

**STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration	)	
	)	
Between	)	
	)	
<b>THE CITY OF JERSEY CITY, HUDSON COUNTY, NEW JERSEY</b>	)	<b>PERC DOCKET #IA-97-34</b>
	)	
and	)	
	)	
<b>THE UNIFORMED FIRE FIGHTERS ASSOCIATION OF JERSEY CITY, LOCAL 1066, IAFF, AFL-CIO</b>	)	
	)	
	)	<b>OPINION AND AWARD</b>
	)	

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Before:           **J.J.Pierson, Esq.**  
                          Arbitrator

For the City of Jersey City:   Paul W. Mackey, Esq.- First Assistant General Counsel

For Local 1066, IAFF:       Paul L. Kleinbaum, Esq. - Zazzali Zazzali Fagella & Nowak

The undersigned was appointed Interest Arbitrator by the New Jersey Public Employment Relations Commission ("PERC") and by the parties pursuant to Article 10(A)(2) and Article 28(B) of the Collective Bargaining Agreement (hereinafter, the "Agreement") to hear and decide the dispute described herein. (See Appointment letter dated November 6, 1996 and the Agreement at pp. 10 and 30).

A hearing was held on December 23, 1996 at City Hall, Jersey City, New Jersey after due notice was given to the parties by the Arbitrator. The parties were afforded full opportunity to present evidence and submit post-hearing briefs in support of their position on the agreed to issue submitted to the Arbitrator for final and binding decision.

### **ISSUES:**

1. What shall be the vacation schedule that is to be applicable to all Fire Fighters coming on to the payroll after January 1, 1997, except those Fire Fighters assigned as detail personnel as referred to in Article 9?
2. What shall be the amount of days for each year of service that a retiring Fire Fighter hired after July 1, 1992 is to receive as terminal leave?

### **BACKGROUND:**

The City of Jersey City (a public employer, hereinafter referred to as the "City") and the Uniformed Fire Fighters Association of Jersey City, Local 1066, I.A.F.F. (hereinafter, the "Union" or "IAFF"), the recognized representative of approximately four hundred (400) fire fighters employed within the City, are parties to an effective Collective Bargaining Agreement (hereinafter, the "Agreement") which governs the period January 1, 1997 through December 31, 1998. (See Joint Exhibit J-1). The Agreement was effective October 1, 1996<sup>1</sup> however, somewhat unusual to the procedure of settlement, two outstanding items were included in the Agreement with the reservation that the issues would be resolved through conventional interest arbitration. Those two issues are:

1. In Article 10, Vacations, paragraph A.2, to reserve to conventional interest arbitration the issue of the vacation schedule that is to be applicable to all line Fire Fighters<sup>2</sup> who came on the payroll after January 1, 1997; and
2. In Article 28, Terminal Leave, paragraph B, the parties agreed to reserve to conventional interest arbitration the issue of the amount of calendar days for each year of service that a retiring Fire Fighter is to receive as terminal leave for Fire Fighters hired after July 1, 1992.

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1. The parties had reached an agreed to settlement on June 28, 1996 (see U-14) but the agreement was rejected by the Membership of Local 1066.

2. The vacation issue did not involve those Fire Fighters hired after July 1, 1992 who are on special assignment. The vacation entitlement for those Fire Fighters is covered by Article 9 of the Agreement.

On November 4, 1996, a joint petition was filed by the parties with the State of New Jersey Public Employment Relations Commission (hereinafter, "PERC") for initiation of interest arbitration. The petition referenced the issues in dispute as "vacation and terminal leave".<sup>3</sup>

Proceedings were conducted under "The Police and Fire Public Interest Arbitration Reform Act".

### **INTEREST ARBITRATION**

Interest Arbitration is permitted in labor disputes for the public fire and police departments within the State of New Jersey per N.J.S.A. 34:13A-14 et. seq. The statute provides that, in the event the parties do not agree on any designated, acceptable terminal procedure or do not fashion one of their own with the approval of PERC, the mandatory procedures of the statute shall be implemented. Pursuant to N.J.S.A. 34:13A-16(d)(2), the impasse in the negotiations herein are to be by "conventional arbitration".<sup>4</sup> Moreover, under Subsection 3(d) of the Act, this Arbitrator is directed to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth under [N.J.S.A. 34:13A-16g]."

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3. These items were identified as economic issues in dispute. The petition did not identify any non-economic issues in dispute.

4. This Arbitration is governed by the "Police and Fire Public Interest Arbitration Reform Act" pursuant to P.L. 1995, c.425, which was signed into law on January 10, 1996 and establishes "conventional arbitration (as opposed to last and final offer arbitration) as the terminal procedure to be utilized when ... unable to reach a new collective agreement (contract).

