the DPOA would have contributed greatly to the need for layoffs and reduced city services.)

In addition to political questions raised by bargaining and impasse procedures, another major issue concerns the qualifications and ability of an individual arbitrator to make decisions with broad public policy consequences. At present arbitration work in the public sector is often dominated by lawyers. However, arising from frustrated contract negotiations, compulsory arbitration raises many economic as well as legal questions. Because arbitration decisions can produce systemic impacts which affect inputs (e.g. taxes) and outputs (e.g. services) of government, an arbitrator must take into account the interplay

of several factors including labor costs, government revenues and expenditures, taxes, employment levels, work rules, and productivity. This situation has caused Columbia University Business School Professor Raymond Horton to pose the following questions:

Do lawyers, or for that matter nonlawyers primarily experienced as labor relations practitioners, possess the training and understanding required to render sound decisions in interest arbitration? Do those skills that promote success in non-compulsory, frequently mediative labor relations functions also promote success in fulfilling the quite different and far more important decision-making responsibilities involved in interest arbitration?²⁴

In Michigan, arbitrators, whatever their training, are allowed considerable discretion in making their decisions since the statutory guidelines for arriving at arbitration awards are quite broad. In a study of the impact of legislated criteria on arbitrations, Michael J. Klapper argued that in Michigan the guidelines "offered little to the process which experienced arbitrators could not have already brought with them."²⁵ Thus, although Harry Platt, a veteran arbitrator, was extremely careful to follow the Act 312 standards, it is not clear that he proceeded any differently with guidelines than he would have without them, nor is it certain that his final decision would have been any different. Perhaps, as suggested by Klapper, the chief utility of statutory guidelines is as justification for awards in the event of appeals. The assumption is that arbitration decisions cannot be overturned as easily if the courts are forced to use legislated criteria to determine whether an award has exceeded an arbitrator's authority.²⁶ As mentioned before, Platt was so confident about having followed the Act 312 standards that he doubted his decision could be overturned.

While one of the general purposes of arbitration is to encourage negotiation, it is interesting that in the residency case the city won its desired

outcome by refusing to bargain. This result is even more striking given Michigan's history of arbitration awards which are generally favorable to the unions. Coleman Young's determination to gamble on maintaining a strict residency position may have partially reflected his personal familiarity with labor negotiations and his political astuteness in correctly reading the time and circumstances surrounding the residency dispute. Unlike the issues in many past arbitrations, the residency controversy directly challenged a longstanding city policy, and arbitrators are often reluctant to change the status quo by taking anything away. In Harry Platt's case this general tendency was reinforced by his legal background and sensitivity to judicial precedents. In addition, everyone including Platt was fully aware of the political importance of the residency policy to Detroit's first black mayor.

Although allegedly the "end" of the bargaining process, arbitration obviously has not stopped action on the Detroit residency matter. Last recourse, again, is an appeal to the courts. The seeming lack of finality in this particular case results in part from the alternative interactions of the legal and administrative systems and the ongoing process of negotiations. And not only is the entire decision-making process time consuming, it is costly as well. The system clearly afforded the union numerous opportunities for exercising influence, but to take advantage of these options required considerable resources. At the same time, the city was forced to spend thousands of dollars of taxpayers' money for defenses. In addition to the enormous costs of lawyers and legal proceedings, in Michigan the two parties and the state divide the costs of arbitration and the panel chairman.²⁷

Police Residency Requirements: Policy Impacts

Given the tremendous social and economic costs born by the public in the police residency dispute, the next logical question is what impact the requirement makes on the lives of Detroit citizens. Does the rule actually promote the "public interest" and if so, how? Is residency a good policy for improving the quality of police services, recruiting more blacks in the police department, or improving the city's financial situation?

One of the most persistent policy concerns associated with police residency is its impact on law enforcement and the delivery of police services. Residency requirements are related to personnel recruitment, and, in a "street-level bureaucracy"²⁸ such as the police department where face-to-face contact and discretion are important, who gets hired to deliver services is especially significant. As mentioned repeatedly throughout this study, the conventional wisdom holds that residency requirements will facilitate minority recruitment and hiring. In this respect another important policy-related impact of residency is on the distribution of jobs. In a very broad sense, if the conventional wisdom is true, residency requirements could help to redistribute wealth and power from the white to the black community.

However, the evidence that a residency policy is effective in increasing the number of black police officers is far from convincing. There is no consistent proof that cities with residency rules necessarily have higher percentages of black officers than cities without such rules. Data for 1965 concerning the percentages of nonwhite officers in police departments throughout the nation showed that Buffalo, a city with a strict residency rule, only had 3-percent nonwhites; 18 percent of its total population was nonwhite. As of 1965 when Detroit's internal department rule was in effect, the police force

was only about 5-percent nonwhite, but blacks constituted 39 percent of the total city population. The forces of Newark and Atlanta each were 10-percent nonwhite even though Newark had a residency rule and Atlanta did not (40 percent of Newark's and 38 percent of Atlanta's citizens were minorities), Washington, D.C. was among the cities with the highest percentage of black police (21 percent of its force), and yet it did not have a strict residency requirement. Instead, it had a modified rule which required residence within a twenty-five-mile radius of the Capitol building. The city also had a heavily black population, 63 percent.²⁹

Establishing a direct causal relationship between residency requirements and the percentage of blacks on a police force is virtually impossible. Several other factors must be taken into account including the percentage of nonwhites in the general city population and regional differences. Furthermore, residency rules are only one of many entry-level standards and conditions of work. Such rules can potentially work to the advantage of blacks, but there are still numerous other institutional barriers (e.g. educational requirements and written and oral tests) which mediate against minority hiring. In addition current budgetary restrictions and affirmative action programs further complicate the impact of a residency policy on black recruitment.³⁰ Although residency requirements alone are not sufficient to ensure minority hiring, in combination with other factors they can perhaps help to change the distribution of city jobs.

Not only is it difficult to discern the impact of a residency policy on personnel recruitment and hiring, but it is perhaps even harder to determine the impact of recruitment on law enforcement and the delivery of police services. On the night of July 29, 1975 Detroit experienced a civil disturbance which erupted from the shooting of a black youth by a white bar owner. The incident had the potential for a full-scale racial outbreak such as the 1967

Detroit riot. After two tense nights of modified police mobilizations, violence was ended. Some observers at least partially attributed the outcome to the increased number of blacks on the force (approximately 17 percent of Detroit's officers were minorities at this time³¹) and to improved police-community relations.³² However, it is impossible to do more than speculate about the independent contribution made by black officers toward the resolution of the incident. Other factors must also be taken into account in explaining the outcome: Mayor Young made personal appearances at the scene of the disturbance, which was located in a neighborhood where he had spent time growing up. In addition, bitter memories of the disastrous results of the 1967 disturbances may have tempered the reactions of both blacks and whites.³³

Despite the logical appeal of the arguments to many Detroit residents and public officials, it is also hard to determine without conclusive documentation if police residency improves law enforcement as a result of officers' commitment to the community, increased accountability and honesty, twenty-four-hour duty, and availability for emergencies. However, even if these assertions were true, many of the potential impacts would seemingly be undermined by the fact that police are not required to live in the same precincts where they work. Consequently, most officers do not reside in high-crime neighborhoods where their presence presumably would be the most beneficial.

In the final analysis, proving anything empirically about the relationship among residency requirements, black recruitment, and the quality of police services is extremely difficult. Significantly though, at least part of the impact of a residency policy in Detroit may result from the black community's perception of the DPOA's struggle as an expression of hostility and an effort to exclude minorities from the police department.

