

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

THE CITY OF ORANGE TOWNSHIP,

“Public Employer,”

- and -

PBA LOCAL 89,

“Union.”

THE CITY OF ORANGE TOWNSHIP,

“Public Employer,”

- and -

FMBA LOCAL 10,

“Union.”

THE CITY OF ORANGE TOWNSHIP,

“Public Employer,”

- and -

**FMBA LOCAL 210,
FIRE OFFICERS ASSOCIATION,**

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket Nos. IA-2010-101
and IA-2011-024

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Joseph M. Wenzel, Esq., City of Orange Township

For the PBA:

David I. Fox, Esq., Fox & Fox

For the FOA:

David I. Fox, Esq., Fox & Fox

For the FMBA:

Eric B. Levine, Esq., Lindabury, McCormick, Estabrook & Cooper

I was appointed interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in an impasse that initially involved the City of Orange Township [the "City"] and PBA Local 89 [the "PBA" or "Union"]. The mediation and interest arbitration proceedings with PBA Local 89 were then joined, based upon the mutual agreement of all parties, with the impasses that were reached between the City and FMBA Local 10 and FMBA Local 210, Fire Officers Association. None of these impasses were resolved despite the participation of all parties in several individual and joint pre-interest arbitration mediation sessions.

A complexity arose early in the process when the City submitted, and the Civil Service Commission approved, a layoff plan that included 52 layoffs and 24 demotions that were to take effect on January 7, 2011. The layoff plan was challenged by the Unions. Agreements were reached by the employee organizations to avoid layoffs or recall employees. The Fiscal Year 2011 budget was presented with a \$3.2 million reduction from Fiscal Year 2010 budget levels. The reduction appears to have been linked to a \$3 million cut in State Aid and Urban Enterprise Zone cuts. This precipitated layoffs and demotions and negotiations for cost saving accommodations and a search for grant funds to avoid layoffs. By way of example, the FMBA and the City entered into an MOA that included, among other things, several economic benefit modifications to

achieve an elimination of the proposed layoffs and the hiring of additional firefighters through grant funds.

During the interest arbitration proceedings, the parties requested periods of time to engage in direct negotiations without the participation of the arbitrator. These efforts were unsuccessful and resulted in the reconvening of formal interest arbitration hearings. An overall record was developed containing evidence that, while individually submitted, included evidence that was relevant to all of the impasses and known to all parties. The record includes substantial documentary evidence, well over two hundred exhibits, testimony, financial reports and certifications. Post-hearing briefs were filed and transmitted to each party on or about January 18, 2014. The record was then re-opened on October 29, 2014 through a submission by the PBA and the FOA, as supplemented on November 14, 2014, regarding financial developments in the City and the finances of the City's Water Sewer Utility as they may impact on the City's overall finances. The FMBA concurred with the substance of these submissions. The City responded on December 9, 2014. Supplemental submissions concerning the City's finances were filed by the PBA and the FOA on December 18, 2014. During the course of the proceedings, motions were filed by the FMBA to bar the City from responding to its petition for interest arbitration on the grounds of having filed an untimely response. The FMBA filed a similar motion on timeliness challenging the City's December 9, 2014 response that contested the relevance

of the City's Water Sewer Utility finances. I reserved on these motions and find that the late filings were *de minimus* in nature and that no party in these proceedings was prejudiced in any way by the City's filings. It is noted that the City's late filing of its response to the FMBA interest arbitration petition contained concessionary demands that were later withdrawn by the City when the parties agreed to submit revised final offers during the course of the proceeding.

As required by statute, each party submitted a last, or final offer, prior to the conduct of the hearing. During the course of the proceedings, all parties, by mutual consent, presented revised final offers. By way of example, the City's initial final offers at hearing, but later revised, included a two and one-half (2 ½) year proposal with no wage increase for the first six months, a 3.5% decrease in wages for the next twelve months followed by no wage increase for the next twelve months. Its revised offers appear below. Revised final offers were also made by PBA Local 89, FMBA Local 210 (FOA) and the FMBA Local 10. The final offers stated below represent all of the revised final offers.

FINAL OFFERS OF THE PARTIES

THE CITY OF ORANGE AND PBA LOCAL 89

The City

1. **Term of Contract**

January 1, 2010 through June 30, 2015.

2. **Article XXIII, Wages**

January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

3. Imposition of a Negative Sick Leave recoupment policy which matches the one already in place for the SOA.

PBA Local 89

1. **Duration**

Seven (7) years - January 1, 2010 through December 31, 2016

2. **Salary**

January 1, 2010 – 2%
July 1, 2010: 1%;
January 1, 2011 – 2%;
July 1, 2011: 1%
January 1, 2012: 3.0%
January 1, 2013: 3.0%;
January 1, 2014: \$1,000 as to First Responder Pay and/or
911 Certification Duties and/or 911
Certification Pay + 1.5%
January 1, 2015: 3.0%
January 1, 2015: 50% of retroactive pay
January 1, 2016: 3.0%
January 1, 2016: Balance of 50% of retroactive pay

The PBA is seeking the above salary increases to be applied to all steps in the members of the PBA's salary guide.

3. **Article XXXIII – Miscellaneous: Section 10, Education Pay**

The PBA proposes that the educational stipend be increased as follows:

| | |
|------------------------------------|---------|
| AA Degree | \$250 |
| AA Degree in Police Science | \$500 |
| BA or BS Degree | \$1,000 |
| BA or BS Degrees in Police Science | \$2,000 |

The PBA proposes that the educational stipend be included in base pay and be effective retroactive to January 1, 2011.

4. **Article XVIII, Clothing and Maintenance Allowance, Section 4**

The Detective Clothing and Maintenance Allowance should be increased from \$250 to \$1000. The pay should be retroactive to January 1, 2011.

5. **Article XXIII, Wages, Section 2**

Employees assigned to the Detective Bureau shall receive an increase in annual payment from \$750 to \$2,000.

6. **Health Insurance Opt-Out Payment**

The PBA proposes that the payment for opting out of health benefits coverage be increased from \$2,500 to \$5,000.

7. **Article V and Article XII, Sick Leave Calculation.**

The PBA is seeking to incorporate language into the parties' CBA which would require the City to calculate sick time and vacation time at a day for a day rate for all patrol PBA members. Members' daily sick time and vacation time calculations, depending on the tour they work, should be either 10.75 hours (patrol), 9.5 hours (detective) or 8.25 hours per day (other). The calculation of time should be retroactive to January 1, 2010.

8. **Article XVII, Life Insurance and Death Benefits, Section 2.**

The PBA proposes that the life insurance benefit received by a surviving spouse of an employee killed in the line of duty be increased from \$10,000 to \$50,000.

9. **Article XIV, Bereavement Leave, Section 1.**

The PBA proposes to add the following to the definition of immediate family member: grandchildren, sister-in-law, brother-in-law and individuals residing in the employee's household. Additionally, child should be defined as natural, adopted or foster child.

The PBA is seeking to revise the language in this section so that bereavement leave does not commence until the first day of the employee's tour following the date of death. Currently, bereavement leave commences the day following the date of death.

10. **Article XI, Court Time**

The following sections of this article pertain to compensation for active employees who are required to attend any judicial or quasi-judicial proceedings in connection with the performance of his/her duties.

Section 1: If an employee is required to appear in any court or in any judicial or quasi-judicial proceeding in connection with the performance of his duties on his day off, time-off, or vacation day, he shall be paid at the rate of one and one-half (1½) times his base rate of pay for all time spent, including travel time from and to Orange Police Headquarters as per existing department regulations, in connection with any such appearance.

Section 3: If an employee is required to utilize a private vehicle to meet the requirements of Sections 1 and 2 of this Article, he shall receive mileage compensation at the prevailing I.R.S. rate.

In addition, the City agrees to pay the necessary parking expenses for appearances required by Sections 1 and 2 of this Article, whether incurred for a City-owned or privately-owned vehicle. In consideration for this benefit, any officer who incurs a motor vehicle summons shall be personally responsible for payment.

Section 4: It is understood and agreed that the provisions of Article X, Section 2, relating to 2 hours minimum call-in pay shall apply to this Article XI; provided, however, that the City shall provide a minimum of three (3) hours call-in pay to officers who are required to appear in any court in the City of Newark in connection with the performance of their duties on their day off, time off, or vacation day.

The PBA proposes that the above provisions pertaining to court time should apply to any member of the PBA who was recently subjected to the City's layoff action and anyone who may be impacted in the future. Many of the PBA employees who were subjected to the layoff action were required to attend judicial or quasi-judicial proceedings in connection with job duties they performed prior to being laid off. Language should be included in the CBA which entitles these individuals to pay in the manner set forth above.

11. **Seniority**

The PBA proposes that language be included in the parties' CBA which would acknowledge the seniority practice. Specifically, language should be included in the CBA which states that seniority will be abided by when making assignments pertaining to overtime, side jobs and tour picks, which are done twice a year.

THE CITY OF ORANGE AND FMBA LOCAL 210 (FOA)

The City

1. **Term of Contract**

January 1, 2009 through June 30, 2015.

2. **Article XXIII, Wages***

January 1, 2009 - 0%
January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

FMBA Local 210 (FOA)

1. **Duration**

Eight (8) years - January 1, 2009 through December 31, 2016

2. **Salary**

| | |
|------------------|---|
| January 1, 2009: | 3.0% |
| July 1, 2009: | 1.0% |
| January 1, 2010: | 2.0% |
| July 1, 2010: | 1.0%; |
| January 1, 2011: | 2.0%; |
| July 1, 2011: | 1.0% |
| January 1, 2012: | 3.0% |
| January 1, 2013: | 3.0%; |
| January 1, 2014: | \$1,000 (First Responder Pay and/or 911 Certification Pay and/or 911 duties) + 2% |
| January 1, 2015: | 3.0% |
| January 1, 2016: | 3.0% |

* The City's proposal for 2009 for the FOA only is based upon the fact that the FOA Agreement expired one year earlier than PBA Local 89 and FMBA Local 10.

January 1, 2015: 50% of retroactive pay
January 1, 2016: Balance of 50% of retroactive pay

The FOA is seeking the above salary increases to be applied to all steps in the members of the FOA's salary guide.

3. **Article XXXIII – Miscellaneous: Section 10
Increase in Education Pay**

The FOA proposes that the educational stipend be increased as follows:

| | |
|----------------------------------|---------|
| AA Degree | \$250 |
| AA Degree in Fire Science | \$500 |
| BA or BS Degree | \$1,000 |
| BA or BS Degrees in Fire Science | \$2,000 |

The FOA proposes that the educational stipend be included in base pay and be effective retroactive to January 1, 2011.

4. **Article XVIII, Clothing and Maintenance Allowance,
Section 4**

The FOA is seeking to increase the clothing and maintenance allowance from \$350 to \$600.

5. **Article IV, Manpower, Section A (Acting Officers).**

Currently, Fire Officers who act in the capacity of a higher rank are not compensated for acting officer duties unless they work for five (5) hours of the shift. The FOA is seeking to eliminate this restriction so that Fire Officers receive compensation for any and all time worked in the capacity of a higher rank.

6. **Article X, Salaries, Section K**

The FOA proposes to increase the Fire Inspector pay from \$2,000 to \$3,000. The FOA also proposes that Fire Inspector pay be incorporated into base pay.

7. **Health Insurance Opt-Out Payment**

The FOA proposes that the payment for opting out of health benefits coverage be increased from \$2,500 to \$5,000.

8. **Article X, Salaries, Section K**

Fire Superior Officers are currently required to obtain a fire inspector license at their own expense and on their own time. The FOA is seeking to revise this provision so that employees are reimbursed for all courses associated with obtaining their fire inspector license. The FOA is seeking to revise this provision so that employees receive two personal days per year for obtaining and maintaining their fire inspector license.

