

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

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■ In the Matter of the Interest Arbitration Between:

Town of Teaneck, N.J.

OPINION

and

AND

F.M.B.A., Local 42

AWARD

PERC Docket No. IA-97-45
■ -----

This interest arbitration proceeding was initiated by the FMBA pursuant to the New Jersey Fire and Police Arbitration Act N.J.S.A. 34:13A-14, et seq. After appointment of the undersigned arbitrator on February 26, 1998, a mediation session was held on April 16, 1998, and hearings to take evidence and argument were held on June 11, August 5, August 24, September 10, and October 22, 1998. Timely briefs were submitted by both parties on February 16, 1999, and the hearings were closed on February 20, 1999, after the receipt of the briefs by the undersigned Arbitrator. At the request of the Arbitrator, the parties subsequently submitted computer disks containing their respective briefs.

Appearances/witnesses were as follows:

For the FMBA:

David I. Fox, Esq.
Larry Robinson
Raphael Caprio
Paul Chrystal
William Lavin

For the Town:

David Lew, Esq.
Gary Saage, Business Administrator
William G. Norton, Fire Chief
Richard Silvia, Captain

The final offers of the parties were as follows:

FINAL OFFERS

FMBA-ECONOMIC

1. Duration of Contract. Five-year contract effective January 1, 1997 through December 31, 2001.
2. Salary increases:
 - 5.0% effective January 1, 1997
 - 5.0% effective January 1, 1998
 - 5.0% effective January 1, 1999
 - 5.0% effective January 1, 2000
 - 5.0% effective January 1, 2001

The above salary increases shall be applied to all steps in the firefighter salary guide as set forth in Article X, Salary Compensation, Section A of the CBA, with the exception of the starting salary for new hirees.

3. Leave With Substitute. Ten (10) additional leaves with substitutes per year.

4. Unlimited Early Relief Up to One Hour. The FMBA proposes to permit firefighters on the same tour to mutually exchange or to obtain leave with substitute on an unlimited basis for early relief of the firefighter's tour of duty up to one hour prior to the end of the tour or shift. For example, if a firefighter shift ends at 6:00 p.m. and the firefighter needs to leave at 5:45 p.m., that firefighter should be entitled to the early relief without charging the early relief to his limited leave with substitute benefit.

5. Portable Radios. The Township shall provide, at no cost to the FMBA, portable radios for every on-duty firefighter on each tour.

6. Rechargeable Handlights. The Township shall supply, at no cost to the FMBA, Survivor Rechargeable Handlights for all firefighters assigned to fire apparatus including each engine, spare engine, ladder, truck, spare ladder truck and rescue truck.

7. Longevity. Longevity increases shall occur on the employee's anniversary date.

8. Acting Officer Pay. Payment of acting officer pay shall commence on the first day when a firefighter is assigned to act in a superior position while in charge of an engine or ladder company assignment.

9. Personal Days. Three (3) personal days not chargeable to the sick leave.

10. Union Leave. The Executive Delegates and Union Representative are entitled to receive leave with pay to attend state and regional FMBA meetings.

11. Union Leave for FMBA President. Twelve tours of duty off per year for the FMBA president to attend to union business.

12. Uniform Allowance and PEOSHA Compliant Uniforms. (a) All new employees will receive new turnout gear within three months of their date of hire; (b) all employees are to have turnout gear replaced with new gear every seven years or earlier if needed; (c) all employees shall receive 4 Nomex pants, 4 short sleeve Nomex shirts, 4 long sleeve Nomex shirts. All new employees will receive Nomex stationwear by the first day on the job. (no change if 24/72-hour shift is awarded.)

13. Fire Ground Frequency by the end of 1999.

14. Plymo-Vent Exhaust System for every apparatus powered by a diesel engine on or before December 31, 1999, except for the HAZMAT trucks.

15. Survivors' Benefits Clause: the estate of a firefighter who dies while not in the line of duty will be paid all accumulate vacation, sick and holiday benefits owned to the firefighter accumulated at the time of death.

16. Good Samaritan Clause – Off-Duty Action.

17. Education Stipend: 3.0% for employees with EMT certification; 2% for employees with first responder training; 1% fire inspector; 1% HAZMAT training, with a maximum total stipend of 4%.

18. Education Leave. All employees who wish to take any career related courses or State certifications or recertifications will be granted time off from duty to attend the course, provided a written request is made within fifteen days in advance of the training. Time off will be granted regardless of previously scheduled leaves.

19. Beepers provided for all firefighters for recall purposes.

FMBA-NON-ECONOMIC

1. 24/72 Hour Shift Schedule.

2. Contractual Grievance Procedure. No employee may continue a grievance past step two of the contractual grievance procedure. Only the FMBA may continue a grievance through steps 3 and 4 of the grievance procedure.

3. Removal of Article XI, Section 1 regarding the presentation of tours.

4. Work Station Uniform – General Order 96-09 supercedes General Order 13-17 with regard to work station uniforms.

5. Table of Organization availability to FMBA.

6. Overtime List. Establish two overtime lists, one for full tour overtime and one for partial tour overtime.

7. Establish and Provide Access to Personnel File.

TOWN OF TEANECK-ECONOMIC

The Township is seeking a four (4) year Agreement limited to the following effective dates and wage increases:

Effective	Percentage Increase
7/1/97	2 3/4 %
7/1/98	3%
7/1/99	3%
7/1/2000	3%

POSITIONS OF THE FMBA

The FMBA's brief is excerpted, reorganized, and incorporated into this award as follows:

The FMBA has addressed each of the statutory criteria in presenting its final economic proposals, a summary of which is set forth herein.

1. Interest and Welfare of the Public. [N.J.S.A. 34:13A-16(g)(1)(a)(1)] and Financial Impact on the Governing Unit, its Residents and Taxpayers [N.J.S.A. 34:13A-16(g)(1)(a)(6)]. The Reform Act requires the arbitrator to access, when considering the parties' proposals, the following: the financial impact of the respective proposals on the Town and what, if any, limitations are imposed by the Law, N.J.S.A. 40A:4-4.1 et seq.

In his financial report, the FMBA's financial expert, Dr. Caprio, summarized his analysis and concerns as follows:

“[t]he analysis of budget, financial and property tax data for Teaneck clearly indicates an ability to support labor agreements at or slightly above the prevailing settlement rates. Further, there is an ability to pay the wage rates requested by FMBA Local No. 42, as well as an ability to re-establish parity in the wage rate of uniform services.”

[FMBA Exhibit No. 9, p. 2; See also Caprio, p. 220:1-9]

Dr. Caprio's analysis of the past several years of municipal budgets and other financial data of the Town indicates that Teaneck's "sound financial footing" is caused in part by having a stable ratable base, by having higher gross property rates including such other comparable Bergen County communities as Hackensack, by its improving property tax collection rate and by its decreasing delinquent tax collections. [FMBA Exhibit No. 9] Examining the current property taxes between 1995 through 1997, Dr. Caprio documented a pattern of underestimating resources. (Caprio, p. 202:9-25; p. 203:1-22) Dr. Caprio further testified that Teaneck had demonstrated a consistent ability to replenish surplus and/or anticipate excess revenues. (Caprio, p. 209:6-25. p. 210:1-25, p. 211:1-25, See FMBA Exhibit No. 9)

With regard to property taxes, over this 3-year period, Teaneck collected an average of \$531,000 more in current property taxes than it anticipated as revenue. [FMBA Exhibit No. 9, Tables 4-7] Dr. Caprio testified that during this same time, delinquent tax collections also decreased. [Id; Caprio, p. 202-203] Dr. Caprio found, based on his analysis of the delinquent tax collections, that delinquencies decreased both as a "percentage of the total tax

levy and in absolute terms" from the period of 1993 through 1997 and that Teaneck underbudgeted the amount that it would collect in delinquent taxes each year since 1993. (Id.) Accordingly, Dr. Caprio opined that with regard to the current tax collections, the effect of this pattern would be to make additional resources available to the municipality for further uses. (Id.)

Finally, Dr. Caprio testified that for fiscal year 1997, Teaneck regenerated its current funds surplus. [FMBA Exhibit No. 9; Caprio, p. 208-212] Specifically, in fiscal year 1997, Teaneck received approximately \$2.7 million in revenue more than expenses, a fact that is clearly relevant to this Interest Arbitration. (Id.) With regard to 1997, which would represent the first year of the FMBA's multi-year contract with the Town, Dr. Caprio described the Town's financial condition and performance as "extraordinary". As to fiscal year 1998, Dr. Caprio testified that only "1.865 of the surplus was budgeted, leaving over \$1 million for other purposes. (Caprio, p. 211:1-3)

Based on his review of all the budgetary information and assuming a continuation of past budgetary practices and trends, Teaneck would have approximately \$2.3 million available to meet resource demands of a labor settlement with the FMBA during 1998, which is more than enough to fund the FMBA's request for both fiscal year 1997 and fiscal year 1998 and to re-establish parity between the uniformed services. [FMBA Exhibit No. 9] In light of the Town's sound fiscal condition as testified to by Dr. Caprio and the significant additional savings identified by the FMBA, the Town clearly has the ability to pay the FMBA's Final Offer.

In his Reply Certification of November 18, 1998, Dr. Caprio reaffirmed his original findings and testimony at the arbitration hearing. In preparing his Reply Certification, Dr. Caprio reviewed his prior report, the Exhibits presented by Teaneck in connection with fiscal matters and the transcript of the testimony of Mr. Saage. Dr. Caprio specifically stated, "with the exception of correcting a minor typographical error in my report, I reaffirm the statements in my report and the comments in my testimony, including my conclusions that Teaneck has a sound financial footing and is clearly able to fund the amount sought by the firefighters represented by FMBA Local No. 42." (Reply Certification at ¶ 3, emphasis added.)

With the exception of a typographical error which appeared in Dr. Caprio's Exhibit No. 11, there was no other area in Dr. Caprio's report and testimony that Business Administrator Saage identified as being inaccurate.

2. Comparable wages, terms and conditions of comparable employees in Teaneck and other comparable jurisdictions [N.J.S.A. 34:13A-16(g)(1)(a)(2)(3)].

In FMBA Exhibits 79-102, the FMBA examines the base salary, fringe benefits and total compensation paid to rank-and-file firefighters in Bergen County. A review of these FMBA Exhibits reveal, that in 1996, among Bergen County municipalities with paid fire departments, Teaneck firefighters rank last as the lowest paid firefighters in Bergen County. By contrast, Ridgewood firefighters who rank highest in terms of maximum based salary were paid \$57,746 in 1996, which was \$4,936 more than Teaneck firefighters. [FMBA Exhibit No. 79]

When total compensation is compared, i.e., maximum salary longevity and clothing allowance and holiday pay, Teaneck firefighters were also paid the lowest maximum base salary and benefits in Bergen County in 1996. Specifically, in 1996, Ridgewood firefighters were paid \$9,043 more than Teaneck firefighters. [FMBA Exhibit No. 80].

Further, in 1997, if the Town's final proposal effective July 1, 1997 is awarded, the salary disparity between Teaneck firefighters and their counterparts in the other paid Bergen County municipal fire departments will grow significantly. Ridgewood firefighters, who are paid the highest maximum base salary in Bergen County, would be paid \$5,516 more than Teaneck firefighters, even if the Town's final proposal is awarded. [FMBA Exhibit No. 82] The same would be true in terms of total compensation. Specifically, in 1997 Ridgewood firefighters were paid \$72,415 in maximum salary and benefits such as longevity, clothing allowance and holiday. If the Town's final proposal is awarded, Teaneck firefighters would continue to be ranked last in terms of total compensation in Bergen County and they would be paid \$10,600 less than Ridgewood firefighters.

The Town's Final Offer is also below the number of negotiated and/or awarded salary increases for firefighters inside and outside of Bergen County. In Hackensack, a comparable Bergen County municipality, the City and Firefighter's Union negotiated a 4-year contract, 1997-2000, which included, among other improved benefits, annual 4% increases effective January 1st of each calendar year. [FMBA Exhibit Nos. 79 & 82] On cross-examination, Administrator Saage admitted that Hackensack is "similar" to Teaneck in terms of tax rates and equalized property tax values and on the basis of ratables. (Saage, p. 733-735).

3. Stipulations of the parties [N.J.S.A. 34:13A-16(g)(1)(a)(4)]

No substantive stipulations between the parties other than that the Town and FMBA are parties' to a CBA which expired on December 31, 1996.

4. Lawful authority of the employer [N.J.S.A. 34:13A-16(c)(1)(a)(5)]

This criterion generally involves restrictions imposed on municipalities by the law pursuant to N.J.S.A. 4:45-14(b). Dr. Caprio, the FMBA's financial expert, testified and the FMBA submitted numerous Exhibits demonstrating, that based on the Town's current fiscal condition, the Cap Law restrictions should not be a deterrent to awarding the FMBA's final salary and benefit proposals. Dr. Caprio testified that the Town did not present any evidence of a Cap Law problem and, in fact, the overwhelming evidence presented demonstrates that the Town's finances have improved significantly and will continue to improve in the next three years. In addition, no cap issue was raised by the Town in this proceeding.

With regard to Fiscal Year 1997, which would be the first year of the FMBA's contract, Teaneck's financial performance was characterized as "extraordinary" by Dr. Caprio. Dr. Caprio also concluded that Teaneck's "sound fiscal footing" will continue into Fiscal Year 1998 since the Town will begin this Fiscal Year with \$1,000,000 surplus and, based on consistent budget performance, Dr. Caprio estimates an additional \$1.3 million would be generated during fiscal year 1998.

It is also demonstrated in FMBA Exhibit Nos. 156-158, that recent amendments in the Cap Law and restrictions imposed by lowering the Cap Index Rates have generally not been dispositive and police and fire negotiations and interest arbitrations as well as prior negotiations involving Teaneck and the FMBA.

5. Cost of living [N.J.S.A. 34:13A-16(g)(1)(a)(7)]

The FMBA submitted numerous Exhibits examining the cost of living figures for all consumers in the United States and its impact on Teaneck firefighters salary for the past 22-year period, as indicated in FMBA Exhibit Nos. 159 and 161, (1973 through 1995), the average salary percentage increase for Teaneck firefighters was just modestly above the CPI. Exhibit No. 160 also demonstrates that in 1973 firefighters had "peer parity" in terms of wages and benefits with Teaneck patrolmen. Teaneck police patrolmen and firefighters were both paid \$11,750 in 1973. However, in 1995, the maximum salary for Teaneck patrolmen was \$56,138, which is \$5,603 more than that paid to Teaneck firefighters. Accordingly, the cost of living statistics have not been a factor in the Town's negotiating practices with its public safety employees.