Given the strengths and weaknesses of residency as a policy to help improve law enforcement and to facilitate black recruitment, its effectiveness in helping to alleviate Detroit's financial troubles must also be weighed. Despite the city's extensive and expensive efforts, it is impossible to quantify the exact economic consequences of allowing nonresidency of city employees. On the whole the city's financial arguments were probably somewhat overstated, based on upper estimates of employee departure figures and questionable assumptions about the amount of resident income spent in Detroit. Nonetheless, financial factors are of immediate universal concern, especially during times of a depressed economy. Thus, the exact magnitude of the financial consequences of nonresidency were not nearly as important to the outcome of the case as was the general intuitive appeal of the economic arguments to Platt and city residents. While it was not certain that a residency policy would improve Detroit's financial situation, many citizens and elected officials perceived that allowing nonresidency could worsen already bad conditions.

Another economic issue, the "public coffer" notion that resources of the city belong to city residents, was also expressed in the Detroit case. This concern becomes increasingly popular during a fiscal crisis. City dwellers resent the idea of "helping to support" the suburbs. They expect that, by paying salaries to resident employees, the city will help reduce urban unemployment and will benefit through taxes and general expenditures in the local economy. Such economic considerations are among the most popular public rationales for residency rules today and have contributed to the recent movement in several cities (e.g. New York, Trenton, Boston, Washington, D.C.) to reimpose or institute the requirements. (This current trend received added impetus with a March 1976 United States Supreme Court ruling which upheld the power of municipalities to impose residency regulations.³⁴) Thus, many present controversies over residency policies are closely tied to deep-rooted city-suburban antagonisms.

Police Residency Requirements: A Symbolic Political Issue

The questionable validity of many of the arguments both for and against the residency policy made the topic extremely controversial. But this still does not fully explain why so much time, money, and energy have been spent on residency challenges in Detroit. In large measure, the publicity resulting from the protracted legal and administrative challenges and the accompanying rhetoric were critical determinants of the issue's salience over an eight-year period. Tracing the evolution of the dispute strongly suggests its symbolic political importance.

Mayor Cavanagh was willing to liberalize and formalize the police residency rule partially in response to the 1967 fact-finding panel recommendations and partially as a "sweetener" for inducing the DPOA to agree to delay implementation of its newly won wage increases. In addition, Cavanagh believed the matter was administrative. The Common Council disagreed with the mayor and went on to pass the residency ordinance, allegedly for financial and racial reasons. Among other things, this incident illustrated how the structure of government and confusion about authority for bargaining contributed to the development of a city's residency policy. Detroit has a strong mayor-council form of government. The residency ordinance resulted at least in part from a power struggle between a liberal mayor and a conservative council, who differed in their views about police residency.

During the Gribbs administration the focus of the controversy shifted from the legislative and executive branches to the courts. Upholding the constitutionality of the residency ordinance, one of the Michigan Supreme Court justices addressed the need for black recruitment and improved police-community relations. Following this decision, the topic of police residency enforcements became one

of the most hotly-debated issues in Detroit government. As the dispute between the DPOA and the city persisted and as Detroit became more black and more polarized, the residency issue became even more racial and more political.

By 1973 the topic of law enforcement and police residency became a major mayoral campaign issue. Coleman Young, an attractive black candidate, and John Nichols, a popular police candidate, both capitalized on the political saliency of crime and law and order issues. Public fear of crime, a major concern nationally, was especially acute in Detroit which had been dubbed "kill city."

Once Young was elected, the residency dispute became symbolic of the struggle for control of the police department between Detroit's first black mayor and the predominantly white police union. As far as Young was concerned the controversy also raised the more general question of whether, as blacks begin to run the cities, they will allow whites to change the rules to their favor. Young openly identified the residency conflict as primarily racial. He publicly emphasized the relationship between the residency requirement and black recruitment and also addressed the connection between the rule and de facto residential segregation. (It is interesting to consider what might happen when more blacks secure city jobs and become middle-class. Very likely, they also will want to move to the suburbs. Accordingly, they may change their position and argue that the residency rule promotes reverse segregation, a likelihood that underscores the racial and political nature of the issue.) Nonetheless, in 1975 the controversy involved major questions of community control and job access and symbolized to blacks broad issues concerning the redistribution of wealth, power, and prestige in Detroit. For whites fearful of crime the issue was one of obtaining maximum security from a resident police

force available for twenty-four-hour duty.

The residency topic became an emotional rallying point for DPOA members and, consequently, became critically important to the union leadership in terms of both internal DPOA and also city politics. By the time the residency ordinance was enacted, the DPOA had established itself as a viable political force. Its challenge to the city legislation became a test of the union's influence and an opportunity to expand its power. If the DPOA succeeded in blocking the mayor on the residency issue, it would be a tremendous political victory for the union. For these reasons, pressure was on the union leadership to exploit all possible means for prolonging the struggle.

Union Influence

The extended residency dispute aptly demonstrated the importance of political, economic, and statutory factors in determining the relative power of the union at a single point in time. The DPOA's failure to change the residency policy was largely a result of economic, social, and administrative concerns which led to political alliances strong enough to successfully oppose it. Although the mayor, the Common Council, the police chief, blacks, and whites fearful of crime all differed in their motivations, they all supported continuation of the residency rule. The DPOA and other public employee unions were the only major groups with a vested interest in modifying the residency rules. In the end, the DPOA lost the support of even the other public safety unions.

Despite its defeat on the residency rule elimination, the union did achieve other goals in the course of its struggle. In addition to its previously mentioned success in blocking enforcement of the ordinance, one of the DPOA's

major accomplishments was expanding its potential influence over city policy making and public resource allocation, which resulted from the determination that residency rules are bargainable. As a general observation about public employee organizations, Hervey Juris and Peter Feuille argue that "the real impact of the union has been to force shared decision-making in the allocation of resources,"³⁵ both monetary and nonmonetary. The possible consequences of this development in the residency dispute are important to consider.

The Detroit case suggests the DPOA's interest in influencing the residency policy as a means to control who gets police jobs, probably at the expense of minorities.³⁶ In addition, if the previously discussed economic arguments hold (see p. 106 above and Chapter 4), allowing nonresidency would contribute to weighting the distribution of public resources in favor of the suburbs at the city's expense. Although the union was defeated on the particular policy matter of residency rules, the decision-making process was time consuming and costly for both the DPOA and the city. Enormous sums of public money were spent on legal and administrative proceedings. And the struggle is not yet over. If and how Detroit's residency policy is enforced still remains to be determined.

In light of these considerations, the strong opposition to the DPOA is not surprising. Significantly, the outcome of the case as it stands illustrates some of the specific limitations to the DPOA's power as well as suggests a few of the more general current constraints on most public employee unions.

The situation as expressed by this study has changed dramatically since the heyday of the sixties when the newly-organized city workers were granted union prerequisites. They were extraordinarily successful in achieving substantial economic gains as well as some influence over personnel matters and policy formulation. Although the exact reasons for these

extensive concessions by public officials are not entirely clear, several political analysts have suggested that one major factor was the desire of moderate-to-liberal mayors to gain electoral strength.³⁷ Theodore Lowi argues that with the erosion of the traditional party machinery elected officials turned to public employees as a major source of support.³⁸ The political wisdom was that the large numbers of city workers and their relatives constituted a sizeable voting bloc which, though not necessarily homogeneous, was nonetheless extremely influential. An additional reason for wooing municipal employees was to avoid service disruptions that could cause politicians a loss of electoral support. These political considerations contributed greatly to the granting of bargaining rights to public employees, a development which has altered the distribution of power in the cities.

