

Public Employment Relations Commission

OPINION AND AWARD

In the Matter of the Interest Arbitration

between

CITY OF EAST ORANGE

AND

EAST ORANGE FMBA LOCAL 23

Docket No. **IA-2000-56**

Before: Barbara Zausner, Arbitrator

Award Dated: June 12, 2002

APPEARANCES

DeCotiis, Fitzpatrick, Gluck & Cole
Attorneys for the City

By, Avis Bishop-Thompson, Esq. and J.S. Lee Cohen, Esq.

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By, Frederic M. Knapp, Esq.

PROCEDURAL HISTORY

The bargaining unit consists of approximately 138 uniformed firefighters, linemen and dispatchers. The predecessor contract expired on June 30, 1999. I was appointed interest arbitrator on February 1, 2001. I met with the parties on June 12, August 10,

October 22, October 30, December 10, and December 21, 2001. Two of the meetings were devoted to mediation efforts. The parties narrowed the issues but did not resolve the dispute. I received the parties' briefs on April 15, 2002 and closed the record on that date. I requested an extension on the due date of the award to June 15, 2002. The decision is made under a conventional arbitration procedure.

FINAL OFFERS

City's final offer

Term of Contract: July 1, 1999 through June 30, 2004.

Salary Adjustment Article X

July 1, 1999 - 0.5% increase in base salary

July 1, 2000 – 1.0% increase in base salary

July 1, 2001 – 1.5% increase in base salary

July 1, 2002 – 2.0% increase in base salary

July 1, 2003 – 2.0% increase in base salary

Probationary Salary

To be amended to reflect that an additional salary step will be included in the probationary period for firefighters.

All new hires shall be hired at a probationary salary of \$25,000 to be received by them through the completion of their working test period. Upon said completion, they shall be placed at the first step of a new seven-step salary guide.

Longevity

Any individual currently receiving longevity will have the amount of longevity frozen for the balance of their career. The amount frozen would be the dollar amount, not the percentage of their salary. By way of example, if an

individual is presently receiving nine (9%) longevity, and that equates to \$5,000 then he or she would receive only \$5,000 per year for the balance of his or her career, not nine (9)% of his or her salary, as that salary might increase over the next several years.

In addition, longevity would be eliminated for all individuals hired after the ratification of the within contract.

Health Benefits

All employees presently covered under an HMO would have their co-pay increased from \$5.00 to \$10.00. All employees covered under traditional coverage would be required to contribute to the cost of said premiums as follows:

Single: \$50 per month contribution

Married or not single: \$125 per month contribution

Retirees: Any retiree receiving traditional coverage as a 'single' would be required to contribute \$100 per month. Any retiree receiving traditional coverage other than single would be required to contribute \$250 per month. If a retiree can obtain coverage under an HMO, then they would not be required to pay any contribution or co-pay.

In order for a retiree to be eligible for any coverage, they would have to be an employee for the City of East Orange for a minimum of 25 years. It would also be required that any retiree eligible for Medicare would utilize Medicare as their primary coverage.

The City proposes a three-tier prescription plan as follows: employees would pay a \$5.00 co-pay for generic drugs; a \$12.00 co-pay for formulary drugs; and a \$25.00 co-pay for non-formulary drugs.

Workers' Compensation

The City proposes a reduction in the temporary disability payments to an amount equal to the statutory minimum or approximately 70% of the employee's wages.

Time on the Books

The City proposes that an employee's time on the books be frozen at its dollar value immediately preceding the promotion of any affected employee.

FMBA's final offer

Term of the Contract: July 1, 1999 through June 30, 2004

Wages

Effective July 1, 1999	2.0 %
Effective Jan. 1, 2000	2.0 %
Effective July 1, 2000	2.0 %
Effective Jan. 1, 2001	2.0 %
Effective July 1, 2001	3.75%
Effective July 1, 2002	4.0 %
Effective July 1, 2003	4.25%

Starting Salary

Effective January 1, 2002 reduce starting salary to \$25,500 for a probationary firefighter.

Salary Guide

Modify number of steps on the salary guide from five steps to six steps to achieve the rank of Firefighter First Grade.

Vacation Days

All employees shall receive one (1) additional vacation day after completing fifteen (15) years of service.

Health Benefits

Modify current health benefits provided to employees to provide: (1) a co-pay of \$5.00 for generic prescriptions and \$10.00 for brand name prescriptions and (2) increase HMO doctor visit from \$5.00 to \$10.00.

Clothing Allowance

Increase current clothing maintenance allowance from \$525 to \$600.

Tuition Reimbursement

All employees are to be reimbursed for payment of tuition, books and costs for any courses taken towards either an Associates or Bachelor's degree in an approved course of study. Approval shall not unreasonably be denied.