9. **Article XII, Clothing Allowance**

The FOA is seeking to incorporate language into this provision which would require the City to provide newly promoted Fire Officers with a complete dress uniform at the City's expense.

10. **Health Insurance**

The parties have agreed in past agreements in accordance with an Award that health insurance benefits shall be paid for any employee who has received a disability pension whether on the job or off the job (accidental or otherwise). This should be incorporated into the agreement.

11. **Article XIII, Insurance, Section C**

The contractual life insurance benefit received by a surviving Fire Officer's family of an employee killed as a result of an on-the-job injury should be increased from \$10,000 to \$50,000. The reasons for this are obvious. Such an amount is obviously and hopefully only rarely or never needed but is clearly appropriate in the rare event of a line-of-duty death and is present elsewhere.

12. **Article XIII, Insurance, Section G**

The “death benefit” which is provided to all members of the bargaining unit should be increased from \$4,000 to \$10,000. The SOA and PBA currently receive a \$10,000 benefit.

13. **Article XV, Leave of Absence, Section B, Subsection 1**

Members of the FOA who use bereavement leave for the death of an immediate family member are required to report back to duty the day after the funeral if they are scheduled to work. This should be revised in a manner consistent with the PBA and Police SOA. The SOA receive time off with pay of up to four (4) consecutive work days in the event of a death in the employee’s immediate family.

14. **Article XV, Leave of Absence, Section B, Subsection 2**

Currently, immediate family member is defined to include the following: father, mother, father-in-law, mother-in-law, grandparents of the employee or spouse, sister, brother, sister-in-law, brother-in-law, child and foster child of an employee, and his relatives residing in his household. The following should be added to the definition of immediate family member: adopted child, grandchildren, and individuals residing in the employee’s household. Members of the SOA receive the above benefit.

15. **Article XV, Leave of Absence, Section B, Subsection 2**

The language should be clarified to show that a day is the existing working day for Local 210’s members, namely 24 hours. All reference to time off should confirm that a day off is a 24-hour shift.

16. **Article XI, Holidays**

Fire Officers receive ninety-five hours of holiday pay in base pay. Members of the FMBA receive 110 hours of holiday pay. The FOA is seeking to increase holiday pay to 110 since the FMBA receives 110 hours of holiday pay.

THE CITY OF ORANGE AND FMBA LOCAL 10

The City

1. **Term of Contract**

January 1, 2010 through June 30, 2015.

2. **Article XXIII, Wages**

January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

FMBA LOCAL 10

1. **Term**

Six year contract 1/1/10-12/31/15

2. **Salary/Wages**

3.0% increase per year to all steps exclusive of increment.

3. **Payroll Deferral**

Incorporate terms of previous settlements/memoranda into contract.

4. **Form of Contract**

The City must execute a formal contract and provide copies to all FMBA members, incorporating all previous memoranda, sidebars, and the results of this interest arbitration.

5. **Acting Superior Pay**

Incorporate current practice for procedure to appoint acting superior opportunities and establish pay rate at hour for hour, no minimum hour requirement.

6. **Salary/Wages for New Hires**

Reduce salary schedule by two steps.

7. **Section 125 Plan**

Establish a Section 125 plan to be utilized for all healthcare contributions including but not limited to the current 1.5% health care contribution.

8. **Educational Stipend**

Increase annual stipends to the following levels.

| | |
|---------------------------------|------------|
| AA Degree: | \$1,000.00 |
| AA Degree in Fire Science | \$1,500.00 |
| BA or ES Degree | \$1,500.00 |
| BA or ES Degree in Fire Science | \$2,000.00 |

9. **Health Insurance Opt-out**

Provide a stipend for those FMBA members who choose to opt out of coverage in the amount of \$5,000.00.

10. **Health Insurance**

Incorporate terms of PERC decision authored by Ed Gerber. Disability benefits for retirees: benefits as awarded by Edmund Gerber on December 12, 2007 in City of Orange Township and Orange P.B.A. Local 89, et al, PERC Docket No. AR-2007-175 and State Board of Mediation Docket No. SB-04-0765.

11. **Death Benefit**

Afford the FMBA with a Death Benefit identical to the one afforded to the Fire Superior Officers' Association.

12. **Transfers Between Tours and Impact on Vacation Schedule**

The FMBA proposes that when a firefighter is transferred between companies, the company to which the firefighter is transferred to must honor any pending vacation requests and request for days off or change days. Also, when a firefighter is transferred to a tour after having selected vacation days, the days will be available for selection in the tour from which the firefighter transferred.

13. **Light Duty**

The FMBA proposes that any firefighter assigned or placed on light duty to work the "5th Platoon" should be placed on the same work schedule as the firefighters and supervisors regularly assigned to the "5th Platoon".

14. **Summer uniforms**

Incorporate the previous agreement regarding the Fire Department purchasing summer uniforms.

15. **Wireless Internet Service**

Allow the FMBA to install and have usage of telephone, facsimile, and wireless internet services within headquarters provided at the FMBA's cost.

16. **Personal Days**

Allow FMBA members to utilize personal days so long as staffing level minimums are sufficient.

17. **Payroll Deductions**

Provide that payroll shall remit payment to third parties on the same date that payroll deductions are made by the employer.

18. **Personal**

Provide that personal days shall be utilized in twelve hour blocks.

BACKGROUND

The City of Orange Township is a municipality in Essex County with a population of approximately 32,000. Its estimated median household income in 2013 was \$42,654 compared to \$54,176 in Essex County and \$70,165 for the State of New Jersey. Salaries for its public safety officers are comparatively low within the County. In 2009, the median salary for its police officers ranked next to last out of twenty-two (22) municipalities in Essex County. The City has struggled to maintain staffing levels in its Fire Department. Projected layoff of firefighters was avoided in 2011 through financial concessions from the fire unions including a five (5) day salary deferral, a give back of fifty-five (55) hours of holiday pay and compensatory time adjustments. Twelve (12) firefighters were hired through a FEMA grant.

FMBA Local 10 represents fifty (50) rank and file firefighters. The last collective negotiations agreement between the City and Local 10 expired on December 31, 2009. FMBA Local 210, Fire Officers Association (FOA) represents thirty (30) Fire Officers. The last collective negotiations agreement between the City and the FOA expired on December 31, 2008. PBA Local 89 represents fifty-eight (58) rank and file police officers. The last collective negotiations agreement between the City and the PBA expired on December 31, 2009. These prior agreements were reached by MOAs that modified prior fully executed agreements. However, the parties did not execute new overall

collective negotiations agreements after reaching the MOAs. The record reflects that the last fully executed collective negotiations agreements had expiration dates of December 31, 2001 for PBA Local 89, December 31, 2004 for the FOA and December 31, 2005 for the FMBA. During these time periods, the City and the Unions also reached sidebar agreements on many issues.

The police and fire departments operate in a challenging environment. While the crime rate in 2013 decreased from 2010 levels, property and violent crime comparisons show the City at substantially higher levels than the State and National averages. In 2009, the Fire Department responded to 246 fires, 169 medical service calls, 198 HAZMAT calls and overall responded to 1,882 calls.

Negotiations among the above parties commenced in early 2010. Due to impasse, petitions for interest arbitration were filed. The last petition was filed on December 14, 2010. Based upon the date of filings, the arbitrations were conducted under the provisions of P.L. 1995, c. 425 prior to the enactment of the 2% "hard cap." The parties engaged in many mediation and arbitration sessions, some of which combined the submission of evidence along with voluntary settlement efforts. These started on October 18, 2010 and continued on February 17, 2011, July 5 and 10, 2012, January 14 and May 21, 2013.¹ The

¹ In the interim, the parties attempted on their own, but did not succeed, in reaching settlement although a draft Memorandum of Agreement was constructed. The record contains reference to this document. I will neither admit nor reference this document inasmuch as it reflects settlement discussions that are not admissible according to applicable law.

final formal interest arbitration hearing was held on July 28, 2013. Post-hearing briefs were filed in late January 2014. Additional submissions by all parties and additional argument concerning recent financial developments in the City and the finances of the City's Water and Sewer Utility were filed through December 18, 2014.

Although there are many issues in dispute in all of the three units, the core of the impasses concerned financial and compensation issues. Because the City's financial condition was an issue that applied to all three bargaining units, this decision's references to the City's finances will be applicable to all three units. This was consistent with a procedural agreement to have the City's financial presentations made in front of all three employee organizations with opportunities for each Union to cross-examine City witnesses.

The parties are in sharp disagreement as to the extent to which the City can fund any of the proposals of the Unions.² The City relies mainly on testimony explaining official budget documents it submitted into evidence as well as testimony in the form of Certifications from Carl Smith, Tax Collector and Joy Lascari, Chief Financial Officer. During the pendency of these proceedings, the City transitioned from a fiscal year budget ending on June 30 of each year to a

² For the purpose of depicting the positions of the parties, I will refer to the three employee organizations individually by name and, where appropriate, collectively as "the Unions."

calendar year budget ending on December 31 of each year. This occurred during 2011 and created difficulty in the City's ability to file a timely budget.

City testimony indicates that its fiscal problems were exacerbated in 2010 by a combination of many factors, including the impact of the deep recession on its budget beginning in 2009. The State sharply reduced funding to the City through the Urban Enterprise Zone program, the City added \$473,350 in deferred charges, had a deficit of \$159,064 in receipts from delinquent taxes, a deficit of \$107,177 in miscellaneous revenues, a tax collection rate of 93.85% that forced it to appropriate \$3.3 million for its reserve for uncollected taxes and suffered increases in debt reserve payments, health benefits and premium costs. Prior to these unfavorable developments, the City had recently concluded a four year agreement with its Police SOA for years 2008-2011 and was under contract in 2009 with PBA Local 89 and FMBA Local 10 for the last year of a four year agreement that began in 2006. The FOA was not under contract in 2009 and this year remains an open year.

Chief Financial Officer Lascari states that she is aware of all annual budgets and annual financial statements since 2009 including the City's budget that it proposed for calendar year 2013. She notes accurately that there are three public safety units in this proceeding with the potential for multiple years' worth of potential retroactive payments. She believes that the City would not be able to absorb the cost of any retroactive payments. She describes the City as

being “plagued with the usual lack of commercial and industrial properties for real property tax basis as well as the problem of a depressed tax-paying populace.” She points to a discovery by a new administration that the City has been underfunding its payments to its unemployment insurance carrier since 2010 and as of July 1, 2013, owed \$1,034,314.03. She further stated that the City has been burdened by a 15% increase in health insurance costs, an outstanding obligation on an ambulance service contract of \$225,000, financial pressures exerted by the “artificial” levy cap set by the State, an unfunded 27th pay period in 2010 which had not been properly budgeted, and decreasing state aid.

Tax Collector Smith emphasized that the City has been adversely affected by property tax appeals since 2009 as a result of declining property values linked to economic recession. He submits that in State fiscal year 2011, Orange lost a total of \$556,957.43 in real property tax dollars from judgments rendered in New Jersey Tax Court and Essex County Board of Taxation. Turning to the transition year 2011, he states that Orange lost a total of \$680,502.98 in real property tax dollars from judgments rendered in New Jersey Tax Court and Essex County Board of Taxation. He next referred to calendar year 2012, and that during the budget year, Orange lost a total of \$1,079,635.12 in real property tax dollars from judgments rendered in New Jersey Tax Court and Essex County Board of Taxation. Noting that the total loss of real property dollars from July 1, 2010 to December 31, 2012 was \$2,317,095.53, he believes that going forward he

expects a similar loss of revenues based upon pending appeals. He stated that the amounts owed have either been paid in real dollars to property owners or provided by placing a credit on outstanding tax bills. The City represented through public notices that despite the national recession, it has attracted new development and revitalization of properties to help revenue production and to control property taxes.