6. Continuity and stability of employment and other terms and conditions of employment [N.J.S.A. 34:13A-16(g)(1)(a)(8)]

This statutory criterion generally involves the stability of employment including seniority and layoffs, as well as hours of work and the nature of employment. It is submitted that even if the Town's Final Offer is awarded, the firefighters compensation in Teaneck would continue to be substantially lower than in any other comparable municipality in Bergen County and other surrounding municipalities outside of Bergen County. Accordingly, this result could cause instability of employment – higher turnover of firefighters or inhibit hiring of firefighters – which could have a detrimental effect on the Town, its residents and firefighter morale.

In considering continuity and stability of the employment, the Interest Arbitrator should also consider Teaneck firefighters' workload. The FMBA submitted numerous Exhibits demonstrating the enormous risk and dangers associated with firefighting, which are significantly greater than the risks associated with the jobs of most non-public safety, municipal employees and employees in private industry. [See FMBA Exhibit Nos. 103, 122-123] These FMBA Exhibits demonstrate that in 1996, Teaneck reached an all time high in the terms of total fire incidents. Specifically, Teaneck firefighters responded to a total of 3,736 alarms. [FMBA Exhibit No. 120] The percentage increase of fire incidents from 1970 to 1996 is 195.34%.

A more comprehensive review of Teaneck Fire Department activities is set forth in FMBA Exhibit No. 121, which demonstrates the total number of runs have increased 62% from 1992 to 1996; total number of fires have increased 69% from 1992 to 1996 and "other emergencies" have increased 52% from 1992 to 1996. As indicated in other FMBA Exhibits, Teaneck firefighters have recently been required to perform other emergency duties in addition to their regular firefighting duties.

IV. Discussion of Final Economic Proposals

A Review of the Record in this Interest Arbitration Demonstrates that the FMBA's Final Offer Can be Distinguished From the Town's Final Offer and Fire Officer's Interest Arbitration Award to Form the Most Reasonable Basis for Resolution of the Bargaining Impasse.

1. Duration of the Contract. In this Interest Arbitration, the FMBA seeks a 5-year Collective Bargaining Agreement effective January 1, 1997 through December 31, 2000. The FMBA maintains that a five-year contract is justified because an award and decision in this Interest Arbitration will not be issued until in or about April, 1999 and will not be implemented until some time thereafter. Thus, the 5-year contract term, as sought by the FMBA, will effectively cover approximately 2 ½ years.

A five-year contract will promote stability and continuity in labor relations and negotiations. The FMBA and Teaneck have been engaged in collective negotiations in connection with this CBA since in or about October, 1996. Accordingly, a 5-year contract will permit the parties to resume their labor-management relations without having to immediately have to return to the bargaining table.

In contrast the FMBA's proposal for a five-year contract, the Town seeks a four-year contract effective July 1, 1997 through December 31, 2000. The Town maintains that the term of the agreement it proposes is consistent with the voluntary contract settlement it reached with the Teaneck PBA. However, the Fire Officers Award has only a 3-year term and expires December 31, 1999.

The FMBA maintains that the 3-year contract awarded by Arbitrator Buchheit in the Fire Officers' Interest Arbitration is too short and will not provide the parties with a sufficient "cooling off" period prior to resuming collective negotiations. The FMBA's contract negotiations with the Town has been intense and quite protracted. As stated above, the parties commenced collective negotiations for a successor CBA and this Interest Arbitration in or about October, 1996. Since an award will probably not be issued and implemented herein until the Spring of 1999, the Town's proposal for a 4-year contract is unreasonable and should be rejected.

2. The FMBA's Salary Proposal. The FMBA's final salary proposal is for a 5-year contract term ...

The FMBA's final salary proposal is justified and forms the appropriate basis for an Interest Arbitration Award. The FMBA's final salary proposal, as well as its other final economic proposals in this Interest Arbitration, is firmly grounded within the parameters of all of the statutory criteria that the Interest Arbitrator must apply in determining interest arbitration matters. [FMBA Exhibit No. 63] The FMBA recognizes that the salary increases it proposes are higher than that sought by the Town and higher than those awarded to the Fire Officers; however, the FMBA's higher salary increases are justified because Teaneck firefighters are paid significantly less in terms of maximum base salary and fringe benefits including, but not limited to, longevity, sick time and holiday pay than their counterparts in other municipal fire departments inside Bergen County and throughout the State. The greater salary increases sought by the FMBA are also justified based on the following significant facts.

First, on or about April 16, 1998, the FMBA and the Town entered into the Starting Salary Agreement for newly hired firefighters. The Starting Salary Agreement provides, *inter alia*, that the FMBA may argue in this Interest Arbitration that the FMBA received credit for any benefits which it claims arise from the Agreement or are relevant to the statutory criteria, including, but not limited to, such things as the savings that result from freezing starting pay and increasing the number of steps on a firefighters salary guide. [FMBA Exhibit No. 11] In August, 1998, the Town hired five new firefighters at the newly negotiated lower starting salary. [Exhibit Nos. 12 and 13] As a result of the Starting Salary Agreement, the Town will incur savings in the first year of employment for the new firefighters hired during the pending Interest Arbitration and for any other new firefighters hired within the term of the CBA. In addition to the five new firefighters hired on or about August 10, 1998, the FMBA anticipates, and Administrator Saage, concurs that other hirings will take place during the term of CBA based on the number of veteran Teaneck firefighters in the FMBA's bargaining unit who are eligible to retire. [FMBA Exhibit Nos. 13 and 14, Saage, p. 692:2-10]

FMBA Exhibits Nos. 13 and 14 set forth the significant savings to the Town as a result of the Agreement's Starting Salary. Specifically, based on the recent hirings of five new firefighters and an additional six other firefighters for the remainder of the term of the contract, the FMBA anticipates a savings of \$70,235. In addition to these savings, Teaneck has incurred significant savings over the past two years by maintaining five firefighter vacancies. The total savings incurred by Teaneck as a result of maintaining five firefighter vacancies from October 1, 1996 through October 30, 1998 was \$277,773. [FMBA Exhibit No. 15]. None of the savings figures identified by the FMBA in its Exhibits were disputed by the Town in its exhibits or testimony of its financial experts.

The FMBA maintains that it is entitled to salary and benefit increases greater than that awarded to the Fire Officers, since the Town will incur no similar savings with regard to the Fire Officers' contract. This is because the Town did not enter into an agreement to reduce starting salaries to in any way modify the existing salary guide for the Fire Officers. Administrator Saage admitted that there has never been a counterpart to the Starting Salary Agreement for the Fire Officers and Police Superior Officers. (Saage, p. 697:20-25). This is because the Fire Officers and Town did not enter into an agreement to reduce or modify the Fire Officers' salary guide. (Id.) There are approximately 25 superior officers in the Fire Officers' bargaining unit in the following ranks, lieutenant, captain and deputy chief. All of the Fire Officers are at maximum salary and receive longevity benefits.

Here, unlike the FMBA's CBA, the Fire Officers' contract does not include a step and range salary guide for the Fire Officers. Although the Town initially sought to reduce the lieutenants salary by negotiating a step salary guide for newly promoted employees, which would have produced additional savings for the Town, this proposal was abandoned by the Town. Accordingly, by the Town's own actions, there are no savings counterpart for the Fire Officers' Award. In contrast, there are 68 firefighters in this bargaining unit, of which 39 are paid less than maximum salary, which represents 57% of the bargaining unit. Accordingly, 57% of the bargaining unit does not receive longevity benefits in addition to their base pay.

In addition to the Starting Salary Agreement, Teaneck has incurred significant savings over the past two years by maintaining five firefighter vacancies. Specifically, in October, 1996, four firefighters were promoted to the rank of Lieutenant, at this time there already existed one vacancy in the title of firefighter which was carried over from the 1995 Early Retirement Incentive Plan. In August, 1998 and as a result of the Starting Salary Agreement, the Town filled the five firefighter vacancies. By not filling these vacancies for approximately two years, the Town incurred additional significant savings which could be applied here to fund the difference between the Final parties' offers. Pursuant to FMBA Exhibit No. 15, the total savings incurred by the Town as a result of maintaining five fire vacancies from October 1, 1996 through August 30, 1998 was \$277,773. [FMBA Exhibit Nos. 11-14 and 15].

The savings incurred by the Town with regard to maintaining five firefighter vacancies for approximately two years and those savings incurred by the Town as a result of the Starting Salary Agreement can be used to fund the FMBA's final proposal.

3. **Comparison of the Town's Employees with Similarly Situated Employees in Teaneck and Comparable Jurisdictions.**

(a) **Internal Comparison of Public Safety Employees.**

The FMBA also seeks salary increases higher than that proposed by the Town because the FMBA seeks to reduce the salary disparity that exists between Teaneck police and fire employees in terms of salary and other contract benefits. Teaneck is one of the few municipalities of its size that does not maintain "peer parity" with regard to the salary and benefits paid to police and fire employees. . .

(b) **Internal Comparison of Non-uniformed, Municipal Employees.**

The FMBA also submits that for Teaneck firefighters and purposes of interest arbitration, Teaneck's non-uniformed municipal employees and Teaneck firefighters are not comparable. In several Exhibits, the FMBA examined the average hours worked per year by Teaneck's blue and white collar municipal employees who work, on average, 35 hours per week or 1,820 hours per year [FMBA Exhibit Nos. 123 and 124].

By contrast, Teaneck firefighters, work, on average, 42 hours per week or 2,184 hours per year. Accordingly, Teaneck firefighters work more hours per week than their non-uniformed municipal employees or, specifically, 364 more hours per year. This amounts to 20% more hours worked per year by Teaneck firefighters than the non-uniformed municipal counterparts. (Id.) This fact, together with the lack of job-related hazards as compared to firefighting, justifies greater payment to Teaneck firefighters than is received by the other municipal employees of the Town of Teaneck.

4. **The FMBA's Proposal for Additional Compensation or Stipends for EMS/EMT or First Responder Certifications and Other Non-Fire Certifications and Licenses.**

...Effective on or about March 17, 1998, the Town unilaterally imposed, in the midst of these Interest Arbitration proceedings, First Responder training for all Teaneck firefighters. Such action was taken unilaterally by the Town without negotiations with the FMBA.

In recognition of the additional training and duties associated with EMT and First Responder training, Teaneck firefighters are entitled to additional compensation. The FMBA maintains that the compensation and all other negotiable terms and conditions of employment in connection with First Responder and EMT training should be a subject of this Interest Arbitration.

The FMBA submitted overwhelming and uncontroverted evidence to demonstrate the EMS and/or First Responder training and certification stipends are common throughout the State of New Jersey including Bergen County. [FMBA Exhibit Nos. 89-91] Attached hereto as Exhibit A is a letter from John Albano, President of Ridgewood FMBA and a Certified Ridgewood firefighter. References to Ridgewood EMS/EMT were made in the FMBA's testimony and Interest Arbitration Exhibit and we submit this correspondence to corroborate the testimonial presented. Specifically, the maximum EMT stipend paid to Ridgewood firefighters is currently \$2,000. ... There are already eight Teaneck firefighters who have obtained their EMT/EMS Certifications. . .

5. The FMBA's Acting Officer Pay Proposal.

In this Interest Arbitration, the FMBA proposes that the payment of Acting Officer pay shall commence from the first pay when a firefighter is assigned to act in a superior position in charge of an engine or ladder company assignment. Article XXVII of the CBA restricts payment of Acting Officer pay (firefighter-in-charge pay) until the firefighter works 30 consecutive calendar days in the superior title or rank. The FMBA proposes to pay Teaneck firefighters acting officer pay on an hour-for-hour basis commencing on the first day of acting assignment on an engine company or ladder company and each day thereafter, which is consistent with the established practice in almost all of the municipalities throughout the State, including Bergen County. . .

D. Important safety and equipment proposals of the FMBA.

In this Interest Arbitration, the FMBA has emphasized the immediate need for additional lifesaving safety equipment for its firefighters including, but not limited to, portable radios, rechargeable handlights, fire ground frequency, beeper system and the plymovent exhaust system. The FMBA maintains that all of the above-listed items are essential to an effective, efficient and, most important, safe fire operations. Numerous Exhibits were submitted as well as the expert testimony of retired Teaneck Deputy Fire Chief Larry Robertson as to the immediate need and value of these vital fire safety and communications items. None of these Exhibits were disputed or rebutted by the Town. . .

7. The FMBA's Non-Economic Proposal to Implement the 24/72-hour shift schedule should be Awarded.

FMBA Exhibit No. 27 is the January 30, 1997 Scope of Negotiations Decision issued by PERC in the Township of Maplewood, Dkt. No. SN-97-1, in which PERC unequivocally ruled that the 24/72-hour shift schedule was mandatorily negotiable. In numerous FMBA Exhibits and in the testimony of its subject matter experts, the FMBA argued in favor of implementation of the 24/72-hour shift schedule. . .

At the Interest Arbitration hearing on June 11, 1998, Union Township Battalion Chief Paul Crystal and William Lavin, President of New Jersey State FMBA and Elizabeth FMBA Local No. 9 testified in support of the FMBA's proposal to implement the 24/72-hour shift schedule. The FMBA's subject matter experts confirmed their own experiences with regard to changing from the 10/14-hour shift schedule to the 24/72-hour shift schedule. The experience in both Union Township and Elizabeth have been positive and consistent with Arbitrator John Sand's findings, including, but not limited to, decreased use of sick leave and overtime. In numerous FMBA Exhibits, the FMBA demonstrated that the 24/72-hour schedule has become a common work schedule in New Jersey fire departments. . .

In September, 1998, Interest Arbitrator Martin Scheinman recently awarded FMBA Local No. 23 the 24/72-hour shift schedule on a trial basis. [FMBA Exhibit No. 191] The trial basis would extend for one year over which Arbitrator Scheinman would retain jurisdiction. Mr. Lavin was a subject matter expert on behalf of East Orange FMBA in its interest arbitration proceedings before Arbitrator Scheinman. . .