Over the last few years, however, changing conditions, particularly economic, have led to some changing attitudes toward unions on the part of both city leaders and the general public.³⁹ Previous assumptions about how essential public services are and how much public demand there is for them, regardless of price, are currently being challenged. Suffering from the effects of inflation and recession, taxpayers are increasingly reluctant to pay the demands of city employees. They have become somewhat more tolerant of service disruptions in an effort to support officials in hard bargaining.

Frightened by the specter of New York's fiscal crisis, growing numbers of city leaders are adopting the view that standing up to the unions can be beneficial both economically and politically. The new perception is that in some cases more can be gained at the polls from irate taxpayers than would be lost to the unions by taking a hard line in bargaining. Coleman Young had no fear of losing political support by opposing the DPOA on the residency issue and, in fact,

perceived an overall gain in strength by taking this position.

Several other recent examples illustrate the trend toward stiffening resistance to union demands. During July 1975 Albuquerque, New Mexico sat out a ten-day police strike after public officials refused to grant the union's wage demand. When the city threatened to accept the resignations of more than 300 officers, the frightened police returned to work accepting the same pay raise they had previously rejected. After an initial rejection, Berkeley police also agreed to accept the City Council's original pay offer when the city withstood a twenty-five-day strike in September 1975.

In San Francisco Mayor Joseph Alioto, forbidden by law to seek a third term in 1975, used his emergency powers to grant striking policemen and firemen most of the pay increases they sought although the Board of Supervisors, whose members were seeking reelection, strenuously objected. Alioto conceded the political wisdom of their stand by suggesting that labor-oriented candidates did not stand a chance to win in the city that year. The public responded to Alioto's action by passing a proposition limiting the mayor's emergency powers in similar future situations.

Whether economic and political factors continue to encourage this trend is yet to be determined. Nonetheless, despite current constraints on their influence, municipal employee unions have already become an institutionalized force in city politics, as evidenced by the numerous examples of their power. On the one hand, they have helped win significant gains for public employees including wage increases and fringe benefits, improved working conditions, and grievance procedures to protect workers from inconsistent treatment. On the other hand, they have contributed to obstructing the redistribution of services, restricting minority hiring, and creating public inconvenience through employee slowdowns

and work stoppages. Public employee organizations have been one major factor in limiting mayoral control over the distribution of increasingly scarce public resources.⁴⁰ As the Detroit residency case illustrated, they can have an important impact on public policy.⁴¹ Exactly how these unions and collective bargaining shape the future of our cities remains to be seen, but the fact of their influence is clearly established; its ultimate desirability is an open question and remains for each individual to judge.

NOTES

Chapter 1

1. For a discussion of the reform movement to eliminate police residency rules see Robert M. Fogelson, "Big City Police " (Tentative title - Unpublished manuscript: 1976), Chapter 2.
2. John A. Greening, "Report of the Committee on Professionalization of the Police Service." International Association of Chiefs of Police, The Police Yearbook (1940), pp. 72-74; Fogelson, "Big City Police," Chapter 6 discusses the rationales underlying efforts to repeal police residency requirements after 1930.
3. James F. Richardson, Urban Police in the United States (Port Washington, N.Y.: Kennikat Press, 1974), pp. 48, 63.
4. The coalescence of the reformers and the rank and file is described by Fogelson, "Big City Police," Chapter 7.
5. Ibid., Chapter 7, in particular the letters replying to the San Francisco Civil Service Commission survey of residence waivers, 1965.
6. Ibid., Chapter 11 discusses these attempts during the late sixties.
7. Michigan, Public Employment Relations Act (PERA), Act 379, PA 1965, as amended; MCLA 423.201, MSA 17.455 (1).
For a discussion of the provisions of PERA see Sterling D. Spero and John M. Capozzola, The Urban Community and Its Unionized Bureaucracies (New York: Dunellen Publishing Company, Inc., 1973), pp. 44-45; Hyman Parker, Michigan Public Employment Relations Act and Procedures. The Employment Relations Studies Series, no. 1 (1975; rev. third ed., East Lansing: The School of Labor and Industrial Relations, Michigan State University).
8. Margaret Anne Levi, "Conflict and Collusion: Police Collective Bargaining." Technical Report (07-74) prepared for the Innovative Resource Planning Project at the Massachusetts Institute of Technology (September 1974), p. 128. Levi gives background (on pp. 113-118) concerning the establishment of the Detroit Fraternal Order of Police (FOP). Her entire Detroit study (pp. 113-172) offers an excellent account of the transformation of the patrolmen's fraternal organization into a strong union. She also examines the emergence of police unions in two other cases, New York and Atlanta.

9. This was the first major police strike since World War II. For a report of the incident see Levi, pp. 144-155. See also William J. Bopp, "The Detroit Police Revolt," The Police Rebellion, ed. William Bopp (Springfield, Ill.: Charles C. Thomas, 1971), pp. 162-172.
10. Levi discusses the impacts on pp. 158-164. See also Harold Wilde, "The Process of Change in a Police Bureaucracy" (Ph.D. diss., Harvard University, 1972), pp. 104-167. Herbert Locke writes about the outbreak in The Detroit Riot of 1967 (Detroit: Wayne State University Press, 1969).
11. "Appendix for Appellant," pp. 47a, 193a. Supreme Court of Michigan, no. 52678, DPOA v. City of Detroit, 385 Mich 519 (1971).
12. Detroit Police Manual, Chapter 3, Section 48, Rule 10.
13. The civil service residency requirement dates back to the creation of the Detroit Civil Service Commission in 1913. But even before 1913, city employee residency had been required by the 1886 City Charter. Rationales for the policy included the democratic theory of citizen participation and the need for community commitment. "Appendix for Appellant," pp. 308a, 342a, 343a.
14. For instance, employees working for facilities located outside the city (e.g. the Detroit Zoo, the Detroit House of Corrections, and the Mayberry Sanitorium) were permitted to live either in Detroit or in the four townships adjacent to the institutions. In addition, bus drivers and transportation equipment operators employed by the Department of Street Railways (DSR) could live in any areas which the DSR services. "Appendix for Appellant," p. 312.
15. Report of the National Advisory Commission on Civil Disorders, Otto Kerner, Chairman (New York: New York Times Company, 1968), p. 322.
16. "Findings and Recommendations of the Detroit Police Dispute Panel" (February 27, 1968), p. 38; See Also "Reply Brief of the Detroit Police Officers Association" - Before the Detroit Police Dispute Panel (22 January 1968), pp. 15-17.
17. The exact number cannot be documented.
18. Jerome Cavanagh, Mayor of Detroit 1961-1969, Interview, 23 January 1975.
19. Draft "Memorandum of Agreement" concerning implementation of "Findings and Recommendations of the Detroit Police Dispute Panel" (March 1968).

- 20. Bernard Klein, City Controller during the Cavanagh administration, Telephone conversation, 27 January 1975.
- 21. "Appendix for Appellant," p. 141a; Detroit Free Press, 23 October 1969.
- 22. John McKinlay, former Assistant Corporation Counsel, Telephone conversation, 19 August 1975.
- 23. Idem.
- 24. Correspondence from City Clerk's Office to Corporation Counsel (5 April 1968); Common Council notes of 8 April 1968 available from City Clerk's Office.
- 25. Common Council notes of 23 April 1968 available from City Clerk's Office.
- 26. Klein, Telephone conversation, 27 January 1975.
- 27. Carl Parsell, DPOA President, "Statement on Behalf of Detroit Police Officers Association In Opposition to Proposed Residency Ordinance" (17 January 1968).