The Unions' financial presentation was as set forth in the testimony of its Financial Expert Raphael J. Caprio, PhD. who also authored a report containing a comprehensive financial analysis of the finances of the City of Orange. For the purpose of his report, Dr. Caprio testified that he reviewed and examined the proposals for a new contract for PBA Local 89 and for Fire Officers Association Local 210 covering the periods from January 1, 2010 to December 31, 2016 and January 1, 2009 to December 31, 2016, respectively; and also the proposals for FMBA Local 10 (rank and file) covering the period January 1, 2010 to December 31, 2015. He testified that he assessed the City's financial condition after relying on an extensive set of materials, including but not limited to (a) the Essex County Abstract of Ratables, 2006-2012, (b) Annual Financial Statements for the City of Orange for SFY 2008 through SFY 2011, TFY2011 and their first calendar year budget, i.e. FY 2012, (c) City Budgets for SFY2008-CFY2013, (d) City audits, (e) recently adopted legislation, commonly referred to as Chapter 78 (the Pension and Health Care Benefits Reform Law of 2011), (f) the distribution of salaries

within the PBA and FMBA Locals, aging costs, health care premium costs, and other related wage and compensation data as provided by the City (g) State of New Jersey data on the distribution of land use and numbers of parcels across which and costs would have to be distributed (to complete a true impact assessment), and finally (h) other budget and comparative data as necessary to develop a complete analysis of the City's ability to fund wage requests as submitted by the Locals. After such review, Dr. Caprio opined that "it is my unqualified conclusion that the City of Orange has, within all criterial as required in current arbitrations and in particular considering the financial criteria and impact upon the community, ample resources to fund the salary increases as requested for settlement without detrimental impact on the community."

Before turning to the evidence that the Unions have submitted the support of Dr. Caprio's conclusion, it must be noted that his review of budget documents led to a general confirmation of CFO Lascari's statement that the City would have difficulty absorbing the cost of retroactive salary payments to employees in the three public safety units at issue for 2010, 2011 and 2012. Dr. Caprio noted, and criticized the fact that the City did not encumber funds to anticipate settling the collective negotiations agreements or funding the terms of an interest arbitration award. He contends that the City was not prudent when it did not encumber such funds and further noted that the City was able to provide salary adjustments during the 2010-2013 time period with other employee organizations. Reference

is made to an MOA between the City and the Police SOA on November 7, 2008 that called for 4% increases on January 1 of contract years 2008, 2009, 2010 and 2011. Later, on January 7, 2009, the MOA was modified to four years of 3% increases in 2%/2% splits. He testified that if the City's position, in whole or in part, were to be sustained on the issue of retroactivity, the City nevertheless has the ability to improve salary scales in contract years prior to and beyond 2013 to a level that would have incorporated salary increases that the Unions have justified for the years that the City contends cannot be funded by retroactive payments. In short, this could be accomplished by adopting the Unions' proposals to defer retroactive monies for prior years towards the end of the Agreement split into equal percentage amounts.

Dr. Caprio points to several areas of the financial evidence to support his conclusion that the City can fund the Unions' proposals. He observed that when the State converted from a State fiscal year to a calendar fiscal year, the completion of a six month transitioning fiscal year allowed for the retention of resources and the reconstitution of the City's fund balance. He noted that:

[M]any benefit payments typically are paid in the first three months of the calendar year, and second, state aid is typically received in the third quarter of the calendar year. Thus, while projecting a pro-rated six-month appropriation budget, the City was (a) relieved of making a significant benefits payment, while (b) receiving a full year of state aid for only a six-month period (which in the case of Orange is significant). The net effect of these two factors generally results in a significant reconstitution to the municipal fund balance. In the immediate case, the late distribution of property tax bills and

politically motivated decision not to generate the full half-year property tax levy provided some unnecessary challenges from which the City has not addressed and is recovered from.

Additional observations as to the City's finances made in Dr. Caprio's analysis can be summarized as follows.

- During the transition year budget and the 2012 fiscal year the City did not use approximately \$1 million in taxing capacity.
- The City has consistently appropriated substantially less funds than are allowable under its appropriation cap.
- The City has raised less revenues in property taxes than are allowable under the tax levy cap.
- Property tax projections in 2013 substantially exceed actual property tax revenues in 2010.
- The City's collections and delinquent taxes have been increasing.
- Locally generated miscellaneous revenues have shown improvement.
- State aid has been consistent, stable and predictable.
- By 2013, the City was expected to reconstitute more than \$1.1 million through excess operations resulting in a significantly improved fund balance at the end of 2013.
- The amount of the surplus that remains available in 2013 is at the highest level since before 2009.
- Chapter 78 has resulted in a shift of up to 35% of premium costs from taxpayers to employees, resulting in savings to the City and reductions in take home pay for employees.
- The Chapter 78 impact has caused a loss of up to 9% of an employee's compensation by 2015.

The financial data on costs that I have resolved are based upon Dr. Caprio's analysis of each of the Unions' salary proposals. The exhibits include costs of step movements and across the board increases, retroactive payments and reductions in salary line items due to reductions in staffing. The Unions' exhibits are the sole evidence on costs.³

The 2014 submissions (October 29, November 12 and December 18) submitted by PBA Local 89 and the FOA, as concurred in by the FMBA, are interpreted by the Unions to reflect that the Water and Sewer Utility substantially improved its cash position and fund balance as of December 31, 2013, thereby improving the City's overall finances and that the City's redevelopment efforts reflect an enlarging tax base that yields greater tax revenues. The Unions point to a City document "Total Revenue from Development Projects 2012-2014: \$940,127.04" to show new revenues reaped by the City as well as a note in the document showing that the funds are used to subsidize the City's tax base for the purpose of law enforcement, firefighters and other critical services. The City rejects the Unions submissions and submits that the revenues from the Utility in 2012 and 2013 did not cover expenses during those years and that it has commissioned a study to look at the solvency of its utility operations. The City also objects to the use of funds from its utility operations to fund payroll costs in its public safety departments.

³ The costs of the salary portion of the Award are approximately one-half of the amounts set forth in Dr. Caprio's cost analysis.

Although the City's finances are mainly at issue, substantial evidence was received concerning cost of living data and external comparables as they appear in charts, graphs, labor agreements, PERC settlement data and interest arbitration awards.

DISCUSSION

The statute requires the arbitrator to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

- (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, 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 the P.L. 1976 c. 68 (C.40A:4-45 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 on 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 programs and services for which public moneys have been designated by the governing body in its 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.
- (9) Statutory restrictions imposed on 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 section 10 of P.L. 2007, c 62 (C.40A:4-45.45).⁴

My review of the criteria will be based on the evidence presented as well as applying well established standards that are ordinarily or traditionally considered in determining terms and conditions of employment. The party that seeks to modify existing terms and conditions of employment must meet a burden to prove the basis for its proposed change. This burden cannot be met by desiring enhanced terms and conditions of employment without providing sufficient evidentiary support. No proposed issue can be deemed presumptively valid in the absence of credible evidence justifying change. I also note that the merits of awarding a proposal cannot be viewed in isolation. A decision to award or deny any individual issue must include consideration as to its reasonableness in relation to the terms of the entire award. In other words, there may be merit to awarding or denying a single issue if it stood alone, but a different conclusion

⁴ During the pendency of these proceedings, the "annual tax levy cap" was modified from 4% to 2%.

may be reached after assessing its merits within the context of the terms of the overall award. By way of example, comparability evidence may suggest the awarding or improving of an economic benefit, but the financial impact of all terms awarded may preclude the awarding of an individual proposal. I will first review and decide issues that are common to all of the three bargaining units other than salary. This will be followed by a review and decision on the issues raised by each unit separately on a unit by unit basis. After review and decision on salary for all three bargaining units, an award section will be provided that will include an individual award for each individual bargaining unit.

Duration (PBA – FMBA – FOA)

PBA Local 89 proposes a seven (7) year agreement effective from January 1, 2010 through December 31, 2016. FMBA Local 10 proposes a six (6) year agreement effective from January 1, 2010 through December 31, 2015. FMBA Local 210 (FOA) proposes an eight (8) year agreement effective from January 1, 2009 through December 31, 2016. The City proposes a six (6) year agreement effective from January 1, 2010 through December 31, 2015 for PBA Local 89 and FMBA Local 10, and a seven (7) year agreement for FMBA Local 210 (FOA) from January 1, 2009 through December 31, 2015.

As is reflected above, PBA Local 89 and FMBA Local 10 each have contracts that will commence on January 1, 2010 while the contract for FMBA

Local 210 (FOA) will commence on January 1, 2009. The start dates for new agreements for each of these bargaining units shall be the day after the expiration date for each of the prior contracts. I conclude that the interests and welfare of the public will be best served by awarding an expiration date that is common for all three units. In this instance, I conclude that this date should be December 31, 2016. A common expiration date will allow the parties to confront the City's fiscal situation and other relevant evidence for each contract year at the same time that negotiations are occurring rather than having to compare and contrasting the results of bargaining years after one or more contracts have been completed due to differing expiration dates. The December 31, 2016 expiration date will allow for sufficient time for negotiations for a new agreement while employees remain under contract prior to the expiration date. Accordingly, the terms of duration shall be January 1, 2010 through December 31, 2016 for PBA Local 89 and FMBA Local 10 and January 1, 2009 through December 31, 2016 for FMBA Local 210 (FOA).

Health Insurance – Disability (PBA – FMBA – FOA)

The Unions have proposed to incorporate the terms of a grievance arbitration award that covered the issue of health insurance benefits for an employee who has received a disability pension due to either an on-the-job or an off-the-job disability injury. According to the Unions, the City is honoring the award but nevertheless, it believes the issue should be incorporated into the

Agreement in order to reflect the terms of this specific condition of employment for unit employees.

The grievance arbitration award involved the City of Orange Township and Orange Police Benevolent Association Local No. 89; Superior Officers Association; Orange Fire Officers Association Local No. 210; Orange Fireman's Mutual Benevolent, Local 10 and Orange Municipal Employee Benevolent Association. (AR-2005-715 and SB 04-0765, issued December 12, 2007, Edmund G. Gerber, Arbitrator). The award is lengthy and need not be summarized. In pertinent part, the award stated that "the City shall provide all employees who retire on early disability with health insurance" because the arbitrator found that the City violated the agreement by not providing health benefits to members of the FMBA and FOA who retired on a disability after the City had changed its health insurance plan.⁵

Based upon the above, I award the Unions' proposal to include language in the new agreements reflecting that the City will provide unit employees who retire on early disability with health insurance pursuant to the Gerber Award.

⁵ The arbitrator took note of the fact that the police units have express contractual provisions that provide for this benefit.

Health Insurance Contributions (PBA – FMBA – FOA)

In the course of their submissions concerning health insurance and salaries, all parties acknowledged that legislation had been enacted requiring unit members to contribute required amounts of base salary towards health care benefits beginning May 21, 2010 pursuant to P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. Chapter 78 provides for amounts of health benefit contributions pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amount of base salary that employee earns. There is no dispute as to the applicability of these provisions to unit employees during this contract term. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the City's lawful authority and statutory limitations. One such legal requirement on the City was to implement Chapter 2 and Chapter 78 in accordance with their terms. The health insurance articles in all three agreements should contain reference to the legal basis for the contributions unit employees have been required to make. Accordingly, the agreements shall include language reflecting that health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

Health Insurance Opt-Out Payment (PBA – FMBA – FOA)

PBA Local 89 and FMBA Local 210 propose that the payment for opting out of health benefits coverage be increased from \$2,500 to \$5,000. FMBA Local 10 also proposes that a provision be included in its Agreement to provide a stipend for those FMBA members who choose to opt out of coverage in the amount of \$5,000.