. . . It is important to emphasize that in the Fire Officers' Arbitration, only one witness, a Teaneck fire lieutenant testified on behalf of the 24/72-hour shift schedule. Administrator Saage admitted in his October 22, 1998 testimony that the FMBA's presentation in this Interest Arbitration has been much more comprehensive with regard to this issue. Notwithstanding this fact, the Town has refused to implement the proposed shift schedule. The

Town's position with regard to the 24/72-hour shift schedule is baseless and without merit based on the overwhelming evidence presented. A review of the record demonstrates that the Town's opposition to the 24/72-hour shift schedule is essentially twofold. First, the Town believes that "chaos" would occur if the FMBA's shift schedule proposal was awarded to the rank-and-file firefighters, but did not apply to the Fire Officers. The second reason the Town seems to oppose this shift schedule proposal involves the Town's misplaced concerns over firefighters being off duty for three consecutive days between scheduled tours of duty. However, as the record makes clear, under the current 10/14-hour work schedule, firefighters are off duty for three consecutive days in between tours. [FMBA Exhibit Nos. 29, 32, 33, 172 & 173; Saage, p. 687:18-21] In addition, the Teaneck police patrolmen work a schedule commonly referred to as the "6 & 3" Schedule. Administrator Saage admitted, on cross-examination, that under the police department work schedule, police patrolmen are also currently off duty for three consecutive days. (Saage, p. 687:9-17). In response to the question whether the Town has any problems with the police schedule, which includes three days off on a regular basis, Administrator Saage, replied "No." (Saage, p. 687:8-17).

With regard to the Town's allegation that "chaos" would occur if the FMBA's proposal were awarded, the Arbitrator must consider the fact that in East Orange Arbitrator Scheinman awarded the 24/72-hour shift schedule to the rank-and-file firefighters without having jurisdiction over the East Orange Fire Officers. Obviously, Arbitrator Scheinman believed, based on the evidence presented which is similar to the evidence presented here, including Mr. Lavin's presentation, that the "chaos" anticipated or forecasted by Teaneck would not occur in East Orange. Furthermore, the FMBA denies that any such "chaos" would occur if the 24/72-hour shift schedule is awarded. This is because, as testified to by William Lavin, there are some benefits in terms of training and supervision of having Fire Officers work the 10/14-hour shift schedule and having rank-and-file firefighters work the 24/72-hour shift schedule. In addition, in the event the FMBA shift schedule proposal were to be awarded, the Town could easily avoid the "chaos" it anticipates by subsequently agreeing to modify the work schedule for the Fire Officers based on an Award in this Interest Arbitration. Accordingly, to the extent that any "chaos" occurs, it would be by the Town's own actions. . .

In addition to the above, on September 11, 1998, Fire Chief Norton testified in opposition to implementation of the 24/72-hour shift schedule because of his belief that increases in overtime and sick leave can be attributed to the shift change. . .

OTHER ECONOMIC AND NON-ECONOMIC FMBA PROPOSALS

3. **Leave with Substitutes.** Ten (10) additional leaves with substitutes per year.

Explanation and Justification. Article XXIV, **Leave with Substitute**, of the CBA provides the FMBA with 15 leaves with a substitute per calendar year subject to the approval of the Chief or his designee and said approval shall not be unreasonably denied. "Leave with Substitute" is commonly referred to as a "mutual exchange" or "mutual swap". A "mutual exchange" or "leave with substitute" is a commonly negotiated benefit or term and condition of employment among firefighters. It refers to an exchange of scheduled working tours between two qualified firefighters. A shift exchange generally involves one firefighter, with the approval of the Chief, agreeing to exchange a scheduled tour of duty with another firefighter, who is scheduled to be off duty at that time. The first firefighter thereafter agrees to work in the place of the other firefighter at a later date. In this Interest Arbitration, the FMBA seeks an increase in its leaves with substitute to 25 per year to provide Teaneck firefighters additional time off to attend to personal and family matters.

As a result of their job duties and work schedules, firefighters have limited and irregular time off to attend to personal and family matters. Accordingly, the leave with substitute benefit was negotiated to provide firefighters with additional time off to attend to unexpected and personal matters.¹ [FMBA Exhibit No. 40] Pursuant to FMBA Exhibit No. 41, firefighters in the Bergen County municipalities of Englewood and Ridgewood have unlimited leave with substitutes or mutual exchange benefits. [See FMBA Exhibit No. 41] Even more significant, Teaneck police officers have unlimited leave with substitutes as compared to Teaneck firefighters, who are limited to 15 leaves with substitutes per year. [FMBA Exhibit Nos. 41 and 17] Although Teaneck PBA has unlimited leave with substitute benefits, the FMBA is only seeking to an increase in this leave benefit from 15 to 25 leaves with substitutes.

¹ However, the FMBA notes that if the 24-hour shift schedule is awarded in this Interest Arbitration, as sought by the FMBA, the FMBA will withdraw this proposal.

4. **Unlimited Early Relief Up to One Hour.** This FMBA proposal also concerns the FMBA's current contractual benefit of leave with substitute. As stated above, the FMBA is currently entitled to 15 leaves with a substitute per calendar year. If a firefighter has to leave his shift, even only 15 minutes prior to the end of the shift, a firefighter is charged with a full leave day with substitute.

In this Interest Arbitration, the FMBA proposes to permit firefighters on the same tour to mutually exchange or to obtain leave with substitute on an unlimited basis for early relief of the firefighter's tour of duty up to one hour prior to the end of the tour or shift. For example, if a firefighter shift ends at 6:00 p.m. and the firefighter needs to leave at 5:45 p.m., that firefighter should be entitled to the early relief without charging the early relief to his limited leave with substitute benefit.

Explanation and Justification. In addition to the arguments in support of the FMBA's other Leave with Substitutes "proposal", the FMBA relies on Exhibit Nos. 42-43 and 18. As demonstrated in these FMBA Exhibits, firefighters in Hackensack, Englewood and Ridgewood all receive unlimited early relief benefits. [FMBA Exhibit No. 45] Similarly, Teaneck police patrolmen receive unlimited early relief, despite the fact that Teaneck firefighters do not enjoy this benefit. This is another example of the benefits disparity that exists among Teaneck police and fire employees. [FMBA Exhibit Nos. 17 and 43].

7. **Longevity.** Longevity increases shall occur on the employee's anniversary date.

Explanation and Justification. At the present time, if the anniversary date is between January 1 and March 15, longevity is paid on January 1 of the same year. Thereafter, if the anniversary date is later, longevity is paid on January 1 of the next year. However, first longevity payments of 2% are paid effective on the anniversary date. Since 39 firefighters will be moving shortly, depending on their respective anniversary dates, to maximum pay and longevity, 57% of the bargaining unit will be receiving longevity on their anniversary dates. However, the most senior Teaneck firefighters will not receive their longevity pay on their anniversary dates. Another basis for the FMBA's proposal is that in almost all other municipalities in the state, including Bergen County, firefighters receive longevity on their anniversary dates. [FMBA Exhibit No. 66]

9. **Personal Days.** Three (3) personal days not chargeable to the sick leave.

Explanation and Justification. Article VIII, **Sick Leave**, Section B sets forth the FMBA's sick leave benefit which is fifteen (15) tours of duty for each calendar year. However, pursuant to subparagraph F, an employee may charge a maximum of three (3) tours of duty to his sick leave per year for the purpose of attending funerals, weddings, religious days or other personal obligations.

The Civil Service rules and regulations require a minimum of 15 sick days. Since three days are chargeable to sick leave for bereavement leave and personal leave, the FMBA is currently receiving 12 sick days as compared to their other counterparts in other Civil Service communities. In addition, the practice throughout this date, including Bergen County, is to provide firefighters with a minimum of 15 sick days, plus separate bereavement leave and personal day benefits.

As set forth in FMBA Exhibit No. 183, Madison PBA Local No. 92 was awarded this identical benefit in May, 1998. Accordingly, Arbitrator Weisblatt ruled, effective January 1, 1998, that the three contractual personal days shall be separated from accumulated sick leave benefits. Arbitrator Weisblatt concluded that the Town of Madison's practice of charging "personal time" to sick leave was "extremely unusual" and "presented an area requiring some adjustment." [FMBA Exhibit No. 183]

10. **Union Leave.** The Executive Delegate and Union Representative are entitled to receive leave with pay to attend State and Regional FMBA meetings.

Explanation and Justification. Article XXI, **Conducting Association Business**, of the CBA provides at Section F that only the Executive Delegate of the FMBA will be granted leave from duty without loss of pay to attend regular monthly state and regional meetings of the FMBA. In this Interest Arbitration, the FMBA seeks, in addition to its Executive Delegate, for its union president to be entitled to attend all regular monthly state and regional meetings of the FMBA without loss of pay. The PBA currently receives this same union leave benefit. Specifically, Article XIV, **Conducting Association Business**, Section F of the PBA's CBA provides, "[t]ime off with pay shall be granted to the president and PBA delegate to the state association, in order that they may attend one state and one county PBA meeting monthly." [FMBA Exhibit Nos. 70 and 17. Attached to Exhibit 17 is the current PBA contract for the Arbitrator's reference].

11. **Union Leave for FMBA President.** The FMBA seeks twelve (12) tours of duty off per year for the FMBA president to attend to union business.

Explanation and Justification. The basis for this FMBA proposal is that Article XIV, Section H of the PBA's CBA provides the PBA president with twelve (12) tours of duty each year for "the conduct of miscellaneous association business. . . said day shall be controlled by the PBA president who shall advise the

department in advance of any association day used." [FMBA Exhibit Nos. 71 and 17. Attached to Exhibit 17 is the current PBA contract for the Arbitrator's reference].

12. **Uniform Allowance and PEOSHA Compliant Uniforms.** In this Interest Arbitration, the FMBA proposes the following with regard to PEOSHA compliant uniforms and gear: (a) all new employees will receive new turnout gear within three months of their date of hire. Turnout gear consists of bunker pants, short bunker coat, new gloves, helmet, suspenders for bunker pants and bunker boots; (b) All employees are to have turnout gear replaced with new gear every seven years or earlier if needed; (c) All employees shall receive 4 Nomex pants, 4 short sleeve Nomex shirts, 4 long sleeve Nomex shirts. All new employees will receive Nomex stationwear by the first day on the job.¹

Explanation and Justification. The requirements for firefighters' stationwear/protective clothing are governed by the New Jersey Public Employees Occupational Safety & Health Act ("PEOSHA"), N.J.S.A. 34:6A-25, et seq. Based on the controlling statutes, rules and regulations, the Township is obligated to provide and maintain, at no cost to the FMBA, all station wear and protective clothing. The Township is also required to replace all uniforms and protective gear which are damaged or unserviceable and to assure that the uniforms and protective clothing are maintained to be safe for fire fighting.

The FMBA makes these proposals because the Township has not acted in full compliance with PEOSHA regarding protective gear such as turnout gear. Specifically, in 1994 when 34 firefighters were hired, the Township did not provide them with new turnout gear. Rather, they were given the protective gear of the retiring firefighters, most of which, if not all, were already beyond the life expectancy date recommended by the manufacturers to be safe for fire fighting. [For additional support of this proposal, see FMBA Exhibit Nos. 55-58].

15. **Survivors' Benefits Clause.** The FMBA proposes a modification of the CBA to provide that in the event a firefighter dies while employed by the Township and not in the line of duty, his or her estate will be paid all accumulated vacation, sick and holiday benefits owed to the firefighter accumulated at the time of death.

16. **Good Samaritan Clause - Off-Duty Action.** A new contract provision which provides that any action taken within the State of New Jersey by a member of the Fire Department on his or her time off, which would have been taken by the employee on active duty if present or available, shall be considered proper Fire Department action and the employee shall have all rights and benefits concerning such action as if he were on active duty.

Recognizing that the employer and its residents benefit from the additional protection afforded them by vigilant off-duty firefighters and further recognizing the responsibility confronting such firefighters, the employer agrees to pay such employees the sum of \$1.00 per year, which shall be deemed included in the employee's base annual wage.

Explanation and Justification. A similar benefit is included in Article XXVIII, **Off-Duty Action**, of the CBA of the Teaneck Fire Officers. Similar contract provisions also exist in the current collective bargaining agreement between the Bergen County Municipality of Ridgewood and FMBA Local No. 47. The purpose of this proposal is to provide contract language to foster such off-duty emergency and fire fighting activities by firefighters which is a benefit to the community. This proposal, if not awarded, would deter firefighters from thinking twice about coming to the aid of others, which they are trained to do, solely because they are off-duty.

18. **Education Leave.** All employees who wish to take any career related courses or State certifications or recertifications will be granted time off from duty to attend the course, provided a written request is made within fifteen (15) days in advance of the training. Time off will be granted regardless of previously scheduled leaves.

Explanation and Justification. EMT training requires 120 hours and first responder training requires 48 training hours. In addition, EMT, First Responder Hazmat and Fire Inspector Certifications all require periodic and continuing education maintain and recertify the license. Accordingly, it is to the Town's advantage to permit firefighters leave with pay to attend classes. In this Interest Arbitration, the FMBA is not seeking payment for the classes but, rather, paid time off to attend to full training.

2. **Modification to Contractual Grievance Procedure.** No employee may continue a grievance past step two of the contractual grievance procedure. Only the FMBA may continue a grievance through Steps 3 and 4 of the grievance procedure.

Explanation and Justification. This proposal was previously agreed to by the Township.

¹In the event the 24/72-hour shift is awarded, the FMBA will not seek a change in its current stationwear uniform allotment.

3. **Removal of Article XI, Section 1 of the CBA.** This provision of the CBA is obsolete. It was originally included in the CBA to apply to the ancient practice of presentation of the tours at the change of shifts. Presentation of the tour is no longer an existing practice in the Teaneck Fire Department, nor do special details exist. Accordingly, Article XI, Section 1 should be removed from the CBA as being obsolete.

4. **Work Station Uniform - General Order 96-09.** Article XI, Section H refers to General Order 13-17 dated 2/11/71 with regard to work station uniforms. However, Chief Norton subsequently issued General Order 96-09 which supersedes the prior order referred to in Article XI(H). Specifically, pursuant to General Order 96-09, permits Teaneck firefighters to wear work station uniforms while on duty while going to or from work and only with the Chief's permission on other occasions.

5. **Table of Organization.** In this Interest Arbitration, the FMBA seeks that the Township has the Table of Organization of the Teaneck Fire Department readily accessible to the union. On several occasions, representatives of the FMBA has asked for a current Table of Organization which has not been made available to the FMBA.

6. **Overtime List.** In this Interest Arbitration, the FMBA seeks to establish two overtime lists for each shift for manpower shortages. One list would be for full tour overtime and one for partial tour overtime.

Explanation and Justification. Currently, the Teaneck Fire Department maintains one overtime list for non-emergency manpower shortages such as scheduled absences including holidays, vacation, sick leave and personal days. The overtime list is on seniority basis. When the need for additional manpower exists, the Deputy Chief calls in off-duty firefighters on the overtime list. In the event a firefighter is called in to serve on overtime for a partial tour, i.e. 6 hours, the employee's name is no longer retained on the overtime list, despite the fact that he did not serve a full tour. In this Interest Arbitration, the FMBA maintains that in the event a firefighter is recalled on overtime for a partial tour, his name should be retained on the overtime list for full tour overtime as well as being placed on a partial tour overtime list.