Alternate Duty Policy

City to negotiate over the impact of the policy.

Acting Captain Policy

Provide for an equitable plan for assignment of acting captains on a rotating basis in accordance with seniority.

DISCUSSION AND OPINION

The top base salary in the unit, as of July 1, 1999 when the agreement expired, was \$52,439. (J-7, Salary Ordinance). Under the predecessor contract, which ran for forty-two months – January 1, 1996 through January 1, 1999 – the unit received 12.25% in wage increases. The FMBA presented a chart of salary comparisons in Essex County that shows the salary base in East Orange (assuming a 4% salary increase) would continue to be between 4.0% and 4.5% lower than the average of other County municipalities, including Bloomfield, Irvington, Maplewood, Montclair, Orange, South Orange, West Orange, and Newark¹ over the life of the contract. The trend improves slightly toward 2002 but that assumes compounded four percent increases over three years. (U-8).

Comparative costs of the proposals

The FMBA salary increase proposal results in a non-compounded increase of 20% over the life of the contract. The City's proposal increases the base by 7%. Using the top base pay as of June 30, 1999 (\$52,439), and without rolling holiday pay into base pay, the resulting salary rates under the two offers would be:

	<u>City Offer</u>		<u>FMBA Offer</u>	
7/1/99	+0.5%	52701	+2.0%	53488
1/1/00			+2.0%	54558
7/1/00	+1.0%	53228	+2.0%	55647
1/1/01			+2.0%	56762
7/1/01	+1.5%	54027	+3.75%	58891
7/1/02	+2.0%	55107	+4.0%	61247
7/1/03	+2.0%	56209	+4.25%	63850

¹ Orange salary assumes the same increase as the Orange Fire Officer Award.

According to the City, the cumulative difference in the cost of the salary proposals over the term of the contract is \$22,945 per firefighter. (C-2, p. 18). The annual cost of gross pay for the unit under the City's proposal would be \$7,982,871 in 2000, and would rise to \$8,698,469 in 2004. The cumulative incremental cost of the City's proposal would be \$2,390,796. (C-2, p. 21). The total average cost per household of the City's proposal would be \$197.48 over the life of the contract. (C-2, p. 22). Under the FMBA salary proposal, the cumulative incremental cost would be \$6,172,306. (C-2, p. 24). The difference between the two proposals in terms of the cumulative incremental cost of projected annual gross pay would be \$2,461,677. (C-7).

The City estimates that the incremental annual increase that would result from rolling holiday pay into base pay would be \$309,450 over the life of the contract. (C-7).

Charles Salley used Union Exhibit 80, a master control list of wage related payments to members of the bargaining unit, to determine the annual cost of overtime. The document shows total overtime from January 1, 2001 to December 14, 2001. Salley added up the overtime worked by each individual and found that the total overtime pay for the unit for the year was \$41,029. (Tr. 12/21/01, p. 418). He then divided that figure by the 138 unit members to obtain an average of \$297; approximately 8 overtime hours per firefighter. Mr. Salley pointed out that the Chief of the Department received [about \$18,000] in overtime last year." (Tr., p. 420).

The Interests and welfare of the public.

This criterion generally is reviewed in terms of the Employer's fiscal constraints, the economic impact of an arbitration award on the public, and the need to have a stable, professional and motivated fire department. The Union argues here that the public interest would best be served by establishing an "equitable compensation plan lending itself to a stable work force." (Br., pp. 6-7).

The Union also points to the level of firefighting activity in East Orange. In 2000, there were over eighty major fires that resulted in

five civilian fatalities. (U-4). A videotaped news broadcast "graphically demonstrate[s] the danger each firefighter experiences daily." (Br., p. 7, U-5). East Orange firefighters also assist in surrounding municipalities under mutual aid agreements with Irvington, Maplewood, Orange and Montclair, among others. Not all of those departments reciprocate.

The FMBA concludes,

The interests and welfare of the citizens of East Orange are best served by having a professional full time firefighting force. This can only be accomplished by attracting the best of the best. Establishing salaries that are inconsistent with those in neighboring municipalities will ultimately have an adverse effect on the ability of East Orange to attract qualified firefighting personnel. (Brief, p. 11).

The City points to the socioeconomic factors that affect the City's ability to raise salaries while continuing to budget for other necessities. "The income level of the City's residents is far below the County and State averages." East Orange has the second lowest per capita income in the county." (Br., p. 8), U-21). The City urges consideration of the low income and high poverty and unemployment rates in the City. It argues that the City's "aggressive efforts to improve its fiscal conditions, the slight success that is evident in 2001 does not erase the ongoing economic plight of the City...." (Br, p. 11-12).