The City currently provides a payment when employees opt out from receiving health benefits from the City. At hearing, it was estimated that the City receives a savings in excess of \$20,000 when an employee opts out of receiving health benefits. The Unions have proposed that the payment for opting out of health benefits coverage be increased from \$2,500 to an amount that shall not exceed 25%, or \$5,000, whichever is less, of the amount saved by the Employer because of the employee's waiver of coverage.

According to the Unions, the proposal is consistent with the clear language set forth in N.J.S.A. 52:14-17.31a(c), as well as N.J.S.A. 40A:10-17.1. It is noted that Article XIII(H) in the existing FMBA Local 210 (FOA) Agreement states that "individual employees may voluntarily waive the Employer provided medical insurance and be paid for this waiver in the amount of \$2,000 annually." The Unions' proposal to increase the payment for opting out of health benefits is reasonable, consistent with statute, and supports the basic premise of

implementing a waiver; namely, that a public employer can achieve substantial savings in health insurance premiums by providing a far lesser payment to an employee who opts out of employer paid health care coverage and the employee can receive a stipend as an incentive for doing so. Given this, and the absence of challenge by the City, I award this proposal with the modification that its implementation must be consistent in all respects with N.J.S.A. 52:14-17.31a(c) and/or N.J.S.A. 40A:10-17.1.

Negative Sick Leave Recoupment (PBA)

The City proposes the imposition of a Negative Sick Leave recoupment policy. According to the City, its proposal to the PBA would match the language that is already in place for the Police SOA.

The City's reference to the Police SOA is directed towards Section 6 of the MOA it entered into with SOA Local 89 for the time period January 1, 2008 through December 31, 2011. The relevant term used in that section is "unearned/negative sick leave." Under prior practice, employees were allowed to accrue and use unearned sick leave balances. The agreement between the City and the SOA contained a formula for recoupment of such time and a guarantee from employees "that all unearned sick leave balances that have been accrued, or which may accrue in the future, will be paid back to the City prior to, or upon separation of employment." Further, the MOA stated that "should an employee

become separated from the City through termination, retirement, etc., recoupment of all unearned sick leave will be immediately due to the City.”

In its post-hearing brief, the PBA refers to its October 7, 2013 submission representing that due to an amicable resolution of this issue, this has obviated the need to render an award on the issue. While note is made of this representation, the record does not include an MOA on this issue that confirms that the issue has been fully resolved. Accordingly, I award the City’s proposal but will retain jurisdiction over the issue in the event that the purported agreement has been executed and/or implemented in a manner that requires that the terms of this Award be clarified.

Article XXXIII – Miscellaneous: Section 10, Education Pay (PBA)

PBA Local 89 currently receives educational stipends in the amount as follows:

| | |
|-----------------------------------|-------|
| AA Degree | \$125 |
| AA degree in police science | \$250 |
| BA or BS degree | \$250 |
| BA or BS degree in police science | \$500 |

The PBA proposes that the educational stipend be increased to the following levels:

| | |
|-----------------------------|-------|
| AA Degree | \$250 |
| AA degree in police science | \$500 |

| | |
|-----------------------------------|---------|
| BA or BS degree | \$1,000 |
| BA or BS degree in police science | \$2,000 |

According to the PBA, the current stipend is only nominal and does not provide an incentive for an employee to obtain an advanced degree. It submits that the City and its residents benefit by police officers obtaining educational degrees. It further submits that the current stipend is not comparable to that paid in other communities.

I do not award the PBA's proposal. Although it cannot be disputed that there are benefits to be derived by an employee pursuing higher education, the record reflects that the parties have reached prior agreement as to the level of added compensation to be received for those who have already achieved a degree. I do not find that a sufficient basis has been shown to award the change proposed by the PBA.

Sick Leave Calculation (PBA)

PBA Local 89 proposes to incorporate language into the parties' Agreement which would require the City to calculate sick time and vacation time at a "day for a day" rate for all patrol PBA members. According to the PBA, members' daily sick time and vacation time calculations, depending on the tour they work, should be either 10.75 hours (patrol), 9.5 hours (detective) or 8.25

hours per day (other). The PBA also proposes that this new method for the calculation of time should be retroactive to January 1, 2010.

According to the PBA, this proposal constitutes a “correction” and would cure an injustice in how hours are calculated for sick time, vacation time, personal days and seniority days. The argument in support of the proposal was succinctly summarized in the PBA’s post-hearing submission:

In other words, these employees are now given hours for the above-referenced contractual benefits based upon an eight-hour work day multiplied by the number of days the employee is entitled to without regard to the number of hours an employee works. When any employee takes a sick day, a vacation day, a personal day or a seniority day, the charge against hours is not eight (8) hours. Currently, employees are charged the actual hours worked during a given day, which equates to 10.75 hours for patrol, 9.5 as to Detectives and for those assigned to Administration.

I do not award this proposal. The PBA has not shown that the current method of calculation is a mistake or a unilateral change in calculation that yields an inequitable result. The existing scheme for the calculation of paid time off is not, as argued, inconsistent with the method of calculation currently provided in the agreement between the City and SOA Local 89 (Police Superiors). SOA Local 89 converted to a 10.75 hour day effective June 1, 2008. When doing so, the SOA and the City converted the then existing hours for sick days, vacation days, seniority days and rank days into a formula that did not expand the amount of paid leave time based upon the paid leave hours that were available to

employees prior to the conversion. A specific example of that conversion appears in the MOA between the City and SOA Local 89:

All leave time shall be converted to hours, by way of example, the current 15 eight-hour sick days, which are provided under the current "4-2" schedule for a total of 120 hours because of the current eight-hour day, shall be changed under the "4-4" work schedule to 11.162, 10.75 hour sick days. This conversion shall be applicable as well to vacation days, seniority days and rank days.

Based upon the above, the proposal is denied.

Clothing and Maintenance Allowance – Detectives (PBA)

PBA Local 89 proposes to increase the Detective Clothing and Maintenance Allowance from \$250 to \$1,000 and for the increase to be retroactive to January 1, 2011. The PBA has established that the existing allowance is nominal and below the level of this benefit generally received in law enforcement. However, the level of increase sought cannot be justified based on the overall financial impact of the terms of the overall award on the City. Accordingly, I award an increase of \$250 in the Detective Clothing and Maintenance Allowance effective January 1, 2015.

Life Insurance and Death Benefits (PBA)

PBA Local 89 proposes that the life insurance benefit received by a surviving spouse of an employee killed in the line of duty be increased from

\$10,000 to \$50,000. It points out that a police officer's job is dangerous and that the surviving spouse benefit is larger in other jurisdictions. This benefit presently exists in Article XVII, Section 2. The existing benefit compares favorably to the \$10,000 death benefit currently received by the FMBA and FMBA Local 210 (FOA). Based upon this, the proposal is not awarded.

Article XIV, Bereavement Leave, Section 1 (PBA)

The PBA proposes to add the following to the definition of an immediate family member: grandchildren, sister-in-law, brother-in-law and individuals residing in the employee's household. Additionally, the word "child" would be defined as a "natural, adopted or foster child." The PBA contends that its proposal would conform the scope of the definition of an immediate family member to that set forth in the SOA agreement.

The PBA is also seeking to revise the language in this section so that bereavement leave (not to exceed five (5) calendar days beginning with the date of death) does not commence until the first day of the employee's tour following the date of death as opposed to the current requirement that bereavement leave commences the day following the date of death. The PBA asserts that the proposed change provides sufficient time to grieve with the existing language does not.

There is merit in the portion of the PBA proposal that the definition of an immediate family member conform in scope to the definition of immediate family member contained in the SOA agreement. I award this proposal. This will provide for internal comparability and no evidence has been presented by the City as to why the definition of an immediate family member should differ between these two units. Accordingly, the definition of immediate family member shall be expanded to include children (natural, adopted or foster), sister-in-law, brother-in-law, grandchildren and individuals residing in his/her household.

I do not award that portion of the PBA proposal concerning when bereavement leave should commence. The existing provision provides for bereavement not to exceed five (5) calendar days beginning with the date of death. The record does not establish sufficient evidence as to why the existing provision is inequitable or arbitrary. I conclude that the status quo shall be carried forward into the new agreement.

Court Time (PBA)

PBA Local 89 proposes changes to the existing provision on court time. It is limited to laid off employees who are required to perform the same official duties as if they were employees. The following sections of Article XI pertain to compensation for active employees who are required to attend any judicial or quasi-judicial proceedings in connection with the performance of his/her duties.

Section 1: If an employee is required to appear in any court or in any judicial or quasi-judicial proceeding in connection with the performance of his duties on his day off, time-off, or vacation day, he shall be paid at the rate of one and one-half (1½) times his base rate of pay for all time spent, including travel time from and to Orange Police Headquarters as per existing department regulations, in connection with any such appearance.

Section 3: If an employee is required to utilize a private vehicle to meet the requirements of Sections 1 and 2 of this Article, he shall receive mileage compensation at the prevailing I.R.S. rate.

In addition, the City agrees to pay the necessary parking expenses for appearances required by Sections 1 and 2 of this Article, whether incurred for a City-owned or privately-owned vehicle. In consideration for this benefit, any officer who incurs a motor vehicle summons shall be personally responsible for payment.

Section 4: It is understood and agreed that the provisions of Article X, Section 2, relating to 2 hours minimum call-in pay shall apply to this Article XI; provided, however, that the City shall provide a minimum of three (3) hours call-in pay to officers who are required to appear in any court in the City of Newark in connection with the performance of their duties on their day off, time off, or vacation day.

The PBA proposes that the above provisions should also apply to any member of the PBA who was subjected to the City's layoff action and anyone similarly situated who may be impacted in the future. The PBA submits that many of the PBA employees who were subjected to the layoff action were required to attend judicial or quasi-judicial proceedings in connection with job duties they performed prior to being laid off.

I do not award the PBA's proposal in its entirety. Section 1 can only apply to a current employee. I do award the PBA proposal to make Sections 2 and 3 applicable to a laid off employee because they are required to perform the same duties as if they were employed. The award shall state:

Any unit employee who has been subjected to layoff and is required to attend judicial or quasi-judicial proceedings in connection with job duties they performed prior to being laid off shall be entitled to the provisions set forth in Article XI, Sections 2 and 3 in the same manner as if they had been employed at the time of the proceeding.

Article XXIII, Wages, Section 2 (PBA)

PBA Local 89 proposes increase in annual payment from \$750 to \$2,000 for employees assigned to the Detective Bureau. It submits that it is one of the lowest payments in the State and submits a chart supporting this contention. The PBA has established that the existing payment is nominal and below the level of this benefit generally in law enforcement. However, the level of increase sought cannot be justified based on the overall financial impact of the terms of the overall award on the City. Accordingly, I award an increase of in the annual payment for employees assigned to the Detective Bureau in the amount of \$250 effective January 1, 2015.

Seniority (PBA)

PBA Local 89 proposes that language be included in the parties' Agreement which would acknowledge the seniority practice. Specifically, it seeks that language should be included in the Agreement stating that seniority will be abided by when making assignments pertaining to overtime, side jobs and tour picks, which are done twice a year. I do not award this proposal. The record contains insufficient evidence that there has been a longstanding and consistent practice that requires all assignments to overtime, side jobs and tour picks to be made on the basis sought by the PBA. In the event that such practice can be proven in a case where seniority has not been followed, the issue of the enforceability of such practice can be presented in a grievance arbitration proceeding.