7. **Personnel File Proposal.** A personnel file shall be established and maintained for each employee covered by this Agreement. Such files are confidential records and shall be maintained in the office of the Chief of the Fire Department, and may be used for evaluation purposes by the Fire Chief or City Manager.

Upon advance notice at reasonable times, any member of the Fire Department may review his personnel file. However, this appointment for review must be made through the Chief of the Fire Department or his designated representative at times mutually convenient.

Whenever a written complaint concerning a member or his actions is to be placed in his personnel file, a copy shall be made available to him and he shall be given the opportunity to rebut it if he so desires, and he shall be permitted to place said rebuttal in his file. When the employee is given a copy of the complaint, the identification of the complainant shall be excised. However, if any disciplinary action is taken based on any complaint, then the employee shall be furnished with all known details of the complaint, including the identity of the complainant.

Explanation and Justification. Obviously, this is a non-economic issue which is of import to the FMBA because it provides firefighters, in essence, with due process or review rights regarding vital and sensitive information that can have an adverse impact on terms and conditions of employment, career status, promotional opportunities and other employment issues.

POSITIONS OF THE TOWN OF TEANECK

The Town of Teaneck's Brief is incorporated into this award, as follows:

POINT II

THE TOWNSHIP OF TEANECK'S PROPOSALS SHOULD BE ADOPTED BY THIS ARBITRATOR

A. Teaneck's Organizational and Economic Posture.

Teaneck is one of seventy-two (72) municipalities in Bergen, New Jersey. TR 4 548. It is undisputed that of the seventy-two (72) municipalities, only four (4) maintain paid fire departments, those being Teaneck, Hackensack, Ridgewood and Englewood. TR 4 457, 548. In all of the other municipalities (except for two (2) that have only paid drivers), the fire departments are unpaid volunteers. TR 4 548. Significantly, there are no volunteer

police departments in the county. TR 4 548. All municipalities which operate a police department do so on a totally professionally paid basis. TR 4 548.

Any economic contract proposal must be measured against financial impact on the governing unit, its residents and taxpayers. Therefore, a thorough understanding of the Township's financial posture is essential. The latter basis is paramount to any determination of the economic contract proposals before this Arbitrator.

During the arbitration proceeding, the Township adduced credible testimony from Gary Saage, Municipal Manager for the Township of Teaneck as to the municipalities' budgetary constraints. Against this backdrop, it is important that this Arbitrator defer to the Municipal Manager regarding the Township's financial position based upon his professional experience.

The Municipal Manager has been employed by the Township for over thirty-two (32) years and brings to the bargaining table an impressive array of financial acuity. TR 4 562. Specifically, the Municipal Manager received his Bachelor of Science Degree in Economics and Accounting from the Wharton School of Finance of the University of Pennsylvania. Notwithstanding this degree, the Municipal Manager also earned a Masters Degree in Public Administration from Fairleigh Dickinson University and is a licensed Certified Public Accountant in the State of New Jersey, as well as a Registered Municipal Accountant. TR 4 562-563. Given the Municipal Manager's professional and academic credentials, his testimony should carry significant weight.

During the arbitration proceeding, the Municipal Manager testified that, according to the 1998 Teaneck Municipal Budget, the Township of Teaneck had a 1998 budget of Thirty Six Million Three Hundred Thousand (\$36,300,000.00) Dollars. TR 4 576. From that amount, forty (40%) percent is attributable to "public safety" in the form of police salaries of approximately Seven Million Two Hundred Thousand (\$7,200,000.00) Dollars and fire salaries of approximately Five Million Eight Hundred Thousand (\$5,800,000.00) Dollars. See T-16 - Schedule A Salaries and Wages.

Additionally, Teaneck's budget allocates additional monies in the amount of Three Hundred Fifty Six Thousand (\$356,000.00) Dollars and One Hundred Two Thousand (\$102,000.00) Dollars to the police and fire departments, respectively. TR 4 577. See Exhibit 19 - Schedule B Other Expenses. Therefore, approximately Thirteen Million (\$13,000,000.00) Dollars out of the Thirty Six Million (\$36,000,000.00) budget is allocated for "public safety" between the police and fire departments. This figure speaks for the Township's good faith efforts to bargain effectively with the Union. Clearly within the constraints of this budget, the Township has attempted to arrive at fair and equitable contract proposal for the Union. TR 4 579.

Moreover, the Municipal Manager presented overwhelming testimony that Teaneck has suffered a tremendous decrease in State Aid. Specifically, the Municipal Manager explained the impact of State Aid to Densely Populated Municipalities. See T-18. For instance, Teaneck received Three Million Three Hundred and Sixty Thousand (\$3,360,000.00) Dollars in 1993, Two Million Five Hundred Forty Thousand (\$2,540,000.00) Dollars in 1994 (reduced approximately Eight Hundred and Twenty Thousand (\$820,000.00) Dollars; One Million Seven Hundred Thirty Thousand (\$1,730,000.00) Dollars in 1995 (reduced approximately Eight Hundred and Ten Thousand (\$810,000.00) Dollars; Nine Hundred Fifteen Thousand (\$915,000.00) Dollars in 1996 (reduced approximately Eight Hundred and Fifteen Thousand (\$815,000.00) Dollars) and in 1997 it was reduced from Nine Hundred Fifteen Thousand (\$915,000.00) Dollars to Zero (\$0.00) Dollars in 1998. Insofar as the reduction in State aid, Teaneck received Three Million Three Hundred and Sixty Thousand (\$3,360,000.00) Dollars less in density aid than it received in year 1993. TR 4 590. Teaneck also suffered additional losses in State aid which have a direct bearing on its financial status. TR 4 591. This is significant because Teaneck was the third largest recipient of State aid for densely populated municipalities in Bergen County, prior to losing same. TR 4 590-91.

A comparison of fire department salaries is equally telling. During the arbitration hearing, the Municipal Manager compared the fire department salaries for 1994 at Five Million Four Hundred Thousand (\$5,400,000.00) Dollars to those in 1998 of Five Million Eight Hundred Thousand (\$5,800,000.00) Dollars, showing that there is an increase of Four Hundred Thousand (\$400,000.00) Dollars. The Municipal Manager also stressed that the Township was also obligated to pay an additional Three Hundred Thousand (\$300,000.00) Dollars in early retirement costs that the Township is paying back in the form of pension benefits. TR 4 596. Therefore, Seven Hundred Thousand (\$700,000.00) Dollars as applied against the Five Million Four Hundred Thousand (\$5,400,000.00) Dollars in 1994 amounts to a staggering twelve point nine (12.9%) percent increase. As such, fire salaries in addition to the early pension payment for the fire department alone show significant percentage increases than the total salaries from 1994 to 1998. TR 4 596.

Therefore, taking that same Three Hundred Thousand (\$300,000.00) Dollars as a percentage of the Five Million Eight Hundred Thousand (\$5,800,000.00) Dollar total salary and fringe benefits for the fire department amounts to a five (5%) percent payment into the early retirement program standing alone, i.e., a five (5%) percent increase. TR 4 596.

Notwithstanding these significant increases, firefighters also receive compensation increases via the Firefighter's Step Increments. Essentially, this is money that the Township will ultimately pay to the collective bargaining unit members on behalf of the step increments. See T-21.

In 1998, the Firefighter's Step Increment totals were over Three Hundred Sixty Five Thousand (\$365,000.00) Dollars. In 1999, they will gain an additional One Hundred Nineteen Thousand (\$119,000.00) Dollars. Therefore, regardless of any collectively negotiated salary increases, firefighters' salaries will rise more than eleven (11%) percent in 1997, twelve (12%) percent in 1998 and over four (4%) percent in 1999. Standing alone, these figures should preclude the Union's economic contract proposals. TR 4 597-98.

The Municipal Manager also testified regarding the significance of "ratables". The Union's witness, Dr. Caprio, described in his Item 1 Analysis how, in 1994, the Township registered a total loss of ratables in the amount of Two Million (\$2,000,000.00) Dollars. Dr. Caprio's figures are as misleading as they are wrong. To the contrary, Dr. Caprio ignored the fact that in 1993, the Township sustained a One Hundred Million (\$100,000,000.00) Dollar loss. Therefore, the Township's overall loss since 1993 is about four (4 ½%) percent, a significant decline for any municipality, especially one such as Teaneck which has attempted to maintain consistent ratables during the past three years, 1996, 1997 and 1998. TR 4 598-99.

Further, Dr. Caprio testified that delinquent taxes decreased during the period 1993 and 1997. This is simply not the case. Rather, delinquent taxes have steadily risen from 1988 through 1997 with moderate flexibility. TR 4 601-03. See T-24.

Additionally, the Township's Operations and Case Surplus show a diminishing cash surplus. For instance, in 1994, the Township showed a budgetary deficit due to a significant decrease in state aid. TR 4 604. As such, in 1994, 1995 and 1996, the Township practically depleted its entire cash surplus. In 1997, the Township generated approximately Two Million Eight Hundred Thousand (\$2,800,000.00) Dollars in current fund operations. From that amount, the Township allocated roughly One Million Eight Hundred Thousand (\$1,800,000.00) Dollars toward the 1998 budget while retaining approximately One Million (\$1,000,000.00) Dollars. Obviously, the budget must generate enough surplus to maintain use in the following year's budget.

Although Dr. Caprio testified that the municipality received approximately Two Million Seven Hundred (\$2,700,000.00) Dollars more revenue than expenses, he was unable to explain why. Therefore, his conclusions can in no way be relied upon. However, in 1997, the Township collected revenues from long overdue tax liens in the amount of One Million One Hundred Thousand (\$1,100,000.00) Dollars from what has been commonly referred to as the "Tennis Club Associates". Because the Township received One Million One Hundred Thousand (\$1,100,000.00) Dollars, the Township was able to use One Million Eight Hundred Thousand (\$1,800,000.00) Dollars in surplus. Additionally, in 1997, the Township borrowed Four Million (\$4,000,000.00) Dollars to replenish its overall cash reserve. TR 4 605-07.

Moreover, Dr. Caprio testified that Teaneck should have had approximately Two Million Three Hundred (\$2,300,000.00) Dollars available to broker a labor settlement with the Union, to fund the Union's demands in fiscal 1997 and 1998 and to reinforce parity among the uniformed services. Dr. Caprio's contention is patently false. TR 4 608. Dr. Caprio estimated that on December 31, 1998, the Township had a surplus of Two Thousand Three Hundred (\$2,300,000.00) Dollars.

Assuming arguendo that the Township used One Thousand Eight Hundred (\$1,800,000.00) Dollars in the 1998 budget to maintain parity that Two Thousand Eight Hundred Thousand (\$2,800,000.00) Dollars is minimally required to maintain status quo, and that an additional One Million (\$1,000,000.00) Dollars is necessary to maintain minimum working surplus, the Township would have incurred a deficit of Five Hundred Thousand (\$500,000.00) Dollars. Therefore, in 1999, the Township must raise taxes at least two points to maintain the 1998 level of budget appropriations. Any further increase in the funds will derive solely from tax increases over and above the annual tax increases of the County and School Board.

Significantly, in 1998, there was no increase in the municipal budget. Due to the loss of State aid, the Township decided not to increase the municipal portion of the tax rate, notwithstanding the increase in the school and county portion of the tax rate. In fact, the taxpayers themselves have voiced their concerns over the economic well-being of the Township and expressed dismay and disapproval with any form of tax increase. TR 4 609-10

During the arbitration hearing, the Municipal Manager testified that the Township's offer to increase wages at two and three-quarters (2.75%) percent annually, standing alone would cost the Township Three Hundred Sixty Two Thousand (\$362,000.00) Dollars in 1997 or fourteen point fifteen (14.15%) percent.

Moreover, the Union's figures for the same calendar year tally Four Hundred Twenty Six Thousand (\$426,000.00) Dollars or sixteen point sixty-five (16.65%) percent. TR 4 614. See T-30 and 31, respectively. Adding longevity increments to these figures raise an additional two (2%) percent to twelve (12%) percent, plus fringe benefits, including, but not limited to Social Security, Medicare and Health expenses. TR 4 615.

The Township also proffered testimony regarding sick days for the firefighters in the first seven (7) months of 1996, 1997 and 1998. See T-32. Toward that end, T-32 reflects a staggering forty-two (42%) percent increase in sick days from 1996 through 1998. Increasingly, sick days translate into additional overtime expenses to the Township. Specifically, the Township allocated approximately Two Hundred Thousand (\$200,000.00) Budgetary Dollars towards overtime. Given current circumstances, that amount would be depleted within the first eight (8) months of the year. Therefore, the Township will face a shortage of overtime funds of One Hundred Thousand (\$100,000.00) Dollars at the end of the first eight (8) months of the year. TR 4 616.

Unequivocally, the loss of State aid has debilitated the Township's fiscal health. The Municipal Manager testified that the Township has attempted to alleviate this effect by eliminating positions throughout various departments and by freezing expenditures. TR 4 622-23. Additionally, the Township instituted pattern salary increases from July 1st rather than a January 1st start date. The July 1st date was incorporated into the last contract with the Teaneck Police Department. The Township has applied the July 1st start date to managerial employees as well. As a result, managerial employees experienced salary increases of three and one-half (3 ½%) percent in both 1997 and 1998. Managerial employees constitute every employee not covered by a Union contract. TR 4 625. Other municipal unions receive wage increases effective July 1st as well, such as the Department of Public Works and ASFL. Again, their raises are three and one-half (3½%) percent. TR 4 627.

The Union also proposes an increase in the amount of equipment purchased by the Township. The equipment budget for the Fire Department is set every year. In 1999, the budget is Thirty Thousand (\$30,000.00) Dollars. According to the Municipal Manager, the decision to purchase additional equipment comes down to "dollars and cents." TR 4 628-29. The Municipal Manager testified that, in order to provide the equipment requested by the Union, "taxpayers" would be required to foot the bill for additional equipment. TR 4 629. If not from them, then from salaries. This is clearly an avenue the Union would not want to pursue. TR 4 629.

Notwithstanding the Union's demand for equipment, and in light of the figures presented by the Union, the Township would be faced with potential financial exposure in excess of One Hundred Fifteen Thousand Seven Hundred (\$115,700.00) Dollars. See Union's itemized purchase requests below.

B. The Township of Teaneck Wage Proposal is Fair and Equitable.

Due to increased costs and approximately a Four Million (\$4,000,000.00) Dollar loss of State aid, the Township's proposal is fair and equitable.