According to the Employer, its final offer, "while spartan by standards, is the only offer which will not negatively impact the interests of the public...."(Brief, p. 13). The award of either party's final offer will have an impact on other bargaining units. The City claims that the FMBA's economic analysis fails to factor in all the costs of its offer, such as changes in health benefits, time on the books, and other changes. It claims that Dr. Caprio's analysis of revenues and expenditures in Table 14 failed to calculate the raises for the workforce in East Orange. (Tr., p. 213, 23-25)

The City points to its fiscal responsibility as a factor to be included in the public interest criterion "because it is directly related to a City's ability to continue to provide public services." (Br, p. 16). The City points to deferred charges, potential losses in aid monies, and other strains on its budget. It also maintains that keeping down taxes and stabilizing the economy are in the public interest.

According to the City, there are other errors in Dr. Caprio's financial analysis of the City's fiscal condition. It "fails to consider the impact [of its economic demands] on the City's current and future budgets [and] the overall deficits accumulated since 1996." Furthermore, revenue from non-tax sources "has evaporated." (Brief, p. 19). The water utility is no longer profitable and has been forced to lay off employees. (Tr., p. 272).

While this criterion is always of prime importance, the evidence on the competing interests (an adequately compensated workforce balanced against fiscal constraints) is in equipoise. As further discussed below, comparison of this unit with others that are similarly situated strongly indicates increases well above those offered by the City. The City has demonstrated, largely on the basis of its relative poverty and that of its citizens, that it cannot afford as generous an increase as proposed by the FMBA. On the other hand, the FMBA's evidence points to significant improvements in the City's economic forecast. Dr. Caprio's analysis identifies adequate funds in fiscal years after 2000 and 2001 to provide a more generous wage increase than it offers. My application of this criterion results in a compromise between the economic offers.

Comparison

(a) same or comparable jurisdiction

The FMBA offers comparison with other Essex County municipalities. In 1995, East Orange ranked below most of the others in the County when maximum salaries are compared. (U-7). It was slightly above the average minimum in 1993. The FMBA argues that the City's wage proposal "perpetuates the pay disparity between firefighters in East Orange and those of other [area] municipalities." (Brief, p. 15).

Recent awards and settlements in Elizabeth, Irvington, Orange, West Orange, Edison, Belleville, Maplewood and Newark range from 2.5% (Orange FOA) to 4.5% (Newark) for 1999. In 2000, the range is 2.75% (Irvington) to 4.0% (Elizabeth). 2001 figures are about the same. (U-9).

Average firefighter base salaries in Essex County were \$53,474 in 1998; \$55,127 in 1999; \$57,215 in 2000; \$59,325 in 2001; and, \$61,654 in 2002. For 2001 and 2002 there are fewer towns reporting. (U-8).

The City claims that the "average settlement and interest award in the State in 1999 and 2000" was 3.5% which, it argues, is "still well above what the City can afford." (Brief, p. 31). The City also notes a "trend toward wage settlements in the immediate surrounding area and within the County averaging ... about 3.5% to 4% for firefighters, including mostly in non-distressed, suburban municipalities...." (Brief, pp. 31-32).

The City notes that this unit received an aggregate 12.25% increase through the interest arbitration award that set terms for the 1996-1999 contract. For the period 1997 - 2000, Irvington and the PBA settled on an 11.75% aggregate increase" over three years; 2.9% annualized average increase. (Br. p. 28).

The City argues,

a comparison of salary rates for employees performing the same or similar functions ... is simply not an appropriate comparison in this case since the fiscal and economic realities in the vast majority of those municipalities are wholly dissimilar to that of the City of East Orange. (Br., p. 26).

The City cites the economic analysis prepared by Dieter Lerch (C-2).

Both parties cite Irvington as comparable. To the extent that comparison is an important criterion, I have relied most on comparisons between East Orange and Irvington with the addition

of Orange and Newark, which share demographic, economic and workload factors. The value of comparing wage rates among similarly situated municipalities in the local area is that the figures give some objective indication of the cost of maintaining a professional firefighting force for those municipalities.

Per capita income (based on data from the 1998 New Jersey Municipal Data Book) in East Orange was \$12,376 compared with a per capita income of \$9,424 in Newark, \$12,982 in Irvington, \$25,448 in Maplewood, \$18,444 in Union, \$16,520 in Hillside, \$30,465 in South Orange, \$12,812 in Orange, and \$18,722 in Bloomfield. (U-21).

Top firefighter rates, to the extent that those are available, are summarized in the table below. The FMBA offer is represented only as of July 1 of each year for convenience.