28. **ORDINANCE NO. 327-G**
 CHAPTER 2
 ARTICLE 1
 CITY EMPLOYEES RESIDENCE
 REQUIREMENTS
AN ORDINANCE to amend Chapter 2, Article 1 of the Code of the City of Detroit by adding new sections to be known as sections 2-1-1.2 and 2-1-1.3, to provide for residency requirements for city employees.
IT IS HEREBY ORDAINED BY THE PEOPLE OF THE CITY OF DETROIT:
 Section 1. That Chapter 2, Article 1 of the Code of the City of Detroit be amended by adding new sections thereto to be known as sections 2-1-1.2, and 2-1-1.3, to read as follows:
 Section 2-1-1.2. Residence shall be construed to be the actual domicile of the individual where he normally eats and sleeps and maintains his normal personal and household effects.
 Section 2-1-1.3. All police officers, appointees in the unclassified service, except the director of the zoo and superintendent of the House of Correction, and all persons working in any branch of the classified service of

the city shall reside in the City of Detroit. The Civil Service Commission may waive the residency requirement for employment in the classified service upon a finding that such waiver would serve the best interest of the city. When waiving the residency requirement, the Civil Service Commission shall base their determination upon:

- (1) The nature of the work.
- (2) The location of the work, and
- (3) All other pertinent facts concerning employment.

The commission shall promptly report any waiver of residency requirement to the Mayor and the Common Council.

Section 2. This ordinance is declared necessary for the preservation of the peace, health, safety and welfare of the people of the City of Detroit, and is hereby given immediate effect.

(JCC p. 850, April 30, 1968).
 Passed May 28, 1968.
 Approved June 4, 1968.
 Published June 5, 6, 7, 1968.
 Effective June 6, 1968.

THOMAS D. LEADBETTER,
 City Clerk.

29. "Appendix for Appellant," pp. 241a, 245a.
30. Ibid., pp. 245a, 246a.
31. Ibid., p. 241a.
32. Ibid., p. 297a.
33. Ibid., p. 289a.
34. Ibid., pp. 262a-265a.
35. Ibid., p. 293a.
36. Ibid., p. 302.
37. Ibid., pp. 251, 252a, 294a.

Chapter 2

1. "Brief on Behalf of Plaintiffs " (8 August 1969), in Detroit Police Officers Association (DPOA) v. City of Detroit, cc no. 114-797.
Nonetheless, at this time, several cases had already upheld the constitutionality of various city and state residency statutes. For examples, see n. 6 and n. 25 below.
2. Michigan Constitution (1963), Art. I; United States Constitution, Amend. 14.
3. Citation of Allgeyer v. Louisiana, 165 U.S. 589, S.Ct. 427 (1897), in "Brief on Behalf of Plaintiffs," (supra, n. 1), p. 3.
4. Detroit Residency Ordinance, No. 327-G, Ch. 2, art. 1 of the Municipal Code of the City of Detroit. (For complete text see Chapter 1, n. 28.)
5. "Appendix for Appellant," p. 381a, in DPOA v. City of Detroit, 385 Mich 519 (1971), no. 52678.
6. To buttress these arguments the city cited Marabuto v. Town of Emeryville, 183 Cal. App. 2d 406, 6 Cal. Rptr. 690 (Dist. Ct. App. 1969), in which the court found a municipal residency ordinance reasonably applicable to policemen because of the need for their services during emergencies and the fact that they are subject to twenty-four-hour duty. Quigley v. Village of Blanchester, 16 Ohio App. 2d 104, 242 N.E. 2d 598 (Ct. App. 1968), also recognized the "geographical proximity in case of emergency" argument in upholding a village residency ordinance.

7. "Brief on Appeal of Plaintiffs-Appellees" (23 November 1970), p. 16, in DPOA v. City of Detroit, (supra, n. 5), no. 52678.
8. "Brief on Behalf of Plaintiffs," (supra, n. 1), p. 4.
9. "Memorandum in Support of Temporary Injunction" (11 April 1969), p. 5, in DPOA v. City of Detroit, (supra, n. 1).
10. Detroit Free Press, 28 June 1972.
11. "Appendix for Appellant," (supra, n. 5), p. 145a.
12. "Brief on Behalf of Plaintiffs," (supra, n. 1), p. 12.
13. "Defendant's Memorandum in Support of Motion to Dismiss " (5 May 1969), p. 4, in DPOA v. City of Detroit, (supra, n. 1).
14. Ibid., p. 8.
15. "Brief on Behalf of Plaintiffs," pp. 13-15, (supra, n. 1).
16. Quoted in "Supplemental Brief on Behalf of Plaintiffs " (5 September 1969), p. 2, in DPOA v. City of Detroit (supra, n. 1).
17. "Brief on Appeal of Plaintiffs-Appellees," (supra, n. 7), p. 11. Relevant sections of the Charter are quoted on pp. 9-10.
18. Detroit Charter, Title 4, Ch. 21, sec. 5 quoted in *ibid.*, p. 11.
19. Quoted in "Brief on Behalf of Plaintiffs," (supra, n. 1), p. 17.
20. "Brief on Appeal of Plaintiffs-Appellees," (supra, n. 7), p. 12. To further support this claim, the union cited Ture v. Ecorse City Council, 331 Mich. 380 (1951) at 387:

As before pointed out, the council has no express power to discharge members of the police department. In the face of the specific provision of the charter such power may not be implied. The procedure contemplated by the charter must be observed.
21. Detroit Charter, Title 3, Ch. 1, sec. 12 (d).
22. Detroit Charter, Title 3, Ch. 1, sec. 12 (t).
23. Detroit Charter, Title 4, Ch. 21, sec. 37 as quoted in DPOA v. City of Detroit, (supra, n. 5), at 528.
24. Cf. n. 18, same reference.

25. Kennedy v. City of Newark, 148A (2d) 473 at 476 quoted in "Defendant's Memorandum in Support of Motion to Dismiss," (supra, n. 13), p. 11. (The city also agreed with the Kennedy court's statement of the issue to be decided - namely, whether an individual may live where he pleases and at the same time insist upon government employment.)

To further support the argument that residency rules are a legislative policy matter, the city cited Berg v. City of Minneapolis, 274 Minn. 277, 143 N.W. 2d 200 (1966), in which the court, relying on the separation of powers and judicial restraint doctrines, upheld a civil service commission residency rule and a police department residency regulation.

26. "Defendant's Memorandum in Support of Motion to Dismiss," (supra, n. 13), p. 16.
27. DPOA v. City of Detroit, CA no. 114-797, Circuit Court for the County of Wayne, Opinion at 6.
28. Idem at 6-7.
29. Idem at 4.
30. Idem at 5-6.
31. Quoted in DPOA v. City of Detroit, (supra, n. 5), at 534.
32. "Brief on Appeal of Plaintiffs-Appellees," (supra, n. 7), p. 14.
33. "Appendix for Appellant," (supra, n. 5), p. 149a.