**Article XXXIII – Miscellaneous: Section 10,
Increase in Education Pay (FMBA Local 210, FOA)**

The FOA currently receives educational stipends in the amount as follows:

| | |
|---------------------------------|-------|
| AA Degree | \$125 |
| AA degree in fire science | \$250 |
| BA or BS degree | \$250 |
| BA or BS degree in fire science | \$500 |

The FOA proposes that the educational stipend be increased to the following levels:

| | |
|-----------|-------|
| AA Degree | \$250 |
|-----------|-------|

| | |
|---------------------------------|---------|
| AA degree in fire science | \$500 |
| BA or BS degree | \$1,000 |
| BA or BS degree in fire science | \$2,000 |

According to the FOA, the current stipend is only nominal and does not provide an incentive for an employee to obtain an advanced degree. It submits that the City and its residents benefit by police officers obtaining educational degrees. It further submits that the current stipend is not comparable to that paid in other communities.

I do not award the FOA's proposal. Although it cannot be disputed that there are benefits to be derived by an employee pursuing higher education, the record reflects that the parties have reached prior agreement as to the level of added compensation to be received for those who have already achieved a degree. I do not find that a sufficient basis has been shown to award the change proposed by the FOA.

Clothing and Maintenance Allowance (FMBA Local 210, FOA)

The FOA proposes to increase the clothing and maintenance allowance from \$350 to \$600. It also proposes to incorporate language into this provision which would require the City to provide newly promoted Fire Officers with a complete dress uniform at the City's expense. The FOA has shown that the existing allowance compares unfavorably to the comparisons it has presented.

However, the increase to the allowance shall be for an additional \$150, thus raising the allowance to \$500 effective January 1, 2016. I do not award the proposal concerning dress uniforms. Article XII(A) provides that the City is now obligated to provide an annual sum of \$70 for the purchase of dress uniforms. It states:

In addition to the annual uniform maintenance stipend, each firefighter shall receive, the annual sum of \$70 in lieu of the provision of dress uniforms by the City. It is understood that by its agreement to pay this additional \$70 stipend in lieu of provision of dress uniforms, the City is relieved from any obligation to provide, or to have provided, dress uniforms for firefighters at any time. Employees are not required to provide or have dress uniforms.

Given this language, I do not award the FOA's proposal on dress uniforms.

Article XIII, Insurance, Section G (FMBA Local 210, FOA)

The FOA proposes that the "death benefit" be increased from \$4,000 to \$10,000. The term "death benefit" in Section G is a life insurance benefit. It is a separate benefit from a \$10,000 benefit provided to a deceased fire officer's family for death resulting from an on-the-job injury. The existing \$4,000 amount for the "death benefit" was negotiated with an effective date of January 1, 1986. The PBA and SOA agreements currently provide a \$10,000 life insurance benefit. Given the date that the \$4,000 amount was established in 1986 and the fact that the PBA and SOA agreements currently provide a \$10,000 life insurance benefit, I find merit in the proposal and incorporate it into the award effective as

soon as is administratively feasible, but no later than ninety (90) days from the date of this Award.

Article XIII, Insurance, Section C (FMBA Local 210, FOA)

The FOA proposes to change Article XIII(C) by increasing the contractual life insurance benefit received by a surviving Fire Officer's family of an employee killed as a result of an on-the-job injury from \$10,000 to \$50,000. I denied a similar proposal advanced by the PBA and noted that the benefit for the PBA, FOA and FMBA is set at \$10,000. Accordingly, the proposal is denied.

Article XV, Leave of Absence, Section B (FMBA Local 210, FOA)

The FOA has proposed to modify Article XV, Section B, Subsections 1 and 2. This provision currently reads as follows:

B. Funeral Leave

1. Special leave of absence with pay up to a maximum of four (4) days shall be granted to any member of the Department in case of a death within his immediate family, but such member shall report for duty the day after the funeral if scheduled to work.
2. The term "immediate family" shall include only father, mother, father-in-law, mother-in-law, grandparents of employee or spouse, sister, brother, sister-in-law, brother-in-law, child and foster child of an employee, and his relatives residing in his household.

The FOA proposes three specific changes to this Article. The first change is intended to eliminate the requirement in Article XV, Section B(1) that the member must report for duty the day after the funeral if the member is scheduled to work. The FOA compares its existing provision with the bereavement leave articles for the PBA and SOA where officers can receive time off without pay of up to four consecutive work days. The specific proposal is as follows:

Members of the FOA who use bereavement leave for the death of an immediate family member are required to report back to duty the day after the funeral if they are scheduled to work. This should be revised in a manner consistent with the PBA and Police SOA. The SOA receive time off with pay of up to four (4) consecutive work days in the event of a death in the employee's immediate family.

The second change sought by the FOA is to expand the definition of "immediate family member". Currently, an immediate family member is defined in Article XV, Section B(2) as follows:

The term "immediate family" shall include only father, mother, father-in-law, mother-in-law, grandparents of employee or spouse, sister, brother, sister-in-law, brother-in-law, child and foster child of an employee, and his relatives residing in his household.

Specifically, the FOA seeks to add to the definition of an "immediate family" member, the following individuals: an "adopted child, grandchildren, and individuals residing in the employee's household." According to the FOA, this proposal would extend the scope of the definition of an immediate family to that as set forth in the SOA Agreement.

The third change to Article XV, Section B is to clarify subsection 2 to show that a day is the existing working day for Local 210 members, namely, 24 hours. Thus, all references to time off in the bereavement section would show that a “day off” is a 24 hour shift. The FOA contends that the clarification it seeks is nothing more than incorporating the parties’ longstanding practice into the Agreement.

I award that portion of the FOA proposal to expand the definition of “immediate family member” to include to add “an adopted child, grandchildren and individuals residing in the employee’s household.” This modification will provide internal comparability with respect to the definition of an immediate family member as provided in the SOA agreement and as awarded to the PBA agreement. I also award the addition of “spouse” which apparently was inadvertently omitted from both the prior agreement and the FOA proposal in order to conform with the SOA agreement and the PBA article as awarded. I do not award that portion of the FOA proposal with respect to the use of the bereavement days and the requirement as to when a member must report to duty. On this issue, because of the substantial differences in their respective work schedules, I do not find the argument as to internal comparability with the police department to be persuasive. I award the clarification sought by the FOA

that a reference to “days” in Article XV, Section B – Funeral Leave, be defined as a 24 hour shift.

Article IV, Manpower, Section A (Acting Officers) (FMBA Local 210, FOA)

Currently, Fire Officers who act in the capacity of a higher rank are not compensated for acting officer duties unless they work for five (5) hours of the shift. The FOA is seeking to eliminate this restriction so that Fire Officers receive compensation for any and all time worked in the capacity of a higher rank. I do not award this proposal. It is not unreasonable for the City to require that a fire officer perform acting officer duties for a reasonable period of time prior to entitling that officer to compensation for working in the capacity in a higher rank.

Fire Inspector Pay (FMBA Local 210, FOA)

The FOA proposes to increase the Fire Inspector pay from \$2,000 to \$3,000 and to incorporate this payment into base pay. The FOA cites to the 5% stipend that a Fire Inspector Certification yields in South Orange. I do not find that this sole comparison serves as sufficient justification for the increase in fire inspector pay sought by the FOA. Accordingly, the proposal is denied.

Fire Inspector License (FMBA Local 210, FOA)

Fire Superior Officers are currently required to obtain a fire inspector license at their own expense and on their own time. The FOA is seeking to revise this provision so that employees are reimbursed for all courses associated with obtaining their fire inspector license. The FOA is seeking to revise this provision so that employees receive two personal days per year for obtaining and maintaining their fire inspector license. I award a modification to Article X, Section K only to the extent that a fire superior officer who obtains a fire inspector license shall be reimbursed for courses associated with obtaining the fire inspector license upon the completion and obtaining of the fire inspector license. This shall be effective for those courses previously taken by fire officers who complete and obtain a fire inspector license after the date of this Award.

Holidays (FMBA Local 210, FOA)

The FOA is seeking to increase holiday pay to 110 hours. Its proposal is based on matching the number of holiday pay hours currently received by the FMBA. Article XI of the FOA Agreement currently provides for 95 hours of holiday pay to be included in the base salary rate. This benefit was agreed to effective January 1, 2001 when the City and the FOA incorporated holiday pay into base salary for all years of service. An examination of the FMBA agreement does reflect that the FMBA receives 110 hours of holiday pay. However, such

pay is based upon eleven (11) paid holidays at the rate of ten (10) hours per day to be received as six (6) days in a pay period covering the first week of June and five (5) days for the first pay period in December. An FMBA employee has an option to have all of the holiday pay paid out in the first pay period of July. Unlike the FOA, there is no provision in the FMBA agreement that these stipends are included in the base salary rate.

Based upon the above, I do not award the FOA proposal. While its proposal would match the number of hours received by the FMBA, the proposal does not take into account that the FOA agreed to the number of hours received as part of its agreement with the City to place holiday pay in the base salary rate. This method of payment differs from that received by the FMBA, thereby undermining the argument that comparability would be served by granting the proposal.

Health Insurance (FMBA Local 210, FOA)

The FOA has proposed to incorporate the terms of a grievance arbitration award that covered the issue of health insurance benefits for an employee who has received a disability pension due to on-the-job or off-the-job disability injury. According to the FOA, the City is honoring the award but nevertheless, the issue should be incorporated into the Agreement in order to reflect this particular condition of employment that employees are entitled to.

The grievance arbitration award involved the City of Orange Township and Orange Police Benevolent Association Local No. 89; Superior Officers Association; Orange Fire Officers Association Local No. 210; Orange Fireman's Mutual Benevolent, Local 10 and Orange Municipal Employee Benevolent Association. (AR-2005-715 and SB 04-0765, issued December 12, 2007, Edmund G. Gerber, Arbitrator). The award is lengthy and need not be summarized. In pertinent part, the award stated that "the City shall provide all employees who retire on early disability with health insurance" because the arbitrator found that the City violated the agreement by not providing health benefits to members of the FMBA and FOA who retired on a disability after the City had changed its health insurance plan.⁶

Based upon the above, I award the FOA proposal to provide unit employees who retire on early disability with health insurance pursuant to the Gerber Award.

Summer Uniforms (FMBA Local 10)

FMBA Local 10 proposes to incorporate what it terms "the previous agreement" regarding the Fire Department purchasing summer uniforms. The FMBA contends that the proposed provision would memorialize a prior practice

⁶ The arbitrator took note of the fact that the police units have express contractual provisions that provide for this benefit.

regarding the providing summer uniforms. In support of this proposal, the FMBA points to the testimony of its President, Ruben Padilla. According to Padilla, there was a decade-long practice between the FMBA and former Fire Chief DeMarzo wherein the Chief would accept a written report requesting a summer uniform as a predicate for the department providing a uniform. According to Padilla, the cost would be between \$70 and \$90 and the providing of the summer uniform was not a regularly recurring cost.

I do not award this proposal. The contract clearly reflects, at Article XII, Section B, that summer uniform items are permitted but are not required. It further states that such uniforms shall be permitted to be worn and purchased “at their own cost and expense.” Given this clear language, the evidence alleging prior practice does not support the awarding of the FMBA’s proposal.

Transfers Between Tours and Impact on Vacation Schedule
(FMBA Local 10)

FMBA Local 10 proposes that when a firefighter is transferred between companies, the company to which the firefighter is transferred to must honor any pending vacation requests and requests for days off or change days. Also, when a firefighter is transferred to a tour after having selected vacation days, the days will be available for selection in the tour from which the firefighter transferred from.