	City	Union	Irvington	Newark	West Orange	Hillside
July 1999	52701	53488	54769			
July 2000	53228	55647	56275			
July 2001	54027	58891	57822	63376	58793	57679
July 2002	55107	61247	59702	65594		59698
July 2003	56209	63850	61493			61489

Average Essex County

1998	53474
1999	55127
2000	57215
2001	59325
2002	61654 ²

² For 2001 and 2002 there are fewer towns reporting. (U-8).

**Demographics
East Orange and Adjacent Towns
Data from C-2 and U-21**

	Population	Median Rent	Value of Single Family Home	Equalized tax rate 2000 (C-2, p. 14)
Irvington	58,434	\$500	\$116,800	\$5.00
Newark	268,510	\$385	\$110,000	\$3.65
East Orange	70,534	\$478	\$116,200	\$6.69
Maplewood	20,765	\$623	\$199,300	
Union	50,404	\$549	\$175,600	
Hillside	21,012	\$548	\$140,700	
South Orange	16,229	\$656	\$234,700	
Orange	28,877	\$500	\$123,600	\$4.59
Bloomfield	43,330	\$541	\$172,500	

(U-21)

The history of unemployment rates in East Orange for 1997-2000 shows that City to be much higher than the state average which, in 2000, was 5.1% compared with 8.7% in East Orange.

Based on other figures in Exhibit U-21 the City argues that East Orange "expends an inordinately high proportion of its revenue on fire services compared to the County's many other municipalities." (Brief, p. 27). The 1998 Municipal data book shows figures for 1993. The average for the County is 16%. Newark spends 21% of its total budget on public safety; East Orange spends 20%; Irvington spends 22%; and Orange spends 21%. The figures show that the towns with the lowest per capita income (and other figures that demonstrate low relative wealth) spend a greater proportion of their municipal budgets on public safety. The percent of its budget expended by East Orange on public safety is about the same as other similarly situated towns like Newark, Irvington, and Orange. Those towns also lead in crime rate figures.

The data show that in the comparison group, the City's offer creates a rate as of 2002 that is at the level of 2000 wages in populous cities of slender means. This criterion points in the direction of the FMBA's somewhat too expensive offer.

(b) private employment

Private sector settlements for 1999 (all covered workers) averaged 3.9%, down from 5.4% in 1998. (U-11). "For the first nine months of 2000 the labor area's employment grew faster" (at 2.2% vs. 1.6%)" than the State's. The unemployment rate dropped by .9%, slightly lower than the statewide rate. The evidence appears to be that employment in the area "should continue its steady, moderate pace of growth." (U-14). Similar statistics and forecasts are published in "Northern New Jersey Regional Developments." (U-15)

This factor is more important in terms of East Orange citizens than it is for determining what a reasonable wage increase would be. Notwithstanding that the City appears high on overall poverty indexes, the data include favorable economic indicators for those individuals employed in the private sector. The FMBA's offer is slightly higher than average private sector settlement in 1999. The City's offer is well below that figure. This criterion is given little weight in setting the economic package.

(c) public employment

The average salary increase for all awards for the year 2001 was 3.75% according to NJ PERC statistics. (Exhibit A, attached to Union's brief). The average reported settlement for 2001 was 3.9%. The average award in 2000 was 3.64% with an average voluntary settlement rate increase of 3.87%. (U-10). The FMBA's offer is in the same ballpark. The City's is well below. Consideration of overall public sector wage increases weighs in favor of the FMBA's offer. However, I have given this evidence little weight because, in my view, raw percentages are not reliable for setting specific increases in a particular municipality.

Overall Compensation

Firefighters in East Orange receive 16 – 23 vacation days per year depending on length of service. Many neighboring departments have more days at maximum but few have as many days at the minimum level. The figures are for 1996 – 2000. Unlike numerous other municipalities, firefighters in East Orange receive no

personal days. In East Orange the clothing maintenance allowance is lower than most other towns and well below the average among the twenty-six Essex County municipalities listed of \$645. Most other firefighters also receive some payments or reimbursement for education expenses. (U-7).

The City maintains that the "firefighters receive adequate compensation given the fiscal constraints in which the City has to operate" and that "its firefighter compensation is generally on par with state and local government employees and private sector employees." (Brief, p. 27).

Review of the current and predecessor contracts (J-1 through J-4) shows that the City provides health insurance, a maximum of twenty-eight vacation days per year, fourteen paid holidays, longevity, uniform allowance, and fifteen days sick leave and bereavement leave.

According to the FMBA, the City's proposals to freeze longevity at current levels for existing employees and eliminate longevity for new hires would reduce current benefits and create a "lower grade of firefighters." (Brief, p. 16). The City also proposes other concessions that would devalue the economic package.