In the instant matter, the firefighters should not be awarded increases equal to or greater than those of the Township's Police Officers or Fire Officers. See Township of Teaneck and FMBA, Local 242, supra. While the Township values its firefighters and the services they provide, the Township is convinced that the economic package offered to the Union embodies fair and equitable contract terms.

C. The Cost of Living.

N.J.S.A.34:13A-16(g) mandates economic consideration for cost of living. The Union neither submitted this issue for consideration at the interest arbitration nor proffered testimony in support of a cost of living increase. Notwithstanding the Union's failure to address this issue, the Township introduced relevant exhibits for the arbitrator's consideration.

For instance, the Consumer Price Index for the New York/Northeastern New Jersey Region showed that for the year ending December 1997, consumer prices increased only two (2%) percent, the smallest increase for any year period since 1964. See T-15(b).

Additionally, the cost of family clothing declined three point two (3.2%) percent, grocery store food prices and the cost of meats, poultry and fish declined seven (7%) percent. Therefore, it was less expensive to feed and/or clothe families during this period of time. Further, the Bureau of Labor statistics reported that the Employment Cost Index (ECI) for total compensation for private non-farm workers in the Northeastern Region increased three (3.0%) percent over the year ended December, 1997. See T-14(b).

Based upon the cost factors indicated in both the Consumer Price Index and the Employment Cost Index, the Union's proposals would dramatically increase the cost for Teaneck in each year of its contract. Simply stated, Teaneck's proposal offers wage increases in excess of the inflation rate and consistent with the trend of total compensation increases in the region.

Moreover, in light of the Township's loss in State aid, both in the form of State density aid as well as other types of State aid, in addition to the cost of living, and coupled with the fact that the Fire Department is only one of

four paid Departments in Bergen County, the Township's proposal is consistent with many arbitration awards and voluntary settlements between other municipalities and fire or police unions.

Pursuant to N.J.A.C. 19:16-5.14, this arbitrator is directed to consider previously decided awards and reports. See Township of Teaneck and FMBA Local 242, PERC No. IA-97-58 (September 4, 1998, Buchheit) (Contract Term July 1, 1997 through July 1, 1999, annual increases of 3.75%, 4% and 4%); Springfield Township and FMBA Local 57, PERC No. IA-97-117 (October 23, 1997, Parker) (Contract Term January 1, 1997 through December 31, 2000, annual increases of 3%, 3.25%, 3/25% and 3/5%); North Bergen Township and IAFF Local 1387, PERC No. IA-96-107 (October 21, 1997, J. Tener) (Contract Term January 1, 1996 through December 31, 1998, providing for 3.5% annual increases); Laurel Springs Borough and POA, PERC No. IA-97-54 (August 14, 1997, S. Buchheit) (Contract Term January 1, 1997 through December 31, 1999 with annual increases of 4%, 3% and 3% annual increases); Rockaway Township and FOP Lodge 31 and SOA, PERC No. IA-97-108 (October 23, 1997, J. Parker) (Contract Term January 1, 1997 through December 31, 2000, 3.5% annual increases); Morris Township and FNBA Local 70, PERC No. IA-97-80 (November 3, 1997, R. Glassen) (Contract Term January 1, 1997 through December 31, 1999, 3.7%, 3.6% and 3.5% increases); Bergenfield Borough and PBA Local 309, PERC No. IA-98-4 (February 6, 1998, C. Kurtzman) (Contract Term July 1, 1997 through June 30, 2000, 3.5%, 2%, 2% and 4% increases).

Significantly, there is no evidence that any of these municipalities suffered a loss of State aid approaching the magnitude of Teaneck's loss. Therefore, any increase awarded in this case should be less than the raises cited hereinabove. Particularly, the Township respectfully requests that this arbitrator look to Arbitrator Buchheit's September 4, 1998 decision between the Township of Teaneck and FNBA Local 242 for the reason that all statutory criteria was previously ruled upon and to further instill harmony within the Township.

D. Continuity and Stability of Employment.

The Municipal Manager testified that the current longevity plan allows all eligible employees to receive a longevity payment of two (2%) percent to a maximum rate of twelve (12%) percent. TR 4 615. However, this figure does not take into account extra monies that the Township will have to pay to the Pension Fund Early Retirement Benefits, i.e., Social Security, Medicaid, health benefits, etc. TR 4 615.

Additionally, the collective longevity of the bargaining unit members demonstrates that the Union members are satisfied with their respective positions and terms and conditions of their employment as shown by their dedication and commitment to the Teaneck Fire Department.

Insofar as the duration of contract is concerned, the Township's proposed four (4) year term is fair and reasonable. This contract term provides the parties ample opportunity to digest the new terms before negotiating for a new contract. This time period will also allow the Township to assess future expenditures in light of the foregone loss of State aid. Certainly, the public interest will be best served by adopting the Township's four (4) year contract proposal.

E. A Four-Year Contract Term is Appropriate.

The Township's proposal to have this contract cover the four-year period from July 1, 1997 through July 1, 2000, is reasonable and appropriate under the circumstances. The parties should be given a reasonable period of time to digest the new contract terms before preparing for a new round of negotiations. If the contract were to end in 1999, fully half of the contract term will have expired before it is settled and within just one year the parties will have to prepare to re-negotiate again. An extra year of stability and predictability in their relationship will help to prevent the disruption and ill will that is often associated with the confrontations of extended, uninterrupted bargaining.

Extending the contract to July 1, 2000, will also provide continuity with police contracts. In the future, Teaneck will be able to address all of its emergency services contracts at the same time, under similar prevailing fiscal conditions. Facing these contract renewals at the same time will provide a unified, comprehensive emergency services plan best suited for the residents of Teaneck. Moreover, the municipality will not then be whipsawed in bargaining for cries of "you gave it to them last year so you can give us no less today." Surely the public interest will be best served by extending this contract until the year 2000.

For all of these reasons, the Township's proposal for a four (4) year contract extension is fair and reasonable under the present circumstances and should be adopted by this Arbitrator.

POINT III

THE ARBITRATOR SHOULD REJECT THE REMAINING UNION PROPOSALS

A. The Union's Proposal for Twenty-Four/Seventy-Two Hour Shift Schedules Must be Denied

The implementation of the Union's proposed twenty-four/seventy-two hour shift schedule in Teaneck has already been decisively addressed by Arbitrator Buchheit in Township of Teaneck and FMBA Local 242, supra. Specifically, Arbitrator Buchheit rejected the Union's demand for twenty-four/seventy-two hour shifts for the following reasons:

Since 1970, the Fire Department has operated under the current schedule, which involves a four-shift, forty-two hour work week. While the Association perceives many advantages to a twenty-four/seventy-two shift, the Township is strenuously opposed to this system, and it is apparent to me that the Fire Department has operated well under the current system. It is also apparent that twenty-four/seventy-two shifts are not common among the professional fire departments in Bergen County. I therefore find insufficient justification for imposing the scheduled change sought by the Association and will not do so. Arbitrator Buchheit award, supra.

In the instant matter, the Township presented testimony from William G. Norton, Chief of the Teaneck Fire Department, as well as the Municipal Manager, in support of the current ten/fourteen shift.

Specifically, Chief Norton testified that under the current system, firefighters work a ten hour shift from 8:00 a.m. to 6:00 p.m. and a fourteen hour night shift from 6:00 p.m. to 8:00 a.m. TR 4 466-467. Therefore, in a given month consisting of thirty days, the firefighters work sixteen days, not including vacation, holiday or sick leave. TR 4 467.

By contrast, the twenty-four/seventy-two hour shift requires that the firefighters work a twenty-four hour shift, e.g., 8:00 a.m. to 8:00 a.m. Thereafter, firefighters are off for seventy-two hours. Simply stated, under this schedule, firefighters work one day and are off three days. TR 4 469. Under this calculation, and still working within a thirty day calendar month, the firefighters will be working eight days as compared to the sixteen days described hereinabove. TR 4 469.

Additionally, Chief Norton further testified that after visiting with Chief Fritz regarding the changeover to twenty-four hour shifts in the City of Elizabeth, Chief Fritz advised Chief Norton that he would need additional staff to accommodate this transition. TR 4 500. Also, Chief Norton testified that, in his professional opinion, without adding an additional Deputy Chief, he would not recommend a changeover to a twenty-four/seventy-two hour shift schedule. TR 4 550-51.

Moreover, in response to the Union's demand for a twenty-four hour shift schedule, Chief Norton raised the following issues with the Municipal Manager for the Township of Teaneck. Specifically, they are as follows:

1. I will definitely need more staff to accomplish what was assigned to the shift Deputy Chiefs. With the 24 hour shifts the Deputy Chiefs would only work 5 times a months which match my work hours. There would be a lack of continuity and follow up. I would need a Deputy Chief to work 5 days a week and at least one more staff officer.
2. Discipline: Lack of follow-up on matters waiting for the shifts to work again. They only work one in every four days and if they have a day off (holiday or vacation) then seven days will go by.
3. Difficulty in recalling personnel: I believe fire fighters will move further away because of the diminished need for them to commute.
4. Personnel will not want staff positions and will nag and complain to get

out of them.

5. Staff employees will not have equal benefits: example; a staff employee has to use more vacation days to be off the same amount of days. Probably use more sick days to recover from an illness not having the benefit of only working 1 in every 4 days.
6. What is to prevent the fire fighters in the first year to cut sick leave and overtime costs, than after the trial period is over go back to their normal use?
7. How the new 24 hour schedule of one day on and three days off would be perceived by the private sector who work 5 eight hour days.
8. With working only 8 days a month would their moonlighting jobs become their first priority?
9. Inter shift transfers: might have to give a firefighter an extra 24 hours off as not to work the firefighter more hours in a week and cause overtime.
10. Meal relief: Now when a firefighter is held on overtime between his shifts we have to give him 1 hour meal relief for R&R purposes. Now they say they can work 24 hours straight without a break. What has changed?
11. I'm sorry! No one can convince me that fatigue is not a factor after working a 10 hour shift followed immediately by a 14 hour shift. Fatigue is a known safety concern.

Additionally, the Municipal Manager testified that he was opposed to the Union's twenty-four/seventy-two hour shift schedule. Specifically, the Municipal Manager stated:

Obvious reasons such as firefighters are members of the Fire Department with great pride in the fact that this is their security blanket, working one day in four, spending a lot of time in outside jobs. We had testimony during the Fire Officers Arbitration when we - - Fire officers' own witness indicated that twenty-four/seventy-two hour shift would allow him to work additional hours on private jobs and some of the things the Chief mentioned, the fact that - - (TR 4 581)

* * *

Also limited to the Chief's testimony was a need for additional staff officers, I think the fact that he testified that two of the towns he visited had more staff officers than Teaneck. He was - - he's concerned about the continuity. He's concerned about training. He's concerned about the fact that a Deputy Chief will maybe work one day a month with him and bear responsibility for various procedures and policy in the Fire Department and then when I - - think the most significant, even getting past all the things that have been testified hereto, when we have a Fire Officer's Arbitration Award that rejects the twenty-four/seventy-two and indicates that the - - ten and fourteen - - .(TR 4 582-583)

Also, when asked during the arbitration proceeding whether the Municipal Manager's decision is in any way influenced by Arbitrator Buchheit's award rejecting the superior officer's request for the twenty-four/seventy-two schedule, the Municipal Manager stated the following:

Absolutely..... I feel it would have a chaotic situation. If we had officers working a ten/fourteen hour shift and firefighters working a twenty-

four/seventy-two hour shift, there is no question in my mind that it would create chaos. You have Deputy Chiefs coming in at different times. Then - - the staff - - the firefighters, who is going to drive this truck, who is going to take this duty, who is going to take that duty in the middle of shifts. It's just absolutely chaos. I think any suggestion in terms of developing a twenty-four/seventy-two hour shift has to be done in an atmosphere other than this environment. It has to be done through careful negotiations with both groups so that something meaningful can be done. TR 4 584-585.

Finally, the Municipal Manager testified that, as the Chief Administrator of the Township and the liaison with the Township Council, with the possibility of another Deputy being approved to accommodate the Union's proposed twenty-four/seventy-two shift, Deputy Chief salary with fringe benefits and longevity would cost the Township an additional One Hundred Fifteen Thousand (\$115,000.00) Dollars. TR 4 586.

However, the most compelling reason to reject the Union's shift proposal is stated in Borough of Atlantic Highlands v. Atlantic Highlands PBA Local 242, 192 N.J. Super. 71, 469 A.2d 80 (App. Div. 1983). In Borough of Atlantic Highlands, the Borough maintained that:

its scheduling plan provides the most efficient utilization of its existing manpower, permitting maintenance of satisfactory around-the-clock police protection at an efficient cost level. It insures a continuous adequate level of manning, including provision for relief personnel when there is an absence due to vacation, illness and unforeseen absenteeism. Borough also argues that its schedule allows for advance planning for attendance at training programs, seminars, court attendance and personal days with a minimum impact on its staffing requirements.

Along those lines, the Court held that:

overall work schedule for the police force of the borough is a managerial prerogative and a policy not subject to mandatory negotiations. For the work schedule of the police to be subject to mandatory negotiation and potentially the subject of an arbitration proceeding would be an intrusion on the exercise of the express **84 and inherent police power functions of the municipality and would significantly interfere with the exercise of the inherent managerial prerogatives necessary to the proper operation of a police force. As noted in In re IFPTE, Local 195 v. State, supra:

When the dominant concern is the government's managerial prerogative to determine policy, a subject may not be included in collective negotiations even though it may intimately affect employees' working conditions. [88 N.J. at 405, 443 A.2d 187]

* * *

We conclude that the reasoning in Irvington PBA Local 29 v. Irvington, supra applies here and that it is the function of the municipality, through its chief of police, to determine the most effective coverage for police protection in the borough.

PERC's decision in the instant case could completely block the promulgation of the rotating shift plan of the police chief. It would confer upon an arbitrator, albeit a stranger to the municipality, the decision which rightfully belongs to the town. We cannot conceive that the act was intended to effect such a disastrous consequence in the case of police departments. Id. at 77-8.

For these reasons, the Arbitrator should follow the precedent set forth in Borough of Atlantic Highlands, supra and reject the Union's shift change proposal. Simply stated, this function should be left to the Chief of the Teaneck Fire Department and municipality within its managerial prerogative.

B. The Union's Proposal for First Caller Response Must be Denied

The Union's proposal that firefighters be trained and compensated for First Caller Response is without merit. First, firefighters only provide assistance to the Teaneck Volunteer Corps, on an as needed basis. Second, the firefighters have been trained and compensated on the use of the Township's new equipment.