The actual reasons for the police department's manpower shortage and the desirability and effectiveness of eliminating residency rules as a solution are questionable. Evidence suggests that the problem at this time was not necessarily one of insufficient applicants. Blacks were especially interested in securing police jobs. However, police departments nationally were rejecting a high percentage of candidates for alleged reasons of failure on written and oral tests, as well as on character exams. (Robert M. Fogelson, "Big City Police" [Tentative title - Unpublished manuscript: 1976], Chapters 6 and 7).

The effectiveness of these tests as a credentialing device is open to serious debate. There is no clear evidence that such exams are related to the quality of police performance. Nonetheless, they were being used to screen out most minority police candidates. The Detroit Commission on Community Relations reported that in 1967 almost 4,000 persons applied for police jobs: 2,122 (53.2 percent) whites and 1,874 (46.8 percent) blacks. Of the 323 who were hired, 252 were white and 71 were black. (Figures cited by Martha F. Gray, Chairman, League of Women Voters Police Committee in "Statement to the Detroit Common Council Concerning the Proposed Residency Ordinance for City Employees" [May 17, 1968]).

As a partial solution to the department's personnel problem, Mayor Cavanagh advocated intensification of minority recruitment and modification of entrance requirements such as height and educational prerequisites. The Detroit League of Women Voters urgently recommended the adoption of special training programs for minorities. The DPOA, on the other hand, was pressing for repeal of the residency rule as a means to help alleviate the manpower shortage. Such an alternative most likely would continue to guarantee white candidates the majority of available police positions.

34. "Appendix for Appellant," (supra, n. 5), pp. 199a-200a.
35. DPOA v. City of Detroit, (supra, n. 5), at 525.
36. Detroit Charter, Title 4, Ch. 1, sec. 12 quoted in DPOA v. City of Detroit, (supra, n. 5), at 529.
37. *Idem* at 530.
38. *Idem*.
39. Williams v. Civil Service Commission of Detroit, 383 Mich 507 (1970), at 517, 518 quoted in DPOA v. City of Detroit, (supra, n. 5), at 531.
40. *Idem*. In arriving at this decision the court responded to the union's contention that the residency requirement was in effect an order to discharge nonresident officers and that under the Charter, as interpreted in Slavin v. City of Detroit, 262 Mich 176 (1933), the power of police removals and appointments is vested in the police commissioner (see pp. 24-25). Claiming that Slavin was inapposite in the DPOA case, the court said:

In Slavin it was contended that the Police Commissioner of the City of Detroit was without authority to effect reductions in manpower for economy reasons and that such authority rested solely in the Common Council of the City of Detroit. Slavin held that the police commissioner, in the circumstances listed, did have a right of removal under the charter. The power of the common council to effect removals was not an issue. (DPOA, [supra, n. 5] at 531-532 in n. 26.)

The union also maintained that the ordinance abridged the police commissioner's power under the Charter to "make all proper rules for the government and discipline" of the police department (subsection (a), sec. 5, Chapter 21, Title 4 of the Detroit Charter, see. p. 8). To this, the court commented:

Subsection (a) is merely one of the powers and duties of the commissioner enumerated under section 5, all of which

must be "exercised and performed as herein provided and in accordance with the laws of the state and ordinances of the city," ... (DPOA, [supra n. 5] at 532 in n. 26.)

41. Idem at 522. The equal protection test was summarized by the Michigan Supreme Court in Tracer v. Bushre, 381 Mich 282 (1968), at 286, 287 which quoted Cook Coffee v. Village of Flushing, 267 Mich 131 (1934) at 134. See also Chapter 4, n. 6.
42. Idem at 522, 523.
43. Idem at 533, 534.
44. Idem at 534, 535.
45. Idem at 535.
46. Idem at 524.
47. Detroit Free Press, 16 September 1971.
48. "Jurisdictional Statement" at 8. Supreme Court of the United States, October Term, 1971. DPOA v. City of Detroit, (supra, n. 5).
49. "Amended Complaint for Declaratory Judgment and Injunctive Relief" (3 April 1969), pp. 1-2. DPOA v. City of Detroit (supra, n. 1).
50. "Answer to Amended Complaint for Declaratory Judgment and Injunctive Relief and Motion to Dismiss" (24 April 1969), p. 2, in DPOA v. City of Detroit (supra, n. 1).
51. Detroit News, 24 July 1969.
52. John F. Nichols, Police Commissioner, "Letter to Councilman Carl Levin" (28 August 1972); Detroit News, 19 July 1972.
53. Detroit Free Press, 20 February 1973.
54. Nichols, "Letter to the Common Council" (22 December 1972).
55. Ibid.
56. Charles A. Meyer, Secretary and Chief Examiner, Civil Service Commission, "Letter to the Common Council" (2 January 1973).
57. Dr. Mel Ravitz, former Common Council member, Interview, 18 August 1975.

58. Detroit News, 1 December 1973.
59. Detroit Free Press, 1 December 1973.
60. Detroit Free Press, 28 November 1974.

Chapter 3

1. City of Detroit, 1971 MERC Lab. Op. 237 at 239.
2. Public Employment Relations Act (PERA), Act 379, PA 1965 as amended; MCLA 423.215, MSA 17.455 (15).
3. City of Detroit, (supra, n. 1), at 253.
4. Idem at 254.
5. Idem.
6. "Memorandum of Agreement Between the City of Detroit and the DPOA" (March 1968).
7. City of Detroit, (supra, n. 1), at 255.
8. Idem.
9. Detroit Police Officers Association (DPOA) v. City of Detroit, 391 Mich 44 (1974) at 56; Harry T. Edwards, "The Emerging Duty to Bargain in the Public Sector," Michigan Law Review 885 (1973): 923-924. This concept comes from the private sector where, under the National Labor Relations Act (NLRA), when good faith bargaining has reached an impasse, the employer may take unilateral action if it is consistent with the terms of its final offer to the union (NLRB v. Katz, 369 U.S. 736 [1962]). However, more recently, the public sector has begun to institute procedures such as fact finding and arbitration to require parties to negotiate beyond impasse.
10. City of Detroit, 1971 MERC Lab. Op. 237 at 240.
11. Decided in Detroit Fire Commissioners, 1970 MERC Lab. Op. 953.
12. City of Detroit, (supra, n. 1), at 240, in n. 1 of the decision.
13. Idem at 241.

14. "Brief of City of Detroit, Appellee," p. 7, in DPOA v. City of Detroit, (supra, n. 9), no. 54411.
15. City of Detroit, (supra, n. 1), at 249, 250.
16. DPOA v. City of Detroit, 41 Mich App 723 (1972).
17. Idem at 728.
18. "Brief of Detroit Police Officers Association, Plaintiff-Appellant," pp. 10-11 in DPOA v. City of Detroit, (supra, n. 9), no. 54411.
19. Idem at 11-13. PERA is unlike the law in some states where conditions of employment controlled by a valid ordinance are exempted from the scope of bargaining: DPOA v. City of Detroit, (supra, n. 9), at 58-59 in n. 8.
20. Public Employment Relations Act as amended, (supra, n. 2); "Brief of Detroit Police Officers Association, Plaintiff-Appellant," p. 14.
21. "Brief of City of Detroit, Appellee," p. 18, in DPOA v. City of Detroit, (supra, n. 9).
22. "Brief of Michigan Employment Relations Commission, Appellee and Cross-Appellant," pp. 5-6 in DPOA v. City of Detroit, (supra, n. 9), no. 54411.
23. Idem at 7.
24. DPOA v. City of Detroit, (supra, n. 9), at 57.
25. Idem at 61.
26. Idem at 63.
27. Detroit Free Press, 16 February 1974.
28. "Brief on Behalf of Detroit Police Officers Association," for "Police Residency: Compulsory Arbitration" (August 1975), p. 2.
29. Transcripts of testimony for "Police Residency: Compulsory Arbitration," vol. XII, p. 36.
30. Detroit News, 18 March 1974.
31. Ibid.
32. Transcripts of testimony, vol IV, p. 119.