The City argues that comparative analysis shows that "the City's firefighters are sufficiently and equitably compensated for their services given the financial travails under which the City has been forced to operate." (Brief, p. 33). It claims the FMBA's presentation does not "demonstrate that the City's firefighters labor under any glaring shortfalls in wages or benefits, compared to comparable bargaining units. It concludes, "the overall contractual benefits are competitive." (Brief, p. 33).

The evidence is that the level of economic benefits for East Orange firefighters is lower than it should be when other factors such as workload (population, number of calls per year, number of vacant buildings, level of crime, relative poverty of citizens, etc.) and relative wealth are compared. This aspect of the factor, "comparisons", must be given considerable weight because there is no more objective indication of what a firefighter should be paid than that paid in similar employment situations. There is no similar

work in the private sector. The most useful comparison must be between those municipalities in the geographic area that have the most in common, in terms of the demographics of its citizens and its relative economic health.

Stipulations

There are no stipulations.

Lawful authority of the Employer and Financial Impact

The FMBA notes that "the City did not offer any CAP argument. Rather, its argument is based upon State supervision and long term economic constraints which the City admits have been a result of its own poor financial administration." It argues that the City "would seek to have the Municipal budget balanced on the backs of its employees." (Brief, p. 19).

The City argues that I must consider "the effect of an award on the City's CAP law restraints and on its entire budget. Increases, if awarded, will have to be funded out of the 2002 and 2003 fiscal year budgets. This limits the ability of the City to fund the award while operating within the CAP requirement." (Brief, p. 33). The City anticipates a possible loss of state aid "if the City fails to follow all of the State's directives." It concludes, "an award based upon the FMBA proposal may plunge the City into severe fiscal distress...." (Brief, p. 34).

An updated and corrected version of Dr. Caprio's analysis of the City's financial statements is in evidence as Union Exhibit 71. Exhibit 1 shows an improvement in the change of property values from -2.13% in 1997 to -0.64% in 2001. Exhibit 2 shows that the effective tax rate increased from \$5.30 in 1996 to 6.69 in 2000. According to Dr. Caprio, the decrease in the municipal tax rate in 1997, and the City's failure to budget adequate revenues "led to a series of cumulative deficits, culminating in 1999." (U-71, Exh 2., note.)

The City collected \$615,000 more than it budgeted in 2001. (U-71, Exh 3). The City's pattern of delinquent tax collections has also increased by more than double between 1996 and 2001. In

2001, the City realized \$2.525 million more than it budgeted. (U-71, Exh 4). Property tax collection has increased about \$14 million between 1996 and 2001. Collections in 2001 showed a surplus for the first time since FY 1996. The City's tax collection trend has improved as has a trend in reduced property values, which has slowed significantly. Dr. Caprio predicted that property values would "level off or increase." (Br., p. 24).

Collection of delinquent taxes has exceeded the budgeted amount during each of the past three fiscal years. (Exh. 4). The delinquent tax schedule was reduced by more than \$6 million between 2000 and 2001. The FMBA argues that "by increasing the ... delinquent collections the City has been able to stabilize its economic circumstances." Exhibit 6 shows that "East Orange has weaned itself from relying upon miscellaneous revenue since 1996." (note 1).

According to Dr. Caprio, the City "can estimate revenues of \$8.7 million" in delinquent tax collection. (U-71, Exh. 5). Exhibit 7 shows "the economic-turn around that East Orange has been able to achieve." There was a surplus in 2000 for the first time in four years. "The City's economic performance improved even more in 2001 as a surplus of \$2,391,000 was achieved." (Br., p. 26). The surplus fund has increased by \$1,132 million in 2001. The percentage increase between 1999 and 2001 in current collections against total levy was 24.4%. That is \$17 million as a result of improved tax collection.

The City has "averaged over \$570,000 in non-budgeted revenue in each of the past six years with a big increase in 2000 over 1999. (U-71, Exh 8). Despite the fact that the total tax levy increased by more than \$4 million between 2000 and 2001, the percent collected increased from almost 81% to almost 87% in 2001.

The FMBA points out that its proposal to include holiday pay in base salary is aimed at increasing salaries while limiting the impact on taxpayers "which will ultimately benefit the taxpayers of the City of East Orange." (Brief, p. 21). An effective and motivated fire department not only will increase the public safety but also will "increase property values and enhance the stature of the City...."

The Union also anticipates an increase in economic development in the City. (Br., pp. 21-22).

The FMBA argues that its wage proposal "would be financially prudent." It relies on the financial analysis performed by Dr. Caprio. He concluded that the City's "failure to adequately budget revenues beginning in 1997 led to a series of accumulative deficits, culminating in 1999." (Brief, p. 22). However, there have been budget surpluses in 1999 and 2000.