Specifically, beginning March, 1998, Captain Richard Silvia of the Teaneck Fire Department testified that firefighters were provided approximately thirty (30) hours of training in CPR, First Responder and defibrillation through the efforts of the American Red Cross. TR 4 460. Significantly, the courses were offered during the Township's working schedule, and firefighters were fully compensated for such training at their regular paid rates. TR 4 461. See also TR 4 409-10.

Additionally, Captain Silvia testified that the firefighters would, in conjunction with the Teaneck Volunteer Ambulance Corps assist in care of people at accident scenes, fire scenes, and render aide, until the arrival of more advanced help." TR 4 394. Notably, the Teaneck Volunteer Ambulance Corps is a "totally volunteer organization" comprised of approximately 100 people. TR 4 395.

Additionally, the Fire Department received automatic defibrillators to assist in rescue duties as donations to Teaneck from the Hackensack Medical Center along with training. This is a savings that is past onto the firefighters through local efforts to better enable the firefighters to assist the Ambulance Corps, should a situation warrant same.

Also, the defibrillator enhances the response rate regarding "rhythms." For instance, under the current defibrillator system, it takes only "microseconds" to determine an individual's rhythm. TR 4 411. Notwithstanding such technical logical improvements in the equipment and the rate at which such services can be rendered, the Union still proposes that firefighters receive additional compensation for providing these services.

Finally, the Municipal Manager testified that, with respect to these improvements in equipment, firefighters are working less hours and in a significantly easier environment than under previously existing circumstances. TR 5 752-53.

Central to the issue of providing such care is that firefighters only render care of this nature until the Ambulance Corps arrives on the scene, and only on a sporadic basis, if any. TR 4 398, 407.

Therefore, the Union's proposal that the additional equipment and paid training for First Caller Response be provided to firefighters under these circumstances is without merit. The contention that firefighters who only provide assistance on a periodic basis be compensated for providing assistance that, through technological advancements, only takes "microseconds" is beyond the weight of the evidence. For these reasons, the Union's proposal must be rejected.

C. There is No Evidence to Support the Union's Economic Proposals

As part of the Union's economic proposals, the Union identified numerous demands for the Township to purchase equipment. Specifically, the Union requested that the Township provide, at no cost to the Union, the following items:

1. Beepers;
2. Fire Ground Frequency;
3. Portable Radios;
4. Survivor Rechargeable Handlights;
5. Plymo Vent Exhaust System;

However, from this list, the Union only offered testimony as to the portable radios, rechargeable handlights and fire ground frequency. Therefore, those matter not supported by credible testimony must not be considered by this Arbitrator.

It is well settled that an arbitrator must act fairly and impartially and to decide the issue solely on the evidence adduced before him at the arbitration hearing. Township of Aberdeen v. Patrolmen's Benevolent Association, Local 163, supra; Fred J. Brotherton, Inc. v. Kreielscheimer, 8 N.J. 66, 70, 83 A.2d 707 (1951). Especially in the light of the Union's demands that the Township purchase additional equipment, it is incumbent upon this arbitrator not to shift the burden to the Township to prove that it would be unable to pay the demand.

Clearly, to shift the burden in such a manner would be contrary to the holding in Hillsdale PBA, Local 207 v. Borough of Hillsdale, supra.

Nevertheless, the Union's demands on its face, coupled with the testimony of the Municipal Manager regarding the impact over the loss of State aid requires that this arbitrator reject all of the Union's proposals.

1. Beepers

Specifically, the Union proposed to have the Township provide all firefighters with beepers for recall purposes, irrespective of cost. Interestingly, the Union presented testimony from Larry Robertson, former Deputy Chief of the Teaneck Fire Department. TR 3 315-316. However, not only was Mr. Robertson not directly familiar with the Township's current beeper system, but he was unable to provide this arbitrator with an estimate of the cost of the beepers. TR 3 318,320-321.

Moreover, the Union also proposes that the Township rent an automated keyboard for transmitting emergency calls and have firefighters assigned to "watch duties" and operate the keyboard, again, at no cost to the Union.

However, there was absolutely no evidence that the current recall procedures are inefficient or ineffective in recalling firefighters for emergencies. The Union, on the other hand, introduced U-46 which estimates the beeper proposal at Eight Thousand (\$8,200.00) Dollars. Clearly, the Union's proposals are beyond the means available for the Township to purchase the requested equipment. Therefore, the Union's beeper proposal must be rejected.

2. Fire Ground Frequency

Additionally, the Union demands that the Township install a fire ground frequency at the cost of approximately Thirty Thousand (\$30,000.00) Dollars. See U-54.

Despite the fact that the Teaneck Fire Department currently uses a standard frequency, the Union again offered no evidence that the current fire ground frequency is outdated, insufficient or that it has caused harm to the welfare of the residents of Teaneck and/or the firefighters. For the reasons stated above, the Union's proposal that the Township install a new fire ground frequency must be rejected.

3. Portable Radios

The Union has also demanded that portable radios be issued at no cost to the Union for every on-duty firefighters. Currently, the Township has eight (8) portable radios available for its firefighters. Here, the Union demands that the Township purchase an additional nine (9) portable radios for approximately Ten Thousand (\$10,000.00) Dollars. See U-46. Again, the Union has offered no evidence that the portable radios currently used by the firefighters is inadequate for its intended purpose. Therefore, the Union's proposal that the Township purchase additional portable radios must be denied.

4. Survivor Rechargeable Handlights

The Union also expects the Township to supply, at no cost to the Union, Survivor Rechargeable Handlights for all firefighters assigned to fire apparatus. See U-62. The cost for such handlights is estimated at Two Thousand Five Hundred (\$2,500.00) Dollars. Once again, the Union has offered no evidence to support its demand. Therefore, the Union's proposal must be rejected.

5. Plymo-Vent Exhaust System

Moreover, the Union expects the Township to install a Plymo-Vent Exhaust System for an additional cost of approximately Sixty Five Thousand (\$65,000.00) Dollars. See U-47. Again, for the reasons stated hereinabove, the Union's proposal must be rejected.

Overall, the Union has advanced a host of economic demands without factoring in a reduction for wage percentage increases. Notwithstanding the Union's economic proposals, the Township urges this Arbitrator to recognize that such economic demands are exclusively within the province of management's prerogative. These functions are inherently designed to serve the Township in a cost effective and efficient manner for residents of the community.

D. There is No Evidence to Support the Union's Non-Economic Proposals

The Union has collectively advanced leave proposals that are unsubstantiated as a whole. Specifically, the Union proposed the following:

1. Leave with Substitute;

2. Unlimited Early Relief Up to One Hour;
3. Union Leave;
4. Union Leave for FMBA President; and
5. Education Leave/Education Stipend

1. **Leave with Substitute.**

Currently, the Union has provided fifteen (15) leaves with a substitute per calendar year subject to the approval of the Chief and/or his designee. However, the Union unreasonably requested that the firefighters be provided with an additional ten leaves per year. Not only did the Union fail to provide testimony as to leave with substitute, but there is unequivocally insufficient justification for requiring a shift change of this nature. Therefore, the Union's demand must be rejected.

2. **Unlimited Early Relief Up to One Hour**

The Union's proposal that firefighters be given unlimited early relief up to one hour is preposterous. This type of flexibility is totally unwarranted and unjustified. In order to curtail the haphazard abuse of an unlimited early relief, the Township is within its right to deny the Union's request. Again, not only has the Union failed to provide testimony as to the unlimited early relief proposal, but there is insufficient justification for requiring such unlimited early relief. Therefore, the Union's demand must be rejected.

3. **Union Leave**

The Executive Delegate and Union Representative are currently entitled to leave with pay to attend State and Regional Union meetings. However, the Union now seeks that, in addition to its Executive Delegate, that its Union President be entitled to attend all regular monthly State and Regional meetings without loss of pay. This proposal must be flatly rejected.

Article XXI specifically provides that the Executive Delegate will be granted leave to attend State and Regional Union meetings and that such representation is fair and reasonable. Certainly the Executive Delegate can, on behalf of the Union, provide adequate representation on behalf of its members. To provide the Union President with this unfettered entitlement is beyond reason.

Additionally, no evidence was presented by the Union during the arbitration proceeding in this regard and the Union failed to provide sufficient justification for requiring the requested Union Leave. Therefore, the Union's demand must be rejected.

4. **Union Leave for FMBA President**

For the reasons stated hereinabove in subsection (10), the Township opposes the Union's request for twelve (12) tours of duty off per year for the FMBA President. Again, no testimony was offered in support of the Union leave for FMBA President and therefore there is insufficient justification for requiring such requested leave by the Union. Therefore, the Union's demand must be rejected.

5. **Education Leave/Education Stipend**

The Union also seeks education leave for career-related courses, certifications and/or training. For the reasons stated in Arbitrator Buchheit's award in the Township of Teaneck and FMBA Local 242, supra, the Union's demand must be denied. Arbitration Buchheit determined that while a college credit program demand is also a benefit available to PBA and SOA members, as well as fire officers in Hackensack and Englewood, it is not a benefit available to Ridgewood fire officers.

In addition, there was no evidence offered at the arbitration that Union members have in practice been disadvantaged economically or professionally by the absence of such a program. For those reasons, the Union's request for education leave must be denied.

Further, the Union's request for an education stipend must be rejected for the same and/or similar reasons.

With respect to the issue of an education stipend, the Union filed a grievance with respect to this matter. Therefore, this is not the appropriate forum for this issue to be resolved, for the reason that it is outside the scope of the present arbitration proceeding.

Accordingly, since the Union has again failed to offer testimony as to the education stipend, there is insufficient justification for requiring such an expenditure of resources and time. Therefore, the Union's demands must be rejected.

The Union has also proposed a Good Samaritan Clause - Off Duty Action. In this regard, the Union requests the Township pay employees for volunteering their services to residents of Teaneck while off-duty. The Union opines that the purpose of this proposal is to foster off-duty emergency and firefighting activities by firefighters with providing residents of the Township with the benefit of their expertise and training. Notably, the Union states that the benefit of this language will make firefighters "think twice about going to the aid of others . . . solely because they are off-duty."

Ironically, the Union seeks to have its members compensated for training inured to the benefit of the community. The obvious impact of the Union's proposal is that firefighters will not turn their backs on residents of the community. To the extent that such trained firefighters would even consider such a despicable thought, raises questions as to the dedication and commitment to the position which they now hold. Certainly, if the Union is suggesting that firefighters, unless compensated, will provide such services to its residents, raises unspeakable moral and ethical issues.

Again, to the extent that the Union wishes it to be compensated for such efforts, it is not within the province of the Township to compensate firefighters on such a vague, ambiguous, and unsubstantiated basis.

The Union's failure to address this issue head-on at the arbitration hearing further shows the lack of commitment to this issue. As stated throughout, the Union's failure to offer evidence on this point is significant. For the reasons stated above, the Union's proposal that firefighters be compensated on a "Good Samaritan" basis must be rejected.

Finally, the remaining issues, (1) Acting officer pay, (2) Personal days, (3) Uniform allowance and PEOSHA compliant uniforms, (4) Survivor benefits, (5) Modification to grievance procedure, (6) Removal of Article XI, Section 1, (7) Work station uniform, (8) Table of Organization, (9) Overtime list and (10) Personnel file proposal are categorically denied. The Township is in no way compelled to advance pay and/or benefits consistent with the Union's efforts to achieve same. For the reasons stated hereinabove, the Union's proposal must be denied *in toto*.

DISCUSSION

The massive amounts of evidence and argument involved in this interest arbitration will be weighed under the default conventional arbitration procedure provided by the Police and Fire Public Interest Arbitration Reform Act using the following statutory criteria:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, C.68 ((C.40A:4-45.1 et seq.).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C. 34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L.1976, c. 68 (C. 40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit, the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new program and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours, and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment

Weighing the evidence through this statutory process, the Arbitrator awards the following changes in terms and conditions of employment, including estimates of the annualized net costs of the award:

Salary Increases/Duration

July 1, 1997	4.0 % (Net Cost for 1997: 2.0 %)
July 1, 1998	4.25 % (Net Cost for 1998: 4.125 %)
July 1, 1999	4.0 % (Net Cost for 1999: 4.125 %)
July 1, 2000	4.0 % (Net Cost for 2000: 4.0 %)

Stipends for EMT/EMS Certification

Effective January 1, 1999, firefighters with the requisite EMT/EMS certification shall receive a 2 % stipend to the base salary. Approximate 1999 Cost: 8 firefighters with EMT/EMS certifications X \$1056 (\$528.00 per point X 2) = \$8448.00 (FMBA Exhibit 188).

24/72-Hour Shift Schedule

a. On or before May 1, 1999, or another date to be mutually agreed on, the firefighters work schedule will be changed to a 24/72 shift schedule. This schedule shall remain in effect until December 31, 2000, or until it is altered or replaced by a subsequent collective bargaining agreement.

b. To minimize any cost impact of the new schedule, accounting for all time-based benefits such as vacations, holidays, personal days, and sick leave shall be adjusted to maintain the same hourly level of costs as under the current schedule.

c. Mutual exchanges must not result in a firefighter's working two consecutive tours of duty.

Modification of Contractual Grievance Procedure

No employee may continue a grievance past step two of the contractual grievance procedure. Only the FMBA may continue a grievance through Steps 3 and 4 of the grievance procedure.

All other proposals are disallowed.

The rationale for this award will be discussed under each of the statutory criteria below. With the exception of the “stipulations of the parties” and the “lawful authority of the Employer,” criteria for which no evidence and arguments were presented, the arbitrator believes all the remaining criteria to be relevant to the determination of this dispute, although the weight of the criteria will vary, as will be clear from the below discussion.

Wage and Benefit Comparability in the Same Jurisdiction

One of the most important criterions for determining an economic award is the **internal labor market** within the same employer, particularly with regard to public safety units because of the strong work culture favoring parity. The Arbitrator’s salary award is firmly embedded in that internal labor market in regard to duration, effective date for and the size of the salary increases, particularly with respect to the other public safety units. The record establishes that the internal pattern for these issues for the public safety units is as depicted in the below table. The PBA and SOA increases were voluntarily agree to, while Arbitrator Buchheit determined the Fire Officer increases. The record established that the salary increases for non-public-safety employees of the Town were 3.5 percent in recent years (TR 625, 627).