33. Detroit Free Press, 16 February 1974.
34. Detroit News, 28 February 1974.
35. Police and Firefighters Arbitration Act (PFFA), Act 312 of Public Acts of 1969. The Act provides that once an impasse has been reached, either the employees or the employer may request compulsory arbitration, thus foreclosing unilateral action by the public employer (as happened in the Common Council's passage of the 1968 residency ordinance). The issues are heard by a panel consisting of three members, one each chosen by the two disputants and a third mutually agreeable party who is chairman. For a very useful discussion about the legislative history, provisions, and administration of PFFA see pp. 37-75 in James L. Stern; Charles M. Rhemus; J. Joseph Loewenberg; Hirschel Kasper; Barbara D. Dennis; Final Offer Arbitration (Lexington, Mass.: Lexington Books, D.C. Heath and Company, 1975). See also Hyman Parker, Michigan Public Employment Relations Act and Procedures, The Employment Relations Study Series, no. 1 (1975, third ed. East Lansing: The School of Labor and Industrial Relations, Michigan State University), pp. 22-25.
36. Detroit News, 25 July 1974.
37. Detroit News, 21 August 1974.
38. Detroit Free Press, 22 August 1974.
39. The intent of the "last best offer" provision is to force each party to be as realistic as possible in its final economic offers, theoretically bringing the sides closer together than in past bargaining positions. See Parker, Michigan Public Employment Relations Acts and Procedures, pp. 24-25; see also Stern et al., Final Offer Arbitration, pp. 46-49.
40. Detroit News, 31 October 1974. Ron Sexton had campaigned for a hard line in police bargaining and upset incumbent Gary Lee in the union's September election.
41. Ibid.
42. Ibid.
43. Detroit News, 30 October 1974. Before the new agreement first-year sergeants had been paid \$18,300 a year with lieutenants receiving \$20,500.
44. Detroit Free Press, 9 January 1975. The new agreement boosted the annual pay for experienced firemen from \$15,000 to approximately \$17,300 beginning July 1, 1975.
45. Ibid.
46. Detroit News, 7 September 1975.

Chapter 4

1. Harry Platt, "Opinion and Award" (September 5, 1975) for "Police Residency: Compulsory Arbitration," p. 5.
2. Ibid.
3. Ibid., p. 31
4. Ibid., p. 38.
5. For a summary of this test and its application to police residency cases, see Michael F. Barnes, "Municipal Police Residency Restriction: Remnant of Feudalism or Sound Public Policy?" Public Safety Labor Reporter (June 1974), pp. 3-32 - 3-35.

For a discussion of suspect classification and fundamental interest see "Developments - Equal Protection," Harvard Law Review 82 (1969): 1087-1131.

Shapiro v. Thompson, 395 U.S. 618 (1969) was the first case to apply the "compelling state interest" test to a residency statute. The plaintiffs attacked durational residency statutes which denied welfare assistance to state residents who had not lived within state boundaries for at least one full year immediately preceding their applications for aid. The court invalidated the statutes on the ground that they restricted interstate travel (which the court held is a fundamental right and can only be curtailed for a "compelling state interest") by effectively cutting individuals off from any public benefits given on the basis of residency.

6. Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61 (1911) stated the full reasonableness test. A discussion of the "compelling state interest" and rational basis standards is presented by Philip P. Houle in "Compelling State Interest vs. Mere Rational Classification: The Practitioner's Equal Protection Dilemma," The Urban Lawyer 3 (1971): 375-427. Barnes (supra, n. 5), pp. 3-30 - 3-32, discusses police residency cases which applied the equal protection rational basis standard to test the validity of various residency rules.
7. DPOA v. City of Detroit, 385 Mich 519 (1971) at 522.
8. "Brief on Behalf of Detroit Police Officers Association," for "Police Residency: Compulsory Arbitration" (August 1, 1975), pp. 15-19.
9. Ibid., pp. 16-17.
10. Ibid., p. 20: Quotation of Dr. George L. Kirkham from Transcripts of testimony for "Police Residency: Compulsory Arbitration," vol. II, p. 29. All further quotations from official transcripts of the proceedings will be noted in parentheses by volume and page number. References to exhibits are also from the proceedings.

11. Dr. Bruce Danto (XIV, pp. 8-13), in *ibid.*, p. 25.
12. Dr. Edward C. Dorsey (XIII, p. 85), in *ibid.*, p. 25.
13. William H. Kroes, Bruce L. Margolis, and Joseph J. Hurrell, Jr., "Job Stress in Policemen," Journal of Police Science and Administration 2 (1974); 145-155, as Union Exhibit 16 and quoted in *ibid.*, p. 27.
14. "Police Officers Residence Requirements (Ten Largest Cities)," Union Exhibit 5 and quoted in *ibid.*, p. 30.
15. Eugene C. Mathivet, Jr., (III, pp. 21-22) and quoted in *ibid.*, p. 29.
16. Neither of these agencies, however, is concerned with law enforcement functions, and the union ignored the fact that there is no organizational coordination among the city, county, and state law enforcement agencies. *Ibid.*, p. 29.
17. Platt, "Opinion and Award," pp. 19-20; "Brief on Behalf of Detroit Police Officers Association," pp. 35-77.
18. The city's statement of the question was based on Kennedy v. City of Newark, 148 A.2d 473, 476 (NJ 1959). Quoted in "Brief of City of Detroit," for "Police Residency: Compulsory Arbitration," p. 22.
19. "Brief of City of Detroit," p. 17. On March 22, 1976 the United States Supreme Court made explicit its implication in the 1972 Detroit police residency case that residency requirements are not inherently unconstitutional. In McCarthy v. Philadelphia Civil Service Commission, no. 75-783, the court upheld the power of municipalities to require their employees to live within the cities for which they work.
20. Ahern v. Murphy, 457 F2d 363 at 364 quoted in *ibid.*, p. 18.
21. Krzewinski v. Kugler, 338 F Supp 492 (D NJ 1972) at 499, 500.
22. For instance, Shapiro v. Thompson, see n. 5 above.
23. "Brief of City of Detroit," p. 10.
24. "Detroit Police Resident Location," City Exhibits 12 and 13; "Brief of City of Detroit," p. 54.
25. "Brief on Behalf of DPOA," p. 50.
26. (VII, pp. 85-87) and quoted in *ibid.*, p. 47.