The FMBA emphasizes Dr. Caprio's testimony about using tax liens and selling property at auction. In recent months, the City has raised considerable amounts of money and has returned properties to its tax rolls. (Citing newspaper articles, Exhibit B attached to the Brief). "[T]he City has obtained an additional \$2.9 million cash over and above that which was anticipated as revenue for the year 2002." These funds "would ... enable the City to fund the entire economic package sought by the FMBA" (Br., pp. 23-24, see also U-71, Exhibit 12). The Union relies on other "infusion[s] of cash" available to the City to "fund a fair and equitable wage increase...." (Br., p., 24).

The FMBA argues that the City's improved economic performance demonstrates that it can "finance municipal operations and ... compensate its employees in a reasonable and equitable manner." (Br., p. 27).

The City points to its declining tax base, consistently high unemployment and poverty rates, and the difficulty of raising revenue through taxes. Furthermore, "the tax levy has substantially increased by 29%." (Brief, p. 34). Under the circumstances, "the firefighters are adequately compensated and [the] excessive increases requested by the FMBA are not supportable." (Brief, p. 34).

The record convinces me that the City's estimate of the financial impact of an award above its offer is overstated. It appears from the record that the City has improved its tax collection success in several regards. It has generated new income while complying with regulations requiring it to pay down its debt and minimize expenditures. The fact remains that in a town like East

Orange, where many people rent relatively inexpensive apartments and are un- or under-employed, in addition to other qualities that exemplify relatively poor residents, the demand for protective services is significantly greater than it is in a quiet suburb inhabited by relatively wealthy people. The City must find a way to maintain a motivated firefighting force because that is such an essential function of government. That may require that the City devote more of its resources to public safety than to other demands.

For reasons noted in the discussion of the first criterion, the public interest, these criteria are entitled to significant weight in deciding the level of compensation and benefits the City shall be directed to pay its firefighters for the next several years. The City has amply demonstrated that it has suffered through devastating economic reverses over the past several years. The record also establishes that the City's aggressive efforts over the past few years have succeeded in reversing the City's economic downslide. The evidence supports the proposition that the City can afford an increase in firefighter salaries that are in line with similar Essex County municipalities.

Cost of Living

The Union offers a number of documents with information about economic indicators. (U-16, 17, 18, 19, 20). As of May 16, 2001, the CPI-U for all urban consumers had increased 3.3% for the prior year, ending in April. The FMBA argues that the "City's proposal of virtually no wage increase and numerous concessions will be substantially lower than the cost of living." (Br., p. 31). The City argues that the FMBA's demand is far in excess of the CPI.

This criterion is entitled to little weight in this decision. Bargaining gains over the past decade have raised public sector wages to respectable levels compared with increases in the cost of living.

Continuity and Stability of Employment

The FMBA argues that its "proposed salary structure provides an incentive to the work force to remain in employment." (Brief, p. 20). Inadequate compensation results in "poor morale ... and the hiring of inexperienced officers to work in an environment plagued by extreme stress and a high fire rate." (Brief, p. 31).

The City contends that the present "overall compensation [package] ... has been an inducement [for firefighters to remain] in the City's employ." (Brief, p. 36). The City also claims there is no evidence to show that the department has "experienced a shortage of available applicants for firefighter positions." (Brief, p. 37).

It is not clear what the evidence on this point shows. The department has the good fortune of having many members who have years of dedicated service and experience. That does not prove that the City could not attract new employees of the same caliber at existing wage rates. Except to note how important it is to maintain the high level of the existing firefighting force, the criterion is of little assistance in resolving the impasse.

ANALYSIS BY ISSUE

Term of the Contract

Both parties propose that the contract begin on July 1, 1999 and end on June 30, 2004. Therefore, that term is awarded.

Wage and Salary Issues

Rate of Increase

I have concluded that salaries should be increased to a level that brings the top salary above \$61,500, which is the County average for 2002 and the anticipated top rate in Irvington in 2003, by the time the agreement expires. This would be accomplished by awarding the FMBA's holiday fold-in proposal. In consideration of the fact that several budget years have already passed, I have awarded only 2% for the first two years, 1999 and 2000, with larger

increases toward the end of the contract. The top base pay would increase as follows:

July 1, 1999	\$52439	+	1%	=	\$52963
July 1, 2000		+	1%	=	\$53493
July 1, 2001	+\$4,033 holidays		8% ³	=	\$57526
July 1, 2002		+	3.5%	=	\$59539
July 1, 2003		+	3.5%	=	\$61623

The result of the base salary changes that will be awarded is to increase that figure by 17% (counting the holiday pay fold-in as an 8% increase) over 5 years without making an untenable dent in the City's budgets. The payout in new money is 9%. The City has offered 7% over the life of the contract. The award is considerably less costly than the FMBA's last offer but is high enough to begin to bring East Orange firefighter salaries in line with wage levels in similarly situated municipalities.