Salary Increases/Duration for other Teaneck Public Safety Units

	<u>PBA AND SOA (T-8,9,10,11)</u>	<u>FIRE OFFICERS (T-2)</u>
July 1, 1997	3.75 % (4.25 %)1	3.75 % (1.875 %)
July 1, 1998	4.0 % (3.875 %)2	4.0 % (3.875 %)
July 1, 1999	4.0 % (4.0 %)	4.0 % (4.0 %)
July 1, 2000	4.0 % (4.0 %)	

The basis for the Arbitrator's salary award is that it duplicates the Fire Officer award except in one respect; as quid pro quo for the starting salary agreement for which the PBA previously received a ¼ % increase over two years (1995 and 1996), an additional ¼ % was added to the FMBA salary increase for both 1997 and 1998. This additional increase is rationalized by the fact that under the starting salary agreement savings were generated by the firefighters and not the Fire Officers. It is also inconsistent for the Town to propose that the Firefighters should not receive a similar quid pro quo as the PBA for lowering starting salaries.

There was also no acceptable basis established under the Town's proposed salary increases for providing a lower increase in base salaries for the FMBA than for the other public safety bargaining units. The fire units already have fallen substantially behind the police units in terms of base pay parity (see FMBA Exhibit 19), and further deterioration in that respect was not supported by the record, and is contradicted by experiences in other communities (see FMBA Exhibit 23). In fact, continued deterioration in FMBA base salaries in relation to the PBA could hinder firefighter morale and impact the continuity and stability of employment and therefore the interest and welfare of the public.

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- 1 The net cost for 1997 consists of the 2.375 % carryover from the July 1, 1996 increase of 4.75 % plus 1.875 % of the July 1, 1997 increase of 3.75 %.
 - 2 The net cost for 1998 consists of the 1.875 % carryover from the July 1, 1997 increase of 3.75 % plus 2.0 % of the July 1, 1998 increase of 4.0 %.

In otherwise duplicating the Fire Officer award, it must be pointed out that the net cost of the Firefighters and the Fire Officers salary increase in 1997 is substantially below that of the PBA and SOA agreements. This is the case because the net cost of the increases in a given year varies from the base increases because of mid-year effective dates for which half of the cost impact carries forward into the next year. For example, the cost of the 1997 PBA and SOA agreement must include half of the 4.75 % increase for 1996 plus half of the July 1, 1997, increase for a total gain to the bargaining units/cost to the Town of 4.25 % (2.375 % + 1.875 %). On the other hand, the net cost of the July 1, 1997 increase for the Fire Officers is only 1.875 % and the Firefighters is only 2 % because these increases are effective for only six months, and there is no carryover from the prior year since there were January 1, 1996 effective dates for the increases that year. Accordingly, the Firefighters net cost increase for 1997 is 2.25 % less than that of the PBA and SOA, about an \$81,000 difference (FMBA-8). Arbitrator Buchheit did not discuss his rationale for awarding fewer dollars to the Fire Officers in this way. However, as will be discussed below under the other statutory criteria, such as comparability with firefighter compensation in other towns, and the Town's ability to pay as determined by the financial impact of the settlement, the undersigned Arbitrator does not believe that there is a basis for this differentiation in net cost that can be supported by other statutory criteria. Accordingly, in partial consideration of this lower net cost to the Town of approximately \$70,000 (2 points X \$35,000), the Arbitrator awarded the other economic proposals that are a part of the award, the 24/72 schedule and the EMT/EMS stipend.

In regard to comparisons with **non-public safety employees in the Town**, the Town established that for 1997 and 1998 these employees, both unionized and non-unionized, received 3.5 % increases on July 1 of each year. Therefore, the Town's salary proposal is not only below

that received by other public safety employees, but of all other Town employees as well, without a convincing rationalization as to why this should be the case. The FMBA, on the other hand, offers a convincing rationale as to why it is difficult to compare what public safety employees do to other occupations in terms of working hours and hazards, and, therefore, why over time public safety employees have tended to receive higher salary increases (FMBA Brief, 51-52; 71, 72; FMBA Exhibits 123, 124).

Salary Effective Dates: The data offered by the Town about increases for other Town employees confirms that, with the salary effective dates awarded here, all Town employees will now have the same effective date for salary increases, July 1. As the Town pointed out, this consistent pattern rationalizes the negotiation process to a greater degree. The Arbitrator does not disagree, as long as the reduced firefighter income caused by the shift is given consideration elsewhere.

Duration of Agreements: The contractual period awarded is consistent with the PBA and SOA bargaining units, but a year longer than the contractual duration awarded to the Fire Officers by Arbitrator Buchheit. While previous arbitration awards normally would be given weight, the fact that this award is issued part way into the last year of the Fire Officers agreement means that the parties would be back at the table before the end of the year. Additionally, under the awarded duration, an additional year would be provided for operating experience under the new 24/72 shift schedule. The FMBA duration proposal is not awarded since at least 18 months of experience under the 24/72 schedule is sufficient to evaluate its impact on the Town and provide a timely response in subsequent negotiations about problems with the schedule, if any.

24/72 Shift Schedule: One of the major reasons that negotiations have been so protracted is that the parties have been completely at odds over changing the shift schedule. The Town

strongly opposed the 24/72 shift schedule and argued that the issue was a managerial prerogative not subject to negotiations. While the Arbitrator finds that more recent case law arrives at a different conclusion (see Township of Maplewood, PERC No. 97-80, Docket No. SN-97-1), he would be reluctant to order such a major change in operations where there was such opposition unless there were compelling reasons for doing so, particularly when no other employee group in the Town will have a 24/72 shift schedule, including the Fire Officers who supervise the FMBA unit. In fact, Arbitrator Buchheit specifically refused to award the 24/72 shift schedule to the Fire Officers. This Arbitrator normally gives important weight to prior awards, but in this instance the Arbitrator feels that there is a compelling rationale for reaching a different outcome about the work schedule based on differences in the evidence that was presented to the two arbitrators. It should be noted that the Arbitrator considers the schedule change to be an economic issue since there are substantial costs of implementation (\$115,000 for an additional supervisory position) and there are substantial potential savings.

In contrast to the evidence available to Arbitrator Buchheit provided by a member of the Fire Officer bargaining unit, the FMBA presented two expert witnesses who presented credible empirical support for the 24/72 shift schedule. Paul J. Chrystal, a Battalion Chief in the Township of Union fire department, reported on a 12-year study of the 24/72 schedule implemented in 1980 that compared various factors six years before and after the implementation of the 24/72 schedule in Union Township (TR 33-103). The findings of the study indicated that with exactly the same staffing levels before and after the change there was a 35 % decline in the use of sick allowance/home illness, a 58 % decline in overtime expense, a 23 % decrease of line-of-duty injuries to firefighters, and a 38 % decrease of tour-of-duty civilian injuries. At the same time, there was a 95 % increase in productivity as measured by the numbers of classified alarms

(up 30 %), tour fire hazard inspections (up 213 %), and non-emergency services (up 150 %). The study attributed the decline in overtime partially to the fall in injuries and sick time, and attributed the decline in firefighter injuries "...to the fact that there is recuperative time in 24 hr. shift due to the 72 hr. off period" and the decrease in tour-of-duty civilian injuries "...largely to the increase in in-service inspections and other fire prevention details performed on the 24 hr. tour-of-duty" (FMBA Exhibit 34). Chief Chrystal also testified that the work week under the 24/72 schedule was the same as the 14/10 schedule, 42 hours (TR 96, FMBA Exhibit 32). While the superiors and the firefighters were placed on the 24/72 schedule at the same time in Union, it was his opinion that the two groups could work on different schedules (TR 73). It was also his opinion that the change in schedule did not cause firefighters to move any further away (TR 97).

William Lavin, President of the New Jersey FMBA and President of Elizabeth FMBA Local 9, testified that in the first year of operation of the 24/72 schedule in Elizabeth there was a 3800 man-hour reduction in sick leave, a reduction that has continued in subsequent years (TR 106). He testified that there was no increase in the percentage of men moving further from Elizabeth (TR 107). He believed the 24/72 schedule saved money in Elizabeth, and that in other communities at worst it was a "financial wash" (TR 112). He testified that the hours are exactly the same and that the public is not aware of the firefighters work schedule as long as the service is provided. In fact, he believed that service improves while at the same time upgrading the quality of life for the firefighters (TR 112-113) He said he was able to get Elizabeth Deputy Chief Tanzola to go on record with the statement that the 24/72 schedule enhanced "... the Department's Training Effectiveness Because there is Only a 4 Day Personnel Turnover as Opposed to the Present Schedule's 8 Day Turnover" (TR 116-117; FMBA Exhibit 172). He also

believed there was less fatigue under the schedule because the firefighters had longer to recover from a shift (TR 118).

The FMBA also placed on the record Arbitrator John Sands decision awarding the 24/72 schedule in New Brunswick (The City of New Brunswick and FMBA, Local 17, John E. Sands, PERC Docket No. IA-95-120). In concluding that the 24/72 shift was better for the health of firefighters, he reported statistics from the International Association of Firefighters in which “Firefighters working split shifts like 10/14s suffered far more fatalities due to heart attacks than fighting fires and other duty-related causes—58% as against 42%. For firefighters working 24-hour shifts the statistics were reversed: 59% of fatalities due to fighting fires and other duty causes and only 41% due to heart attacks” (p. 13). Based on his analysis of the record, including evidence on the experience with the schedule in Union Township, Arbitrator Sands drew many of the same conclusions about the effects of the schedule as Chrystal and Lanvin. In regard to second jobs, he concluded that “... whether on 10/14s or 24/72s, firefighters will be working second jobs and that improved ease of doing so will have a positive impact on firefighter morale and service” (p. 16). Sands awarded the 24/72 schedule on a trial basis conditioned on reductions in sick time and overtime use. He also incorporated provisions preventing mutual exchanges that would require working two consecutive shifts and maintaining the hourly costs of time-based benefits such as vacations, holidays, personal days, and sick leave. He also believed that superiors and firefighters “must” be on the same schedule for continuity of supervision, but that would be resolved because as the arbitrator for both groups he would also award the same schedule to the superior officers.

Beside Chief Norton’s testimony about potential problems attracting supervisory staff, administering discipline, achieving sufficient response to recalls, additional moonlighting and

moving out of town by firefighters, additional benefits for line supervisors, and greater fatigue (see, for example, Town Exhibit 3), the only proof offered by the Town was hearsay testimony provided by Chief Norton about conversations he had with the Fire Chief from Union Township, Chief Fritz, and also the Chief from West Orange. Aside from cautioning Chief Norton on supervisory staffing, Chief Fritz told Chief Norton that he had no objection to the 24/72 schedule, and that there was not a problem with firefighters moving out of town (TR 527). Despite the fact that there are numerous New Jersey communities with the 24/72 schedule whose experiences could be mined to provide support for hypotheses about the negative effects of the schedule, the Town offered no direct evidence from these communities. The bottom line, however, is that the Chief testified he could live with the schedule if additional supervisory staff were made available, staff that already existed at Union Township and West Orange when the 24/72 schedule was implemented (TR 551). He testified that to implement the schedule he would need an additional deputy chief position. The Chief also felt he needed a new staff position.

In conclusion, the uncontroverted evidence presented by the FMBA convinces this Arbitrator that the substantial benefits of the 24/72 schedule to all parties, the Town, the firefighters, and the public, justifies undertaking a trial run. Under the award, the trial run would last from on or before May 1, 1999 to December 31, 2000, or, if a new contract has not been agreed to by that time, until a superceding agreement is reached by the parties. By eliminating consecutive mutual exchanges, the award minimizes firefighter fatigue, a concern of the Chief. Hourly costs for time-based benefits such as vacations and sick leave are maintained at the same level, also a potential problem pointed out by the Chief (TR 469, 476).

The 24/72 schedule should not continue after the trial run if the FMBA and the Town, or absent mutual agreement, an interest arbitrator, are not convinced that the new shift schedule has achieved some or all of its intended objectives of 1) improving morale, 2) reducing sick leave, 3) reducing overtime, 4) enhancing training, 5) maintaining or improving productivity using the same number of firefighters and work hours, and 6) reducing firefighter and civilian injuries.

The Arbitrator recommends that the parties appoint a joint committee for the purpose of identifying and collecting the objective data required to undertake a systematic evaluation of the schedule.

One important area that this award cannot resolve is the issue of the Fire Officers schedule. Unlike Arbitrator Sands, this arbitrator does not have jurisdiction over the Fire Officers work schedule and therefore cannot change it. Although the record indicates that different schedules for the Fire Officers and the Firefighters would not be unworkable (TR 516), the Arbitrator believes that supervisory efficiency and teamwork would be best served if the Fire Officers and the Firefighters worked the same schedule, **and he recommends that the parties responsible for that decision consider implementing a common schedule.**

Stipends for EMT/EMS Certification: No other employee group in the Town receives stipends for EMT/EMS Certification, including the Fire Officers. However, there are three compelling bases for awarding these stipends. First, there has been a demonstrable increase in the first medical response workload over the years as testified to by Captain Silvia, although the Town argued that additional compensation was not necessary since the firefighters provided only initial aid with equipment, including defibrillators, that took very little time to use. Additionally, the required training took place on the job (Town Brief, pp. 26, 27). In this respect, the maximum stipend awarded here represents only 2 % of the base compensation of the firefighters at

maximum, a figure at the bottom of the list in comparison with other communities. The Town also argued that the proposal was not properly before the Arbitrator because there was an active grievance (Town Brief, p. 33). However, there was no evidence of a mutual agreement to decide the matter in grievance arbitration (TR 29). Moreover, the negotiation process is often where grievances are resolved.

Second, as will be more fully discussed below, the EMT/EMS certification has been recognized by many other communities through additional compensation.

Third, this stipend, along with the new 24/72 shift schedule, will provide a quid pro quo for the shift in effective dates for salary increases, to be discussed more fully under "financial impact" below.

Wage and Benefit Comparability in Similar Comparable Jurisdictions

Salary Increases: Neither party was able to establish that their salary proposals were supported by comparable increases in fire units in other municipalities in Bergen County or other surrounding communities. Each party submitted examples of settlements that were most supportive of their proposals but the average settlements fell somewhere in between. Almost all of the settlements placed on the record by the FMBA were less than its proposed salary increases (FMBA-95-102). The FMBA also provided PERC data that indicated the average increases were 4.24 p% in 1996. But PERC recently reported data to the Special Panel of Interest Arbitrators for both 1997 and 1998 wherein the average increases were 3.63 % and 3.87 % respectively ("Five Year Salary Increase Analysis," Memorandum from Timothy A. Hundley, dated February 11, 1999). Accordingly, while somewhat on the high side due to declining wage increase patterns for public safety units around the State, an important finding is that the **internal pattern created by previous increases in base salaries for the other three public safety units** is closer to the

mark in comparisons with other communities, particularly in regard to the other four fire units in Bergen County municipalities. In fact, Teaneck firefighters currently receive the lowest base wages among these communities, and the base increases awarded herein will not improve that relative standing in any meaningful manner, given that the 1997 percentage increases in the other communities was similar (FMBA-79, 82; FMBA Brief, p. 30). In contrast, the Town's salary proposals were below most of the increases for the municipalities reported in its brief (p. 18), and would cause Teaneck firefighters to fall further behind other municipalities to which the Town is comparable.