The rationale for these proposals was advanced in the testimony of Firefighter Padilla. According to Padilla, a firefighter selects his vacation in December of the year prior to vacation. If the firefighter is transferred to another fire company during the year, his or her "slot" may have been picked by another firefighter leaving the transferred firefighter without a pick despite concrete vacation plans that the firefighter may have made as early as the prior December. Firefighter Padilla testified that the City has attempted to solve such conflicts in the past. Based upon Firefighter Padilla's testimony, I award the proposal with certain modifications. The award is as follows:

When a firefighter is transferred from one company to the next after having selected his/her vacation in December, the company to which the firefighter has been transferred will honor that vacation selection so long as the days have not already been selected by another firefighter who works in the tour to which the firefighter has been transferred. In the event that another firefighter has already selected the vacation days selected by the transferred firefighter prior to his transfer, the company will make every reasonable effort to permit the firefighter to retain his original vacation selection. A decision as to whether the firefighter's prior vacation selection will be honored will be made within 72 hours of the transfer. Any denial of the prior vacation selection shall be in writing and accompanied by reasons for the denial. The vacation days previously selected by the transferred firefighter will be made available for selection by another firefighter who remains assigned to the tour from which the transferred firefighter had been assigned.

Light Duty (FMBA Local 10)

FMBA Local 10 proposes that any firefighter assigned or placed on light duty to work the "5th Platoon" should be placed on the same work schedule as the firefighters and supervisors regularly assigned to the "5th Platoon".

According to the Union, this proposal would establish a uniform standard for light duty for those placed on the "5th Platoon." Testimony in support of this proposal was offered by Firefighter Padilla. Firefighter Padilla testified that the Agreement, at Article V(E), already provides for light duty and that this proposal deals solely with the scheduling of work hours while on light duty. According to Firefighter Padilla, firefighters who work the 5th Platoon on a permanent basis work four 9-hour days per week but that some firefighters who have been placed on light duty on a temporary basis are assigned a work week of five 8-hour days. After due consideration of the testimony, I decline to award this proposal. Insufficient justification has been presented as to why all firefighters who are placed on light duty must be placed on an identical work schedule.

Education Stipend (FMBA Local 10)

FMBA Local 10 currently receives educational stipends in the amount as follows:

| | |
|---------------------------|-------|
| AA Degree | \$125 |
| AA degree in fire science | \$250 |

| | |
|---------------------------------|-------|
| BA or BS degree | \$250 |
| BA or BS degree in fire science | \$500 |

The FMBA proposes that the educational stipend be increased to the following levels:

| | |
|---------------------------------|------------|
| AA Degree: | \$1,000.00 |
| AA Degree in Fire Science | \$1,500.00 |
| BA or ES Degree | \$1,500.00 |
| BA or ES Degree in Fire Science | \$2,000.00 |

According to the FMBA, the current stipend is only nominal and does not provide an incentive for an employee to obtain an advanced degree. It submits that the City and its residents benefit by police officers obtaining educational degrees. It further submits that the current stipend is not comparable to that paid in other communities.

I do not award the FMBA's proposal. Although it cannot be disputed that there are benefits to be derived by an employee pursuing higher education, the record reflects that the parties have reached prior agreement as to the level of added compensation to be received for those who have already achieved a degree. I do not find that a sufficient basis has been shown to award the change proposed by the FMBA.

Life Insurance or Death Benefits (FMBA Local 10)

FMBA Local 10 proposes that its bargaining unit members receive a Death Benefit identical to the one afforded to the Fire Superior Officers' Association. Article XIII, Section G provides a death benefit in the amount of \$4,000. The term "death benefit" in Section G is a life insurance benefit to be distinguished from the \$10,000 benefit in Article XIII, Section B which is paid to a deceased firefighter's family for death resulting from an on-the-job injury. As I noted in the award on this issue for the FOA, the PBA and SOA agreements currently provide a \$10,000 life insurance benefit. I awarded the \$10,000 life insurance benefit for the FOA to provide consistency with the PBA and SOA agreements. Similarly, I award the \$10,000 life insurance or "death benefit" for members of FMBA Local 10. It shall be effective as soon as is administratively feasible, but not later than ninety (90) days from the date of this Award.

Payroll Deferral (FMBA Local 10)

FMBA Local 10 proposes to incorporate terms of previous settlements/memoranda relating to payroll deferral into the terms of the agreement. I award this proposal subject to confirmation by the City that such documents have been fully and officially executed in the manner asserted by the Union.

Form of Contract (FMBA Local 10)

FMBA Local 10 proposes that the City execute a formal contract and provide copies to all FMBA members, incorporating all previous memoranda, sidebars, and the results of this interest arbitration.

This proposal has merit and it is awarded in modified fashion. The record reflects that the last fully executed collective negotiations agreement between the parties expired on December 31, 2005. Thereafter, a Memorandum of Agreement was entered into modifying the prior agreement through December 31, 2009. However, there was no fully executed collective negotiations agreement replacing the one that expired on December 31, 2005. The FMBA proposal would require the execution of a formal contract that includes the prior fully executed prior agreement, the prior MOA, sidebars and the results of this interest arbitration. I award the portion of the FMBA proposal except for the reference to sidebars. While I agree that a new fully executed contract should incorporate sidebar agreements, I do not award this portion of the proposal in the absence of evidence as to the extent to which such sidebars exist. The parties are free to, and should, incorporate such sidebar agreements during the process of drafting the new agreement. In the event there is a lack of mutual agreement to incorporate sidebars, such failure would not, in the event of a dispute, diminish the rights of the FMBA to enforce the terms of the documents pursuant to the language that appears in the sidebar documents.

Acting Superior Pay (FMBA Local 10)

FMBA Local 10 proposes to incorporate current practice for the procedures to appoint acting superior officer opportunities and to establish the pay rate on an hour for hour basis with no minimum hour requirement. The applicable provision for this issue is Article IV – Manpower. Under Article IV(a), a firefighter who is required to serve as an Acting Captain or Man In Charge receives Captain's pay but receives no additional compensation unless the firefighter serves in an acting capacity for less than five (5) hours of the shift.

The FMBA's proposal is in two parts. The first part is to incorporate current practice as to appointment procedures. The record contains no evidence contradicting testimony as to the current practice. Accordingly, I award this portion of the FMBA's proposal. The second portion of the FMBA proposal is to eliminate the five (5) hour minimum requirement for additional compensation. I have declined to award a similar proposal advanced by the FOA and also decline to award this proposal advanced by the FMBA.

Salary/Wages for New Hires (FMBA Local 10)

FMBA Local 10 proposes to reduce the salary schedule by two steps for new hires. It asserts that the eleven step schedule creates an incentive for firefighters to leave City employment. I do not award this proposal. The salary

schedule for the FMBA, as well as a new hire schedule, shall be awarded in the salary section of this Award.

Section 125 Plan (FMBA Local 10)

FMBA Local 10 proposes that the City establish a Section 125 plan to be utilized for all healthcare contributions including but not limited to the current 1.5% health care contribution.

Chapter 78 of the Laws of 2011 provides legal authority for the City to establish a cafeteria plan for its employees pursuant to Section 125 of the federal Internal Revenue Code, 26 U.S.C. § 125 (See Local Finance Notice 2011-20R, page 18). The 125 Plan would reduce an employee's tax obligation while the employee's contribution levels have risen as a result of Chapter 78. Pursuant to this authority, I award the FMBA Proposal so long as it conforms to the authority provided to the City by this statute.

Wireless Internet Service (FMBA Local 10)

FMBA Local 10 seeks to install and have usage of telephone, facsimile, and wireless internet services within headquarters provided at the FMBA's cost. The FMBA offers the following rationale in its post-hearing submission:

[T]he FMBA's proposal regarding wireless internet services presents no impediment of any kind to the City while it would return consistency to the Department, aid in restoring morale and even enhance firefighter training. FF. Padilla explained that the proposal consisted of allowing the FMBA to install and have usage of telephone, facsimile, and wireless internet services within headquarters provided at the FMBA's cost. Historically, there has been a past practice regarding this proposal as it was basically a facilities issue with no capital expenditures. The FMBA has already funded the costs of providing the necessary infrastructure and if awarded, FMBA members still be subject to all Departmental rules and regulations governing usage while on duty. FF. Padilla described how this process was in place under for Chief DeMarzo and that Chief Manganelli encouraged its use for training purposes, thus proving this proposal would actually provide a benefit to the Department itself and not just to the individual members of the FMBA.

There is merit to the FMBA proposal. I award the following language:

The FMBA shall be allowed to install and have usage of telephone, facsimile, and wireless internet services within headquarters provided at the FMBA's cost. Usage while on duty shall be subject to departmental rules and regulations.

Personal Days (FMBA Local 10)

FMBA Local 10 proposes that its members be allowed to utilize personal days so long as staffing level minimums are sufficient. It also proposes that personal days be permitted to be utilized in twelve (12) hour blocks.

Testimony in support of the personal days proposals was provided by Firefighter Padilla. He testified to practices, as well as a reorganization document announced by the City. The reorganization caused a reduction of two

Deputy Chiefs assigned to Administrative Staff at a savings of approximately \$200,000. The reorganization also reduced the number of firefighters required to man a crew from thirteen (13) to ten (10). Firefighter Padilla complained that the City uses an alleged lack of manpower as a basis to deny the use of a personal day when twelve (12) scheduled firefighters are scheduled to man a crew. He views this circumstance as providing for a full complement plus two (2) firefighters. The FMBA argues that when the City sets the minimum number of firefighters per crew at ten (10), the rationale for rejection of a personal day when twelve (12) firefighters are scheduled is completely lacking.

Article XVI provides for personal days “subject to availability of manpower”. There is merit to the FMBA proposal that when the City sets the minimum staffing level at ten (10) firefighters, the denial of a personal day when twelve (12) firefighters are scheduled to man the crew is inconsistent with the language set forth in Article XVI(A). The FMBA acknowledges that it is not seeking to negotiate over minimum staffing levels. It is apparent that this issue is a matter of contract interpretation because it arises in a context of when the City determines the minimum level of staffing it requires. This determination can vary. I conclude that this issue is a matter of contract interpretation to be decided in the context of the specific evidence that exists concerning staffing levels when a personal day request is denied. For this reason, I do not award contract

language on the use of personal days and yield this matter to the parties' grievance procedure.

The other part of the FMBA's proposal on personal days is to allow their usage in twelve (12) hour blocks. The relevant contract language is at Article XVI, Section C. It states "for purposes of this Article, a personal day shall be 8:00 a.m. to 6:00 p.m. or 6:00 p.m. to 8:00 a.m. A twenty-four (24) hour day shall constitute two (2) personal days." The FMBA's complaint is that when a firefighter decides to take one personal day that begins at 8:00 a.m. and ends at 6:00 p.m. the firefighter is required to return to the Department two hours before an 8:00 p.m. roll call, thus subjecting the firefighter to two roll calls. I do not award this proposal. The number of personal days and the time periods for the use of those days are clearly set forth in the Agreement and insufficient evidence has been provided to require a change in the language.

Payroll Deductions (FMBA Local 10)

FMBA Local 10 proposes that payroll shall remit payment to third parties on the same date that payroll deductions are made by the employer. The FMBA submits that the City has become frequently late in transmitting such payroll deductions to third parties. Because of this, employees have been noticed on occasion that they are subject to delinquency. There is merit to the FMBA proposal. However, there is no certainty that the City, under the mandatory

language proposal, would be able to remit such payments on precisely the same date that it makes other payroll deductions. I award the following language:

The City shall make reasonable efforts to remit payment to third parties on the same date that payroll deductions are made by the employer.