It should be noted that salary ranges for City officials increased 31% between 1992 and 1999. (U-75). Employees represented by CWA Local 1077 received raises of 2.5%, 3%, and 3.5% in 1997, 1998 and 1999. (U-76).

Reduction in starting salary effective January 1, 2002

Both parties have a proposal in this area. The difference between the proposals is \$500. The FMBA seeks credit for the proposal as a "concession." (Brief, p. 12). I conclude that the City's proposal to reduce the starting salary to \$25,000 is reasonable. As is noted elsewhere in this opinion, the most important factors in this decision are the City's straitened circumstances and the need to bring salaries in line with those in the area. The extra \$500 savings per new hire provides additional money to help fund the award.

³ This amount is not new money. It would be paid separately in a lump sum if that sum were not added to base salary.

Guide Steps

The City's proposal would add two steps to the guide. The FMBA proposes to add one step, which represents a concession and another future cost-saving measure. Increases in salary guide steps are generally made one step at a time. I conclude that it is reasonable to add one step to the salary guide which provides additional savings to the City for all future hires.

Longevity

The City seeks a freeze in longevity pay. It argues that the freeze would result in a savings of \$51,073 in the fiscal year ending June 30, 2002. It claims the "cumulative potential savings" would be \$151,508 for 2001 and 2002. (C-2, p. 30). The Union points out that eliminating longevity for new hires would create two classes of employee. Except for the cost saving to the City, the proposal has little merit in light of existing overall compensation and comparisons with similarly situated municipalities. Most Essex County municipalities provide for longevity pay. The evidence does not show a trend in the direction of freezing and eliminating longevity pay.

Holiday in Base

In PERC No. 2002-4, the Commission affirmed an interest arbitration award in City of Orange and Orange Superior Officers Association. The City argued that PFRS regulations barred the arbitrator from awarding the Union's demand to include holiday pay in base pay. The Commission cited its decision in Delran, where it found that "the arbitrator's award did not address the pension effect of the fold-in ... and that the award could be legally implemented by including the holiday pay in base pay for the purpose of calculating overtime...." "[The] method of payment for holiday pay and the base pay rate for overtime purposes [are] mandatorily negotiable."

The FMBA asserts that the inclusion of holiday pay in base salary from the start of employment (effective July 1, 2001) is an important part of the total economic package that "seeks to place the firefighters on a footing ... comparable to that of firefighters in

other departments." (Brief, p. 11). It claims "[o]nly the inclusion of holiday pay into base salary would allow East Orange firefighters to approach the salaries paid to firefighters in many neighboring municipalities such as Orange, Irvington and Newark, all of which are classified as distressed cities along with East Orange." (Brief, p. 14). Newark firefighters were paid over \$6,000 more per year in base salary than East Orange firefighters as of 1999. The differential remains as great by 2002, even assuming a four percent raise for East Orange a firefighters.

The FMBA argues that adding holiday pay to base salary would cost the City very little new money because unit members already receive holiday pay. Adding holiday pay to base would have small consequences for pension contributions.

The City points to the impact on hourly rates for overtime compensation that would result from adding holiday pay to the base rate. There would also be an increase in pension costs. According to the City's calculations, the "average incremental cost for the first year affected (2002) would be ... \$854 per firefighter." The cost for 2003 would be \$886 and for 2003 it would be \$924 per firefighter. (Br., p. 30, Lerch p.311, also C-3).

I agree with the FMBA that folding holiday pay into base pay is a relatively inexpensive way to improve firefighter compensation. The added cost is off set, in part, by concessions in other areas.

Workers' Compensation

The City proposes to reduce temporary disability payments to the statutory minimum or approximately 70% of employee's wages. There is no evidence in the record on this subject. It is impossible to assess what savings, if any, would accrue to the City under this proposal. Therefore, I must conclude that the City has not met its burden of proving a need to change the current workers' compensation plan.

Time on the Books

The City proposes freezing time on the books at the dollar value immediately preceding promotion. There is no evidence in

the record about this subject. It appears that the City has implemented a change by ordinance and the FMBA has filed an unfair practice charge. There is no evidence in the record, such as the existing plan, usage patterns, and prior experience to support a change in the status quo.

Clothing Allowance

The City opposes the FMBA's proposal to increase the annual clothing allowance from \$525 to \$600. The City provides station wear to its firefighters. It argues that this additional expense should not be awarded because "the likely impact of such an award would be an increase for all public safety personnel...." (Brief, p. 29).

For reasons cited by the City, I have not awarded an increase in this area. An increase of \$75.00 per person in this unit would cost over \$10,000 per year and is likely to spill over to other public safety units. I believe it makes more sense to increase wage rates to acceptable levels and to allow the firefighters to use their discretion in how the money is spent.