27. "Brief on Behalf of DPOA," p. 55; Platt, "Opinion and Award," p. 39.
28. "Brief of City of Detroit," pp. 49-50.
29. "Brief on Behalf of DPOA," p. 74.
30. "Brief of City of Detroit," p. 54.
31. Detroit Free Press, 3 March 1975; City Exhibits 7-16, 32 and 33.
32. Detroit Free Press, 3 March 1975; "Brief on Behalf of DPOA," p. 57. The union's figures were cited from Joint Exhibits 17A and 17B and from prior monthly police department reports obtained from Detroit's labor relations department.
33. The city's argument was partially based on the fact that white officers usually live in predominantly white middle- and upper-middle-class areas. In such communities, even when crime does occur, police are less likely to apprehend their neighbors and fellow officers. In many of these neighborhoods certain categories of law enforcement problems, such as juvenile delinquency, are often handled through informal community sanctions.
34. "Brief of City of Detroit," pp. 34-35.
35. "Brief on Behalf of DPOA," p. 53.
36. Coleman Young, Mayor (IV, p. 125).
37. Ibid.
38. "Brief on Behalf of DPOA," p. 69
39. "Applicant Analysis - 1974," City Exhibit 39.
40. "Department Strength," City Exhibit 41.
41. "Applicant Analysis - 1974," City Exhibit 39; Ferree (X, 63-64).
42. Platt, "Opinion and Award," p. 27. According to the city, of Detroit's 5,418 sworn officers, only about 17 percent (923) were black as of 1975 ("Brief of City of Detroit," p. 37).
43. Coleman Young, Mayor (IV, p. 120),
44. Detroit Free Press, 7 February 1975.
45. Coleman Young, Mayor (IV, p. 124).

46. Ibid., p. 123
47. "Brief of City of Detroit," p. 47.
48. Professor Jerome Skolnick (VI) and quoted in Platt, "Opinion and Award," p. 29.
49. Police Chief Tannian (V, pp. 84-95).
50. (V, 69; VI, 54) and quoted in "Brief on Behalf of DPOA," p. 80.
51. Patrick Murphy, Former Detroit Police Commissioner (VII, p. 11).
52. Detroit Free Press, 10 February 1975; "Brief of City of Detroit," pp. 57-58.
53. City Planner Yale Rabin (X, pp. 96-101) and quoted in "Brief of City of Detroit," p. 60.
54. Rabin (X, pp. 103-105).
55. (VIII, pp. 85-87) and quoted in "Brief on Behalf of DPOA," p. 47.
56. Ibid., p. 46.
57. Detroit News, 9 March 1975.
58. Ibid.; Dr. Barbara Bryant, Vice President, Market Opinion Research Co., Inc. (IX).
59. "Police and Fire Survey," City Exhibits 18 and 19.
60. (IX, p. 26) and quoted in "Brief of City of Detroit," p. 64.
61. "Brief on Behalf of DPOA," pp. 41, 43-44.
62. Dennis Green, City Finance Director (IX, pp. 119-122).
63. Green (IX, p. 104).
64. Green (IX, pp. 124-125). In the 1974-75 budget the city contributed \$90 million to the pension fund.
65. Ibid.
66. The multiplier factor of 2 is based on the assumption that 50 percent of employee income is spent in the Detroit economy and 50 percent is spent outside. Mattila used this multiplier to calculate the total indirect effect of a loss in circulation of city employee money. In other words, in addition to the direct loss of employee income, the city would also suffer from the indirect loss of expenditures in the local economy. According to Mattila, the ultimate loss to Detroit would be double the income of each family. Dr. John Mattila, Economist (IX, pp. 130, 133-134).
67. Mattila, (IX, p. 132).

68. Calculated from figures cited by Matilla (IX, pp. 136-137) and presented in "Economic Impact of ... City Employee Families Moving to the Suburbs," City Exhibit 27. The 5,000 figure was arrived at by applying Yale Rabin's 20-percent pent-up demand figure to the total of approximately 26,000 general city employees.
69. "Brief on Behalf of DPOA," p. 79.
70. Ibid., p. 78.
71. Ibid., p. 80.
72. The 1974-75 budget was \$771 million; the tax-supported portion was \$616 million (Green, IX, p. 103). Approximately 45 percent of the budget revenues was made up of local taxes, assessments, and interests. Property taxes alone contributed about \$158.8 million. Roughly 17 percent of the revenues came from grants, share taxes, and revenues which included state and federal revenue-sharing (Green, IX, pp. 106-107).
73. Green (IX, pp. 109-116).
74. Green (IX, pp. 115-116).
75. Robert Knox, real estate broker and former Detroit housing commissioner (X, pp. 34-38).
76. "Brief on Behalf of DPOA," p. 81.
77. Green testified that 16.6 percent of the operating budget revenues (\$521 million) were from "grants, share taxes, and federal revenue sharing." This is \$86.49 million (Green, IX, pp. 103, 196).
78. "Brief on Behalf of DPOA," p. 82.
79. Coleman Young, Mayor, "Letter to Harry Platt Concerning Police Residency Waiver Policy" (17 March 1975), City Exhibit 46.
80. An additional development, not mentioned by Young, further complicated the feasibility of discretionary residency waivers. The 1973 New Detroit Charter reorganized the police department, theoretically dividing its management between a police chief (formerly commissioner) responsible for daily administration and a five-member civilian board of commissioners responsible for policy making. In reality, there is considerable tension over the actual delegation of authority. The source of responsibility for discretionary waivers was seen as another bone of contention.
81. Detroit Free Press, 7 September 1975.

82. Platt, "Opinion and Award," p. 32. See also n. 19 above.
83. Quoted in Platt, "Opinion and Award," p. 35.
84. Ibid., p. 37.
85. Ibid., p. 40. Platt's conclusions on these points assume the effectiveness of twenty-four-hour duty. However the question, whether, even with a residency requirement, round-the-clock duty helps deter crime and improve law enforcement, still seems open to empirical investigation.
86. Ibid., p. 41.
87. Ibid., p. 47.
88. Ibid., p. 57.
89. Skolnick (VI, pp. 107-108, 111-112); Professor Albert J. Reiss, Jr. (VII, p. 11).
90. Platt, "Opinion and Award," p. 53.
91. "Brief on Behalf of DPOA," pp. 3-5, 69-70.
92. Platt, "Opinion and Award," pp. 52-53.
93. Ibid., p. 54.
94. Ibid., p. 55.
95. Ibid.
96. "Brief on Behalf of DPOA," p. 31.
97. Platt, "Opinion and Award," pp.56-57.
98. Detroit Free Press, 7 September 1975. The DPOA may have preferred to concentrate on its own compromise proposals (see Chapter 4, p. 80) rather than the one suggested by Platt since discretionary waivers would leave union members to the mercy of the police chief, a political appointee. Accordingly, such a policy could be subject to political manipulation and would not provide the union with any degree of consistency or predictability.
99. Platt, "Opinion and Award," p. 58.

Chapter 5

1. Detroit Free Press, 7 September 1975.
2. Ibid.
3. Caviston v. City of Detroit Police Department, (5 February 1975), at 18, No. 73-259-171-DZ.
4. Idem at 16.
5. Detroit Residency Ordinance, No. 327-G; Ch. 2, art. 1, sec. 2-1-1.2 of the Municipal Code of the City of Detroit. See Chapter 1, n. 28.
6. Caviston v. City of Detroit Police Department, (supra, n. 3) at 17.
7. Detroit News, 6 February 1975.
8. Caviston v. City of Detroit Police Department, (supra, n. 3), at 19.
9. Police-Firefighters Act (PFFA), Act 312 of Michigan Public Acts of 1969 as amended by Act 127 of Michigan Public Acts of 1972, section 12. The conditions for appeal also are cited in James L. Stern; Charles M. Rhemus; J. Joseph Loewenberg; Hirschel Kasper; Barbara D. Dennis; Final Offer Arbitration (Lexington, Mass.: Lexington Books, D.C. Heath and Company, 1975), pp. 48-49.
10. Correspondence: Office of DPOA lawyers Gregory, Van Lopik, and Higle (December 1975).
11. Detroit Free Press, 9 September 1975; Detroit News, 7 September 1975.
12. Correspondence: Office of DPOA lawyers Gregory, Van Lopik, and Higle (December 1975). Telephone conversation, May 1976.
13. Detroit Free Press, 9 September 1975.
14. As of May 1976 the city still had taken no action to discharge non-resident police, despite its continual threats to do so.
15. Harry T. Edwards, "The Emerging Duty to Bargain in the Public Sector," Michigan Law Review 71 (1973): 903-904.
16. For a discussion about the concept of multilateralism, see Hervey A. Juris and Peter Feuille, Police Unionism (Lexington, Mass.: Lexington Books, D.C. Heath and Company, 1973), p. 45-50.