Salary (PBA – FMBA – FOA)

The parties are far apart in their proposals concerning salary and salary related issues. Their final revised proposals are as follows:

THE CITY OF ORANGE AND PBA LOCAL 89

The City

January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

PBA Local 89

January 1, 2010 – 2%
July 1, 2010: 1%;
January 1, 2011 – 2%;
July 1, 2011: 1%
January 1, 2012: 3.0%
January 1, 2013: 3.0%;
January 1, 2014: \$1,000 as to First Responder Pay and/or
911 Certification Duties and/or 911
Certification Pay + 1.5%
January 1, 2015: 3.0%
January 1, 2015: 50% of retroactive pay

January 1, 2016: 3.0%
January 1, 2016: Balance of 50% of retroactive pay

The PBA is seeking the above salary increases to be applied to all steps in the members of the PBA's salary guide.

THE CITY OF ORANGE AND FMBA LOCAL 210 (FOA)

The City

January 1, 2009 - 0%
January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

FMBA Local 210, FOA

January 1, 2009: 3.0%
July 1, 2009: 1.0%
January 1, 2010: 2.0%
July 1, 2010: 1.0%;
January 1, 2011: 2.0%;
July 1, 2011: 1.0%
January 1, 2012: 3.0%
January 1, 2013: 3.0%;
January 1, 2014: \$1,000 (First Responder Pay and/or 911 Certification Pay and/or 911 duties) + 2%
January 1, 2015: 3.0%
January 1, 2016: 3.0%
January 1, 2015: 50% of retroactive pay
January 1, 2016: Balance of 50% of retroactive pay

The FOA is seeking the above salary increases to be applied to all steps in the members of the FOA's salary guide.

THE CITY OF ORANGE AND FMBA LOCAL 10

The City

January 1, 2010 - 0%
January 1, 2011 - 0%
January 1, 2012 - 0%
January 1, 2013 - 1%
January 1, 2014 - 1%
January 1, 2015 - 1%

FMBA LOCAL 10

3.0% increase per year to all steps exclusive of increment.

This is a conventional arbitration proceeding. As such, the arbitrator has the authority to fashion the terms of an award without being restricted to accepting either the final offer of the public employer or the final offer of an employee organization on any individual issue. The arbitrator also has the authority to deny in full or in part any proposal that has been advanced by any party. In these three impasses, I conclude that none of the salary proposals can be awarded because based upon the record developed at hearing, no final offer of any party represents a reasonable determination of the salary issue. The following findings are based upon the record evidence and form the basis for the salary awards that I have issued.

The City's wage proposals are below the cost of living data. The Unions' wage proposals are above the cost of living data. A salary award cannot be

directly tied to the cost of living data. While it may be a factor that influences a wage result, it is only one of the many criteria that are relevant and entitled to weight when making a wage determination. The weight to be given to this data suggests an award higher than proposed by the City but lower than what has been proposed by the Unions.

The record includes substantial evidence on comparability. The existing wage structure for all units does not compare favorably with those employees performing the same or similar services in public employment in similar comparable jurisdictions. The jurisdictions in Essex County serve as a proper basis for this conclusion. They can be considered as being within the local operating area and all jurisdictions make contributions to the County government based on equalized rates. They are the most comparable despite wide socio-economic differences among the many municipalities. While a benefit, such as maximum longevity of 14% of base salary is above average, the overall compensation received at the time of contract expiration falls below most police and firefighter bargaining units in Essex County. When the comparability evidence is confined to the few Essex County municipalities that are most comparable to Orange, such as East Orange and Irvington, the comparability data is more favorable. The external contracts negotiated or awarded with effective dates of January 1, 2010 going forward are relevant. A PERC Salary Increase Analysis reflects a sharp decline in salary settlements beginning in

2009. Awards averaged 3.75% in 2009 and declined in 2010 to 2.88%, in 2011 to 2.05%, in 2012 to 1.86% and rose slightly in 2013 to 2.17%. Voluntary settlements declined in 2009 to 3.6%, in 2010 to 2.65%, in 2011 to 1.87%, in 2012 to 1.80% and in 2013 to 1.88%. In respect to comparables, I give most weight to the Irvington PBA Award of 1% in 2011, 1.5% in 2012, 2.0% in 2013 and 2.0% in 2014 as this municipality is most comparable to the City of Orange when the standards for comparisons as set forth in the PERC Rules are applied.

The City's wage proposal (3% over six (6) years for PBA Local 89 and FMBA Local 10 and 3% over seven (7) years for FMBA Local 210, FOA) would cause a broader gap in comparisons within Essex County generally and among municipalities within the County that are the most comparable to Orange. Such a result is not in consistent with the interests and welfare of the public and could undermine department morale, interfere with continuity and stability of employment and lessen the effectiveness of the public safety operation. The Unions' wage proposals 19.5% plus \$1,000 for PBA Local 89 for seven (7) years (exclusive of step or longevity movement), 18% for FMBA Local 10 for six (6) years (exclusive of step or longevity movement) and 24% plus \$1,000 for FMBA Local 210, FOA over eight (8) years (exclusive of step or longevity movement) would make for more favorable comparisons within Essex County generally and among municipalities within the County that are most comparable to Orange. However, these proposed increases are above the average increases in wages

in Essex County over the relevant time period. Moreover, the comparability data must also be weighed and balanced with criteria concerning the financial impact of such wage increases on the governing unit, its residents and taxpayers and statutory restrictions imposed on the City, including the City's ability to comply with the "appropriations cap" and the "tax levy cap." When doing so, the Unions' proposals are not reasonable and inconsistent with the interests and welfare of the public. The Unions have made a forceful presentation that the City could fund the costs of their proposals. But their projections do not factor in the City's obligation to fund other personnel and non-personnel costs that are attached to its responsibilities that extend beyond public safety.

I next turn to comparisons within the City of Orange. There is little in the way of internal comparability evidence for the years at issue. A chart depicting internal comparisons over identical contract years is as follows:

| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 |
|-------------------------|----------------------------|----------------------------|---|---|------|------|------|------|
| PBA Local 89 | 1/1/09 – 3% 7/1/09 – 1% | -- | -- | -- | -- | -- | -- | -- |
| FMBA (FOA) Local 210 | -- | -- | -- | -- | -- | -- | -- | -- |
| FMBA Local 10 | 1/1/09 – 3% 7/1/09 – 1% | -- | -- | -- | -- | -- | -- | -- |
| Police SOA Local 89 | 1/1/09 – 2% 7/1/09 – 1% | 1/1/10 – 2% 7/1/10 – 1% | 1/1/11 – 2% 7/1/11 – 1% | | | | | |
| OPEIU | 0 | 0 | 7/1/11* – 2% four (4) furlough days | 7/1/12* – 2% four (4) furlough days | | | | |

The above internal comparisons must be viewed in the context of not only their terms but also the time periods when the agreements were made. The 2009 wage agreements for PBA Local 89 and FMBA Local 10 came in the fourth year of a four year agreement that commenced in 2006. While the FOA seeks a similar increase for 2009, the financial evidence and the economic environment is drastically different from that beginning in 2006 and for this reason cannot support an award at that level. The Police SOA Local 89 wage agreements for 2009, 2010 and 2011 were the second, third and fourth years respectively of a four year contract that commenced on January 1, 2008 and was executed in November of 2008 and was "corrected" downwards in January 2009. This agreement is of greater relevance because of the time period when it was negotiated. But the weight the Unions seek to be given to the SOA agreement is less strong than would be the case if the financial profile of the City had not declined to the extent that it did in 2010 and 2011. The SOA agreement was negotiated prior to the full impact of the deep recession on the City. The OPEIU agreement involved non-public safety employees and contained 2% wage increases in the third and fourth years in 2011 and 2012 that were offset by 4 furlough days in each contract year. There were no increases in the first two years of the OPEIU agreement but 11 out of 22 employees who had been laid off for budget reasons were rehired as a term of that agreement.

The continuity and stability of employment for police officers, firefighters and fire superiors has not been shown to have been adversely impacted by wage and benefit levels set forth in the respective collective negotiations agreements. The City's proposal, if awarded, could alter this finding for prospective years because wage levels would stagnate in relation to other jurisdictions. The overall compensation currently received is comparatively low but the relative assets of the City to fund its labor agreements must be taken into consideration as a reason for wage disparities. It is reasonable to conclude that overall compensation levels are in harmony with what the City has been able to afford for the difficult and dangerous work performed by its public safety officers. An improvement in those terms is warranted but the level of improvement must be consistent with all of the statutory factors and not limited to salary comparisons among the County's wealthiest municipalities.

A complicating factor in fashioning wage adjustments is that the City did not encumber funds to fully plan for the cost of any retroactive payments for wage increases that could be awarded for contract years 2010, 2011 and 2012. The Unions contend that this was caused by imprudent budgeting. However, there are other factors that contributed to the City's budgeting. These include losses in State aid and a declining real estate market. Further, official budget documents reflect that the City did not appropriate funds up to its statutory spending limitations nor raise revenues up to its statutory taxing authority during

these years. The City may be faulted for this but it cannot be assumed that its taxpayers were able to absorb the tax increases (estimated at 21%) that would have been required to make up the difference in the revenue loss.

The record reflects that the City has been slowly recovering financially. Its public releases indicate that redevelopment and revitalization of its properties was ongoing despite the recession. Reductions in personnel costs and increasing fund balances show that a reasonable level of wage increases and retroactive payments can be made by the City beyond the level of wages it has proposed. However, the salary terms proposed by all three Unions would adversely impact on the governing unit, its residents and taxpayers and would impinge upon the City's ability to raise sufficient revenues to fund the proposals within its spending and taxing limitations in order to fund the proposed increases. The Unions have raised two additional considerations with respect to funding. They have been fully considered. First, I do not find the revenues from the City's Water and Sewer Utility to be relevant in funding the costs of the Unions' proposals. Such funds are not predictable and are beyond the City's control. Second, the Unions have pointed out that the legislative imposition of health care contributions as set forth in C. 2, P.L. of 2010 and C. 78, P.L. of 2011 have caused reductions in take home pay for employees and helped with the City's finances. While these observations are accurate, wage increases must be

awarded only as justified by the statutory criteria which do not include offsetting the cost contributions with salary increases.

I first turn to the FOA negotiations and contract year 2009 in particular. The FOA did not receive an increase in 2009 while the FMBA and PBA Local 89 received 4% increases (3%-1% split) during the last year of a four year agreement (2006-2009). The Police SOA received a 3% increase in 2009 (2%-1% split), the second year of a four year agreement. The FOA seeks a 3% wage increase for 2009. The City's proposal for a zero wage increase in 2009 for the FOA cannot be justified. It would cause a 4% reduction in the rank differential within the fire department simply because the FOA, unlike the FMBA, the PBA and the Police SOA, was not under contract for that year. However, the FOA's request for what is in essence a "parity" increase cannot be justified based solely upon an internal comparison for one contract year that was negotiated in prior years. All evidence points to the fact that the financial status of the City underwent significant changes between the time that the 2006-2010 contracts were negotiated and the negotiations for FOA's contract year 2009. Under all of the circumstances, I award an increase of 2% in 2009 for the FOA. However, the effective date for this increase shall be deferred to 1% effective January 1, 2015 with the additional 1% effective January 1, 2016. I do not award retroactivity for these increases due to the lack of availability of funds for the 2009 contract year coupled with the financial impact of wage increases for this unit and the other

units in the ensuing years that will also require deferrals in retroactive pay for all units based on the City's failure to encumber funds to pay for salary increases in 2010, 2011 and 2012.

I next turn to contract years 2010 through 2016. These contract years are applicable to all three units. As indicated above, the record reflects that the City voluntarily negotiated a contract with the Police SOA Local 89 containing three (3%) percent wage increases (2%-1% split) for 2008, 2009, 2010 and 2011. The Unions seek the same percentages for 2010 and 2011 based mainly, but not exclusively, on this internal comparability consideration. The City rejects the proposals asserting that there were fundamental changes in the economy and its finances going into 2010 that make the Union's proposals for three (3%) percent increases based upon a 2008 agreement incongruous with the events that occurred thereafter.