Vacation Days

The City is opposed to adding a vacation day after the 15th year of service. It argues, "This proposal is not supported by compelling evidence regarding comparability." It cites Union exhibit 8. (Brief, p. 30). I agree with the City that there is little evidence in support of adding a vacation day which would be an added expense. I have concluded that the best use of funds is to increase the low base salary. Comparability evidence supports the contention that leave benefits are roughly comparable in the County.

Insurance Co-Payments

The City proposes to increase co-payments in the prescription plan. It notes the "dramatic increase" in the cost of prescriptions. "An increase in the firefighters' co-payments would greatly reduce the City's financial obligation, provide some cost containment, result in only a modest increase in the

firefighters' out-of-pocket expenses and still maintain a reasonably attractive insurance system." (Brief, p. 30).

The FMBA has proposals in this area that are reasonable and generous under the circumstances. The City's offer imposes a considerable and differential increase on retirees. It is possible that the FMBA's claim that I do not have jurisdiction over retirees' benefits is correct. The only evidence in the record deals with the fact of insurance cost increases. There is no evidence about cost or potential savings to be realized from the City's proposal.

The FMBA's offer more evenly spreads out the cost and places the bulk of the burden on those currently employed. Those concessions are offered in the expectation of a more generous wage package than the City proposes or than will be awarded. The FMBA's offer recognizes the significant increase in health care costs and addresses the problem by shouldering some of the responsibility. The FMBA's offer is reasonable.

Alternate Duty Policy

The City maintains an alternate duty policy for employees who have been injured on duty. The light duty assignment works a five day, eight hour schedule. This disrupts the firefighter's lifestyle because the regular schedule is 24/72. Mr. Salley testified that forcing firefighters back to work on light duty seems like a penalty for suffering an injury on duty. The FMBA wants to be able to negotiate over the impact of the policy.

The City will be directed to negotiate over the impact of its policy. This proposal has no cost and is aimed at more equitable treatment of firefighters who are injured on duty. Management retains discretion to decide what the policy shall be.

Acting Captain Policy

The FMBA seeks a plan of assignments based on seniority. Mr. Salley testified that once an active captains list expires,

deputy chiefs can choose whomever they want to appoint. The appointments used to be rotated.

The demand places no economic constraints on the Employer but rather will improve morale and eliminate the appearance of favoritism. The FMBA also cites savings to be realized from bringing in a firefighter on an acting basis rather than bringing a captain in on overtime to replace an absentee. The FMBA proposal is fair and would permit the orderly deployment of employees based on experience. However, the record is devoid of information on how the proposal might affect the Department overall. Therefore, I will direct the parties to negotiate over the proposal.

Tuition Reimbursement

The FMBA seeks reimbursement for tuition, books and expenses of any courses taken towards either an Associates or a Bachelors degree in an approved course of study. There is insufficient data in the record to support addition of this benefit. As with other economic issues, I have concluded that the best place to make those improvements in salary payments.

AWARD

Term: July 1, 1999 through June 30, 2004

Wage Increase

Effective July 1, 1999	+	1%
Effective July 1, 2000	+	1%
Effective July 1, 2001	+\$4,033 (holidays: 8%)	
Effective July 1, 2002	+	3.5%
Effective July 1, 2003	+	3.5%

Probationary Salary

Effective January 1, 2002 the starting salary shall be \$25,000.

Salary Guide

Effective January 1, 2002 the salary guide shall have six-step guide after the probationary level.

Longevity

No change.

Health Benefits

Effective July 1, 2002, modify current health benefits provided to employees to provide: (1) a co-pay of \$5.00 for generic prescriptions and \$10.00 for brand name prescriptions and (2) increase HMO doctor visit from \$5.00 to \$10.00.

Clothing Allowance

No change.

Vacation Days

No change

Alternate Duty Policy

The City is directed to negotiate with the FMBA at its request over the impact of its alternate duty policy.

Acting Captain Policy

The City is directed to negotiate with the FMBA at the FMBA's request over the proposal to assign acting captains (when there is no active captains list) on a rotating basis in order of seniority.

Workers' Compensation

No change.

Time on the Books

No change.

Tuition Reimbursement

No change.

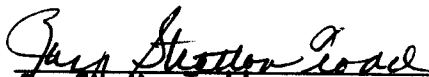
Any other proposals not discussed herein are not awarded, and other contract articles not modified herein shall remain as is.

BY: 
Barbara Zausher

New York

Ulster

Sworn to and affirmed before me on June 12,
2002.


Jay Stratton Todd
Notary Public, State of New York
Qualified in Delaware County No. 4448168
My Commission Expires Jan. 31, 19 2003