Salary Effective Dates: The salary effective dates in other municipalities for the agreements placed on the record are quite varied. While many increases start on January 1, many also start on July 1, and some have split increases that start on both dates or on some other date during the year, such as the one paid to the FMBA in October, 1994 (FMBA Exhibit 18). Accordingly, the Arbitrator finds more compelling the argument that it is important to have all effective dates of salaries consistent within the same community, as long as the economic impact to the firefighters of shifting the start dates is dealt with satisfactorily, a matter discussed elsewhere.

Duration of Agreements: Again, agreement duration practices in other municipalities are diverse, and the Arbitrator finds more compelling the argument that it is important to have the duration of all collective bargaining agreements within the same community be the same.

24/72 Shift Schedule: Evidence presented by the FMBA establishes that the 24/72 schedule, while nonexistent in the four paid Bergen County fire departments, now exists in approximately 26 communities, with several communities changing in recent times either voluntarily or by award, for example, New Brunswick, Bayonne, and Westfield (FMBA Exhibits

30, 31, 192, 193). In contrast, Officer Lanvin could recall only one community, Rahway, that had reversed a decision to operate on the 24/72 schedule (TR 109). In 1996, in his New Brunswick decision, Arbitrator Sands found that 16 of the 48 paid departments in New Jersey and 70 % of the paid departments nationally were on the 24/72 hour shift (The City of New Brunswick and FMBA, Local 17, John E. Sands, PERC Docket No. IA-95-120, June 28, 1996). Accordingly, it can be concluded that many comparable fire departments in the State have adopted the 24/72 shift schedule, and that Teaneck would not by any means be a pioneer in setting up such a system. The evidence from these communities about the effects of the 24/72 schedule that is on the record, namely, from Union Township and Elizabeth, is favorable, as previously discussed.

Stipends for EMT/EMS Certification: Uncontroverted evidence placed on the record by the FMBA established that stipends for EMT/EMS certification are paid in many other communities, including Hackensack and Ridgewood in Bergen County (FMBA Exhibits 94, 189, 190.). These stipends usually ranged from \$1250 to \$3471, so the 2 % stipend awarded here with a current annual cost of around \$1000 at maximum base salary is at the bottom of such payments.

Wage and Benefit Comparability in other Private and Public Employment in General

The evidence on the record for other public and private settlements was dated. It indicated that from 1995 to 1996 private sector wages increased 4.3 %, federal government wages increased 3.3 %, state government wages increased 2.1 %, while local government wages increased 3.0 % (FMBA Exhibit 130). For the year ending June 1998, the Employment Cost Index for total compensation for private employees in the Northeast Region rose 2.9 % while salary and wages alone rose 3.1 % (Town Exhibit 14A). These data represent a small decline from the previous year when the same figures were 3.0 % and 3.1 %, respectively (Town Exhibit

14B). These data are more consistent with the Town's salary proposals, and tend to explain falling public safety salaries in general. But, in the opinion of the Arbitrator, it is more important that the salary increases awarded here are consistent with both the local internal Town labor market regarding public safety wages and the local external labor market regarding salary increases paid to firefighters in surrounding communities. As discussed above, this award is consistent with these latter factors. This award of a four-year agreement is consistent with national trends in the private sector for agreements of longer duration (FMBA Exhibit 133).

Overall Compensation

The uncontroverted evidence developed by the FMBA clearly establishes that not only are the firefighters at the bottom of the pack in Bergen County and many other communities in regard to base salary, but they lag in other areas as well, for example, size of longevity payments, timing of longevity payments on anniversaries, holiday pay, shifts differentials, mutual exchanges, EMS stipends, acting pay, personal/funeral days, vacations, and clothing allowance (FMBA Exhibits 80-88). Town employees represented by AFSCME also receive greater vacations (FMBA Exhibit 125). Uncontroverted evidence also establishes that the police in Teaneck also have unlimited mutual exchanges, unlimited early relief, a Good Samaritan clause, and better union leave provisions, while both the police and Fire Officers have portable radios.

The instant award would provide for only a minor **relative** improvement in total compensation, if any.

Cost of Living

Figures on the record regarding the New York-Northeastern New Jersey CPI indicate that by the end of 1997 the CPI declined to a 2.0 % increase for the year, and that by July 1998 the annual increase was down to 1.6 %. The increases awarded here exceed increases in the cost of

living, but they are consistent with other statutory criteria regarding internal and external labor market comparability. As part of the comparability analysis, it is relevant that the Town has already agreed to salary increases for all other employees that exceed increases in the cost of living, a pattern repeated in most surrounding communities.

The Financial Impact on the Governing Unit, Its Residents and Taxpayers

It is difficult to argue that an award for a bargaining unit that is the last of the Town's bargaining units to settle will have a adverse impact on the governing unit, its residents, and taxpayers if it draws its essence from the internal pattern that has been created by all previous settlements covering the same contract period, particularly, when, as in this matter, the internal pattern for public safety units was created by voluntary settlements with the PBA and SOA. Since the Town voluntarily agreed to the PBA and SOA settlements, it can be presumed that the Town believed it could agree to such increases without an adverse impact on the Town, residents, and taxpayers, unless, of course, the economic climate has worsened since the earlier settlements, not the case here. Moreover, in the instant matter there is no basis for paying the last unit to settle, the FMBA, a smaller increase than the other units on the argument that they already get more. As discussed above, this is not the case because their pay and benefits are less advantageous in several respects in comparison with other internal and external bargaining units, and the Town's proposal would reinforce this situation.

The economic package awarded here is somewhat more than the other public safety units because it recognizes: (1) the salary savings achieved from new starting salaries for which the PBA was previously recognized in 1995 and 1996[an additional ¼ % inn 1997 and 1998]; (2) the reduced cost to the Town of shifting the effective date for salaries from January 1 to July 1--1;

1 The Town argued that an important reason for the shift in the effective date of the salary increases in the PBA and SOA 1995 and 1996 agreements was the difficult financial condition of

(3) the increased job responsibilities regarding emergency medical responses not similarly experienced by other public safety units [an additional cost of ¼ % beginning in 1999]; and (4) the clear potential for generating cost savings and productivity increases under the 24/72 schedule, indeed, the award of the 24/72 schedule and its continuation into future agreements is conditioned on improvements in productivity and morale, and reductions in injuries, sick leave, and overtime that will offset the costs associated with the implementation of the schedule. Other cost effects are controlled because hourly costs from all time-based benefits such as vacations and sick leave are maintained at the same level.

The small additional cost of the award over the internal public safety pattern will have a minimal effect on the tax burden of taxpayers. For example, the additional ¼ % or \$8,978 increase in 1997 constitutes only a minute proportion of the \$36,000,000 Teaneck budget. And the Town did not argue that an increase that met the internal pattern of the public safety units would lead to layoffs, declines in existing programs and services, or the failure to initiate new programs or services.

At the same time, larger increases in economic benefits than what has been awarded were not justified in the opinion of the Arbitrator. As already discussed, a 4% increase is now an above average increase in the State of New Jersey for public safety units. Additionally, the award also contains the highly desired 24/72 shift schedule. Moreover, if the \$35,000 cost of the additional point per year over the Town's proposal was the only additional cost per year, the healthier current budget situation of the Town compared to the 1993 to 1997 period could bear

the Town caused by a decline in State aid. However, that argument is not nearly as relevant at this point in time now that the Town has weathered a several-year reduction in state aid. It is also noted that at the time the shift in the salary effective dates for the PBA and SOA was accomplished for economic reasons, the Town agreed to continue effective dates of January 1 for the Fire Officers and FMBA for 1995 and 1996. In fact, the Town's last offer to Arbitrator Pierson in the FMBA arbitration contained the January 1 effective dates (Town Exhibit 6).

the additional cost when compared to the estimated unbudgeted \$1 million surplus for 1998. The budget surplus is usually larger, in fact, Mr. Caprio estimated it at \$2.3 million for 1998. But if the Town needs to budget surplus on a recurring basis, that recurring expense would have to be replaced by other budget funds/taxes before it was available for other expenditures like increases in wages and benefits. A \$1 million surplus is not large when compared the Town's annual budget appropriations of \$36 million. In this context, the total annual cost increase of the public safety contract settlements is sizeable. For the FMBA unit alone, the annual cost increase of a 4% settlement would average over \$140,000, so that over a four-year contract duration, the salary base is up well over half a million per year, and this does not include longevity and other benefit increases tied to the base salary or potential retirements. Furthermore, a large proportion (57 %) of the FMBA bargaining unit may not be getting longevity pay, but they are receiving step increments that add considerably to the economic burden of the Town: \$365,000 in 1998 and \$119,000 in 1999 (T-21; Town Brief, pp. 11, 12). Pension costs related to early retirements were also significant (\$300,000). Thus, salary savings identified by the FMBA in regard to lower starting salaries (\$70,235), open positions (\$277,773), and retirements (FMBA Exhibit 183) are significantly absorbed by the step increments, the across-the-board increases, and early retirement costs, indeed, tax increases might be required to fund the public safety salary increases, although the Town did not argue that such increases would cause problems with budget CAPS.

Some of the other FMBA economic proposals appear to have merit, particularly in regard to what appears to be an under-investment by the Town in safety and communications equipment. But additional economic expenditures at this point are not supported by the Town's economic context.

With the exception of the modification of the contractual grievance procedure proposed by the FMBA, the non-economic proposals of the FMBA are denied because there was no testimony offered in regard to those proposals. The Town noted that it was "not challenging" the FMBA's contractual grievance procedure proposal (TR 725).

The Continuity and Stability of Employment

The FMBA argued that a longer contract duration would contribute to greater stability of employment since it would provide the parties a longer opportunity to live with each other under the agreement before beginning negotiations for a replacement contract. However, the Arbitrator credits the Town's competing stability of employment argument that the negotiations process would be more rational and less complicated if there was a complete overlap in the contract duration and the effective dates of salary increases for the several public safety units, if not for all Town bargaining units.

The continuity and stability of employment of firefighters has been good. There was no evidence of layoffs in recent years, and since five firefighter positions that were not staffed for approximately two years have now been filled, manning levels in Teaneck have been stable over recent contracts (FMBA Exhibit 171), although down substantially from 1970 (FMBA Exhibits 114 to 116). There was no evidence presented that voluntary turnover was a problem due to deficient terms and conditions of employment, and this award should reinforce this situation. Maintaining reasonable parity among the base salaries of public safety units for whom the parity culture is very strong also contributes to improved morale and thus the continuity and stability of employment. The evidence also suggests that the 24/72 schedule will also reinforce the morale of the firefighters because it improves the recovery time from stress and toxic fumes. By preventing consecutive shifts due to mutual exchanges, the award minimizes firefighter fatigue.

The Interest and Welfare of the Public

In the view of this arbitrator, while this criteria is the first listed in the statute, it is really a more global criteria that derives from an appropriate balance of certain of the other criteria, namely, the interest and welfare of the public is served best when the financial effect of the terms and conditions of employment of the firefighters is to promote the continuity and stability of employment of the firefighters **and** to provide the public with an adequate level and quality of services at a reasonable cost. The record establishes that the Town leaders have provided firefighting services at a lower cost than comparable communities in Bergen County and elsewhere in terms of the wages and benefits of the firefighters. At the same time, Town leaders have apparently maintained both public satisfaction with the services (FMBA Exhibits 136-146, 187) **and** firefighter loyalty to employment in Teaneck, as indicated by the above discussion of the continuity and stability of employment. This award should continue this relationship. There was no claim by the Town that the award would interfere with limitations imposed on it by the CAP law, P.L. 1976, C.68(C.40A4-45.1 et seq.)

More specifically, to the extent that the EMT/EMS stipend provides an incentive for additional firefighters to be EMT/EMS certified, the interest and welfare of the public is well served. The evidence also strongly suggests that the 24/72 schedule will serve the interest and welfare of the public by increasing productivity, reducing firefighter and civilian injuries, reducing sick leave and overtime costs, and improving firefighter morale.

Conclusion

Neither the final offer of the Association or the Town best effectuated the relevant statutory criteria. The award fashioned, in taking account of all the statutory criteria and

assigning weight to the criteria as appropriate, found that the middle ground between the proposals of the two parties best effectuated the intent of the statute.

AWARD

Salary Increases/Duration

July 1, 1997	4.0 %
July 1, 1998	4.25 %
July 1, 1999	4.0 %
July 1, 2000	4.0 %

Stipends for EMT/EMS Certification

Effective January 1, 1999, firefighters with the requisite EMT/EMS certification shall receive a 2 % stipend to the base salary.

24/72-Hour Shift Schedule

a. On or before May 1, 1999, or another date to be mutually agreed on, the firefighters work schedule will be changed to a 24/72 shift schedule. This schedule shall remain in effect under December 31, 2000, or until it is altered or replaced by a subsequent collective bargaining agreement.

b. To minimize any cost impact of the new schedule, accounting for all time-based benefits such as vacations, holidays, personal days, and sick leave shall be adjusted to maintain the same hourly level of costs as under the current schedule.

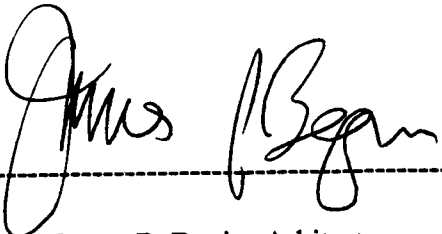
c. Mutual exchanges must not result in a firefighter's working two consecutive tours of duty.

Modification of Contractual Grievance Procedure

No employee may continue a grievance past step two of the contractual grievance procedure. Only the FMBA may continue a grievance through Steps 3 and 4 of the grievance procedure.

All other proposals are denied

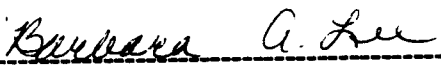
Dated: March 15, 1999



James P. Begin, Arbitrator

State of New Jersey
County of Mercer

On this 15th day of March, 1999, before me personally came and appeared JAMES P. BEGIN to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



An Attorney at Law of the State of New Jersey