17. This fear is expressed by John T. Dunlop in "Major Issues in New Sector Bargaining," Emerging Sectors of Collective Bargaining, ed. by Seymour L. Wolfbein (Braintree, Mass.: D.H. Mark Publishing Company, 1970), p. 19.
18. Harry H. Wellington and Ralph K. Winter, Jr., make this point in The Unions and the Cities (Washington, D.C.: The Brookings Institution, 1971), pp. 24-29.
19. Stern et al., Final Offer Arbitration, p. 49.
20. Edwards, "The Emerging Duty to Bargain in the Public Sector," p. 911.
21. Ibid., p. 912; DPOA v. City of Detroit, 385 Mich 519 (1971).
22. For a complete discussion about PFFA see Stern et al., Final Offer Arbitration, pp. 37-75.
23. Raymond Horton, "Arbitration, Arbitrators, and the Public Interest," Industrial and Labor Relations Review 28 (July 1975): 499.
24. Ibid., p. 501.
25. Michael J. Klapper, "Legislated Criteria in Arbitration of Public Safety Contract Disputes," The Arbitration Journal 29 (June 1974): 126-127.
26. Ibid.
27. Stern et al., Final Offer Arbitration, p. 71.
28. Michael Lipsky, who coined the term, "street-level bureaucracy," defines street-level bureaucrats as individuals who, in their face-to-face encounters with citizens, represent "government" to the people. Lipsky, "Towards a Theory of Street-Level Bureaucracy," Mimeographed. American Political Science Association, 1969.
29. Figures are cited from the Report of the National Advisory Commission on Civil Disorders, Otto Kerner, Chairman (New York: New York Times Company, 1968), p. 322. Information about the cities' residency requirements is from Robert M. Fogelson, "Big City Police" (Tentative title -- Unpublished manuscript: 1976), Chapter 7, and from the letters replying to the San Francisco Civil Service Commission survey of residence waivers, 1965, and from Police Personnel Selection Survey (Washington, D.C.: International Association of Chiefs of Police, 1968, 1971).
30. For instance, in Detroit a 1974 Federal Court order mandated the police department to hire one female for every male hired (Ferree, Detroit Police Department personnel director, X, p. 64).

31. Police department figures quoted in Harry Platt, "Opinion and Award," in "Police Residency: Compulsory Arbitration" (5 September 1975), p. 12.
32. See Detroit Free Press, 24, 30, 31 July; 3 August 1975; Detroit News, 29, 30, 31 July 1975; Newsweek, 11 August 1975.
33. Ibid.
34. McCarthy v. Philadelphia Civil Service Commission, no. 75-783, See Chapter 4, n. 19.
35. Juris and Feuille, Police Unionism, p. 146. Among the gains to public employees achieved through joint decision making are wage and fringe benefits, grievance procedures, and improved working conditions. See also n. 40 below.
36. This finding sheds doubt on David Stanley's conclusion in Managing Local Government Under Union Pressure (Wash., D.C.: The Brookings Institution, 1972), pp. 32-33, that unions have "no effect" or "little effect" on hiring policy because they are more interested in matters such as promotions which directly affect their members.
37. Among those who attach some significance to the power of public employee votes are Stanley, Managing Local Government Under Pressure, pp. 2-3; and Edward Banfield and James Q. Wilson, City Politics (New York: Vintage Books, 1963), p. 212. Another possible reason union status and demands were granted to public workers is that when an executive order from President Kennedy made it clear that he approved of public sector bargaining, the mayors followed suit and appealed to liberal funding sources for support. This argument is summarized by Margaret Anne Levi in "Conflict and Collusion: Police Collective Bargaining," Technical Report (07-74) prepared for the Innovative Resource Planning Project at the Massachusetts Institute of Technology (September 1974), pp. 207-208. (She cites James Q. Wilson, "The Mayors vs. the Cities," The Public Interest 16 (Summer 1969): 25-37 and Frances Fox Piven, "The Urban Crises: Who Got What and Why," 1984 Revisited, ed. Robert Paul Wolff [New York: Knopf, 1973], p. 168.) From her own research Levi offers a somewhat different explanation for why officials granted union prerequisites to public employees: "collective bargaining was a possible and acceptable form of social control" to gain labor peace (p. 208).
38. Theodore Lowi, "Machine Politics - Old and New," The Public Interest (Fall 1967), pp. 83-92, esp. pp. 89-90.
39. Critics now charge that the bargaining system combined with the strike and its threat allows unions too much power to affect matters outside their normal realm of influence through political strategies such as lobbying, referenda, and voting. For instance, Wellington and Winter make this criticism in The Unions and the Cities, pp. 28-29. Interestingly, the DPOA had attempted but failed to eliminate residency rules by lobbying for a state amendment to restrict the powers of Home Rule cities to pass such legislation.

40. Levi makes this point on p. 219 in "Conflict and Collusion; Police Collective Bargaining,"
41. For more detailed discussions about some of the impacts of public employee unions see the two major comparative studies on municipal employee organizations: David Stanley's Managing Local Government Under Union Pressure and Hervey A. Juris and Peter Feuille, Police Unionism.

When Stanley asked his respondents whether public employee unions had affected the administration of local government, the general answer was "not much." Stanley explained:

Some forces tend to offset each other. For example, unions can impair efficiency in a strongly organized department if they accelerate cost increases and if they insist on work rules and conditions that hinder the flexible use of managerial techniques. On the other hand, unions may improve program effectiveness by demanding that the organization be adequately staffed, by pressing for equal levels of service throughout the city, or by insisting on a sound safety program. The work performance of employees may also be aided by the psychological security resulting from an effective grievance procedure and good fringe benefits, or it may be hindered by knowledge that desirable assignments are based on seniority rather than performance (p. 139).

Summer Slichter, James Healy, and Robert Livernash reached some similar conclusions in their classic study in the private sector, The Impact of Collective Bargaining on Management Wash., D.C.: Brookings Institution, 1960), pp. 946-961.

Slichter, et al. (pp. 946-954), Stanley (pp. 139-140, 145, 148-149), and Juris and Feuille (pp. 150, 183) agree with the general conclusion that by restricting management's discretion, insisting on bilateral decision making, and increasing costs, unions and collective bargaining have forced administrative personnel to act more like management and to consider the consequences of their proposed actions. At the same time, Slichter, et al. take pains to point out that the diversity in the character and results of collective bargaining make generalizations about specific impacts of unions hazardous (pp. 954-957). This point is especially well-taken in the public sector given the variations among state and local bargaining and political systems.

For a review of the research on the impacts of collective bargaining in the public sector see Ralph T. Jones, Public Sector Labor Relations: An Evaluation of Policy-Related Research (Belmont, Mass.: Contract Research Corporation, February, 1975. Supported by the National Science Foundation, contract no. NSF-C838), pp. 197-246, esp. "Other Impacts of Public Sector Unions," pp. 225-233.

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