The statutory criteria I deem most relevant for the resolution of this dispute are financial impact, statutory limitations on the City and internal and external comparability. In combination, the evidence on these factors are consistent with a result that is in harmony with the interest and welfare of the public. These criteria must be weighed and balanced. After doing so, I award common increases at each step and rank for all three units of 1.5% for 2010, 1.5% for 2011, 1.5% for 2012, 1.5% for 2013, 1.5% for 2014, 1.5% for 2015 and 1.5% in

2016, effective each January 1 of each contract year. Retroactivity for contract years 2010, 2011 and 2012 shall be deferred. Retroactive payments shall be made at 50% of what is due and payable during 2016 as soon after this Award as is administratively feasible with the remaining 50% due and payable on the first pay period that occurs in January 2017. Employees eligible for step increases shall receive their annual step increases towards salary maximum. A new modified salary schedule reflecting these increases shall be constructed and placed into the new agreement.⁷ Given the City's financial obligations under the terms I have awarded, I find that the Unions' additional salary proposals must be denied. These include PBA Local 89's proposal for \$1,000 in First Responder Pay and/or Certification Duties and/or 911 Certification Pay and the FOA's proposal for a \$1,000 payment.

The costs of funding the terms of the award have been shown by the testimony and exhibits from the Unions' financial expert to be within the City's ability to fund without creating adverse financial impact and within the City's statutory spending and tax levy limitations. While I do not agree that the City is capable of funding the costs of the Unions' proposals, the costs of the award are less than half of what the Unions contend fall within the City's capability as reflected in its comprehensive financial analysis. The terms of the Award have attempted to ease the cost impact of the wage changes on the City. There is no

⁷ I do not award any changes in the structure of the existing salary schedule.

cost impact in contract year 2009 for the FOA until January 1, 2015. There is no retroactive cost impact for contract years 2010, 2011 and 2012 until 2016 (50%) and the end of the first pay period in 2017 (the remaining 50%). The funding for contract years 2013 and beyond have been shown to be within the City's means to fund due to several factors in the record that have not been rebutted, including: the City's unencumbered fund balance is increasing and approached \$4,000,000 by the end of 2013; the City's tax collection rate rose significantly in 2013; there has been a substantial decrease in payroll costs in the PBA Local 89 and FMBA Local 10 bargaining units due to lower staffing levels.

Accordingly, and based upon all of the above, I respectfully submit the following Awards:

PBA LOCAL 89 AWARD

1. All proposals by the City and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

There shall be a seven (7) year agreement effective January 1, 2010 through December 31, 2016.

3. **Health Insurance Opt-Out Payment**

The payment for opting out of health benefits coverage shall be increased from \$2,500 to an amount that shall not exceed 25%, or \$5,000, whichever is less, of the amount saved by the Employer because of the Employer's waiver of coverage. The

implementation shall be consistent in all respects with N.J.S.A. 52:14-17.31a(c) and/or N.J.S.A. 40A:10-17.1. The effective date shall be prospective.

4. **Health Insurance Contributions**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

5. **Health Insurance**

The terms of an Opinion and Award authored by Edmund Gerber concerning disability benefits for retirees shall be incorporated into the labor agreement. (See City of Orange Township and Orange P.B.A. Local 89, et al, PERC Docket No. AR-2007-175 and State Board of Mediation Docket No. SB-04-0765, December 12, 2007).

6. **Negative Sick Leave Recoupment**

The City shall have the authority to implement a Negative Sick Leave recoupment policy consistent with the one already in place for the SOA. I retain jurisdiction over the issue in the event that the terms of this Award need to be clarified as a result of any prior agreement on this issue.

7. **Article XVIII, Clothing and Maintenance Allowance, Section 4**

Effective and retroactive to January 1, 2015, the Detective Clothing and Maintenance Allowance shall be increased from \$250 to \$500.

8. **Article XXIII, Wages, Section 2 - Detective Pay**

Effective and retroactive to January 1, 2015, employees assigned to the Detective Bureau shall receive an increase in the annual payment from \$750 to \$1,000. Such payment shall be a payment made to base salary and applicable for all calculation purposes.

9. **Article XI, Court Time**

A new section shall be added to Article XI stating the following:

Any unit employee who has been subjected to layoff and is required to attend judicial or quasi-judicial proceedings in connection with

job duties they performed prior to being laid off shall be entitled to the provisions set forth in Article XI, Sections 2 and 3 in the same manner as if they had been employed at the time of the proceeding.

10. **Article XIV, Bereavement Leave, Section 1**

The definition of immediate family member shall be expanded to include children (natural, adopted or foster), sister-in-law, brother-in-law, grandchildren and individuals residing in his/her household.

11. **Salary**

There shall be 1.5% increases at each step of the salary schedule effective January 1, 2010, January 1, 2011, January 1, 2012, January 1, 2013, January 1, 2014, January 1, 2015 and January 1, 2016. Employees eligible for step increases shall receive annual step increases towards maximum in each contract year. Retroactive payments for the across the board increases for years 2010, 2011 and 2012 shall be made at 50% of what is due and payable during contract year 2016 as soon as is administratively feasible with the remaining 50% due and payable on the first pay period that occurs in January 2017.

FMBA LOCAL 10 AWARD

1. All proposals by the City and the FMBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

There shall be a seven (7) year agreement effective January 1, 2010 through December 31, 2016.

3. **Health Insurance**

The terms of an Opinion and Award authored by Edmund Gerber concerning disability benefits for retirees shall be incorporated into the labor agreement. (See City of Orange Township and Orange P.B.A. Local 89, et al, PERC Docket No. AR-2007-175 and State Board of Mediation Docket No. SB-04-0765, December 12, 2007).

4. **Health Insurance Contributions**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

5. **Health Insurance Opt-Out Payment**

The payment for opting out of health benefits coverage shall be increased from \$2,500 to an amount that shall not exceed 25%, or \$5,000, whichever is less, of the amount saved by the Employer because of the Employer's waiver of coverage. The implementation shall be consistent in all respects with N.J.S.A. 52:14-17.31a(c) and/or N.J.S.A. 40A:10-17.1. The effective date shall be prospective.

6. **Form of Contract**

The City and the FMBA must execute a formal contract that includes the prior fully executed agreement, the prior MOA and the results of this interest arbitration.

7. **Acting Superior Pay**

The current practice containing the procedures to appoint acting superior opportunities shall be incorporated into the collective negotiations agreement without any change to the pay eligibility requirements currently established to serve in an acting capacity.

8. **Section 125 Plan**

Effective as soon as is administratively feasible, but no later than ninety (90) days from the date of this Award, the City shall establish a Section 125 Plan to be utilized for all employee healthcare contributions. The imposition of the plan shall conform to the authority set forth in Local Finance Notice 2011-20R, p. 18.

9. **Article XIII, Section G – Death Benefit**

Effective as soon as is administratively feasible, but no later than ninety (90) days from the date of this Award, the "death benefit" which is provided to all members of the bargaining unit shall be increased from \$4,000 to \$10,000.

10. **Wireless Internet Service**

The FMBA shall be allowed to install and have usage of telephone, facsimile, and wireless internet services within headquarters provided at the FMBA's cost. Usage while on duty shall be subject to departmental rules and regulations.

11. **Payroll Deductions**

The City shall make reasonable efforts to remit payment to third parties on the same date that payroll deductions are made by the employer.

12. **Payroll Deferral**

The terms of previous settlements/memoranda shall be incorporated into the contract subject to confirmation by the City that such documents have been fully and officially executed. I retain jurisdiction in the event of a dispute.

13. **Transfers Between Tours and Impact on Vacation Schedule**

When a firefighter is transferred from one company to the next after having selected his/her vacation in December, the company to which the firefighter has been transferred will honor that vacation selection so long as the days have not already been selected by another firefighter who works in the tour to which the firefighter has been transferred. In the event that another firefighter has already selected the vacation days selected by the transferred firefighter prior to his transfer, the company will make every reasonable effort to permit the firefighter to retain his original vacation selection. A decision as to whether the firefighter's prior vacation selection will be honored will be made within 72 hours of the transfer. Any denial of the prior vacation selection shall be in writing and accompanied by reasons for the denial. The vacation days previously selected by the transferred firefighter will be made available for selection by another firefighter who remains assigned to the tour from which the transferred firefighter had been assigned.

14. **Salary**

There shall be 1.5% increases at each step of the salary schedule effective January 1, 2010, January 1, 2011, January 1, 2012,

January 1, 2013, January 1, 2014, January 1, 2015 and January 1, 2016. Employees eligible for step increases shall receive annual step increases towards maximum in each contract year. Retroactive payments for the across the board increases for years 2010, 2011 and 2012 shall be made at 50% of what is due and payable during contract year 2016 as soon as is administratively feasible with the remaining 50% due and payable on the first pay period that occurs in January 2017.

FMBA LOCAL 210 (FOA) AWARD

1. All proposals by the City and the FOA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

There shall be an eight (8) year agreement effective January 1, 2009 through December 31, 2016.

3. **Health Insurance**

The terms of an Opinion and Award authored by Edmund Gerber concerning disability benefits for retirees shall be incorporated into the labor agreement. (See City of Orange Township and Orange P.B.A. Local 89, et al, PERC Docket No. AR-2007-175 and State Board of Mediation Docket No. SB-04-0765, December 12, 2007).

4. **Health Insurance Contributions**

Health care contributions for unit employees shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78.

5. **Health Insurance Opt-Out Payment**

The payment for opting out of health benefits coverage shall be increased from \$2,500 to an amount that shall not exceed 25%, or \$5,000, whichever is less, of the amount saved by the Employer because of the Employer's waiver of coverage. The implementation shall be consistent in all respects with N.J.S.A.

52:14-17.31a(c) and/or N.J.S.A. 40A:10-17.1. The effective date shall be prospective.

6. **Article XVIII, Clothing and Maintenance Allowance, Section 4**

Effective January 1, 2016, the clothing and maintenance allowance shall be increased from \$350 to \$500.

7. **Article X, Salaries, Section K**

A fire superior officer who obtains a fire inspector license shall be reimbursed for courses associated with obtaining the fire inspector license upon completing obtaining the fire inspector license. This shall be effective for those courses taken by fire officers who complete and obtain a fire inspector license after the date of this Award.

8. **Article XIII, Insurance, Section G**

Effective as soon as is administratively feasible, but no later than ninety (90) days from the date of this Award, the "death benefit" which is provided to all members of the bargaining unit shall be increased from \$4,000 to \$10,000.

9. **Article XV, Section B – Funeral Leave**

The definition of "immediate family member" shall be amended to include to add "spouse, an adopted child, grandchildren and individuals residing in the employee's household."

The reference to "days" in Article XV, Section B – Funeral Leave, be defined as a 24 hour shift.

10. **Salary**

The 2009 salary schedule for the FOA shall be increased by 2%. The increases shall be deferred to 2015 and 2016. One percent of this salary adjustment shall become effective January 1, 2015. The other 1% shall be effective January 1, 2016. There shall be no retroactivity to accompany these wage adjustments.

There shall be 1.5% increases at rank effective January 1, 2010, January 1, 2011, January 1, 2012, January 1, 2013, January 1,

2014, January 1, 2015 and January 1, 2016. Retroactive payments for years 2010, 2011 and 2012 shall be made at 50% of what is due and payable during contract year 2016 as soon as is administratively feasible with the remaining 50% due and payable on the first pay period that occurs in January 2017.


Dated: July 7, 2016
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 7th day of July, 2016, before me personally came and appeared James W. Mastriani 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 same.



JOHN J. BLANCHARD
Attorney At Law
OF NEW JERSEY