## STATUTORY CRITERIA

The criteria which require such consideration are listed under the statute (at N.J.S.A. 34:13A-

16g) as follows:

1. **The interests and welfare of the public. Among the items the arbitrator...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 wage, hours, and conditions of employment of other employees performing the same or similar service and with other employees generally:**
  - (a) **In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.**
  
  - (b) **In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.**
  
  - (c) **In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995, c. 425 (C. 34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.**
  
3. **The overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits and all other economic benefits received.**

4. **Stipulation of the parties.**
5. **The lawful authority of the employer. Among the items the arbitrator...shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45.1 et seq.).**
6. **The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator...shall take into account, to the extent the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.**
7. **The cost of living.**
8. **The opportunity and stability of employment including seniority factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective bargaining between the parties in the public service and in private employment."**

The statute further requires that the Arbitrator "(S)hall decide the dispute based on a reasonable determination of the issues, giving due weight to [the above listed factors]...and...indicate which of the factors are deemed relevant, satisfactorily explain why other are not relevant, and provide an analysis of evidence on each relevant factor." See Id.

## **FINAL OFFERS**

### **Final Offer of the Union<sup>5</sup>:**

The Union requested that the Agreement be amended to read as follows:

#### **Article 10, Vacations**

A.2. For all Fire Fighters coming on to the payroll after January 1, 1997, annual vacation will be granted in accordance with the following schedule, except for those assigned as detailed personnel as referred to in Article 9:

- (a) up to the end of the first calendar year one (1) twenty-four (24) hour tour for each full four (4) months of service not to exceed three (3) tours.
- (b) during the second year of service, four (4) twenty-four (24) hour tours.
- (c) from the third year of service to the end of five (5) full years of service, five (5) twenty-four (24) hour tours.
- (d) during the sixth year of service, six (6) twenty-four (24) hour tours
- (e) for the seventh and eighth full years of service, eight (8) twenty-four (24) hour tours.
- (f) commencing with the ninth full year of service fifteen (15) twenty-four (24) hour tours.
- (g) drawing shall start upon completion of transfers in each group.

#### **Article 28, Terminal Leave**

**Section B.** All Fire Fighters hired after July 1, 1992 who retire will receive a mandatory cash payment in lieu of time off for the number of years of service to the City based on five (5) calendar days for each year of service.

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5. (See Union Exhibit U-18).

**Final Offer of the City<sup>6</sup>:**

**Vacation**

For all Fire Fighters hired after 1/1/97, annual vacation will be granted in accordance with the following schedule except for detail personnel as referenced to in Article 9:

1. Up to end of the first calendar year - one (1) twenty-four (24) hour tour for each four (4) months of service.
2. Second year of service to the end of three (3) years of service - four (4) twenty-four (24) hour tours.
3. Fourth (4th), fifth (5th) and sixth (6th) years of service - five (5) twenty-four (24) hour tours.
4. Seventh (7th), eighth (8th), ninth (9th) years of service - seven (7) twenty-four (24) hour tours.
5. Tenth (10th) year of service - eight (8) twenty-four (24) hour tours.
6. Eleventh (11th) year of service and on - ten (10) twenty-four (24) hour tours.

**Terminal Leave**

The City's final offer on the terminal leave day issue is that Fire Fighters hired after July 1, 1992 shall accrue three days per year as is provided for in the predecessor agreement which is in evidence.

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6. See Employer Exhibit E-1.

## SUMMARY OF LOCAL 1066's POSITION

The Union's position is principally based on a comparison of the salary and benefits received by Police Officers employed by the City as compared to Fire Fighters. According to the Union, Police Officers receive "far better treatment" in terms and conditions of employment than do Fire Fighters.

The Union noted that, in past contracts, Local 1066 had made efforts to assist the City during periods of fiscal constraints by deferring pay increases, while other uniform police units neither agreed to the pay deferral nor were subject to the City's proposal.<sup>7</sup>

Local 1066 also cited another example of police officers receiving favored treatment when (effective January 1997) the City unilaterally transferred emergency call duty where oxygen is needed to Fire Fighters.<sup>8</sup>

While not seeking equity with City employed Police Officers, Local 1066 sought "some measure of fundamental fairness."

## SUMMARY OF THE CITY'S POSITION

In presenting its case, the City focused primarily upon the welfare of the public (N.J.S.A. 34:13A-16(g)(1); comparisons of the conditions of employment with other employees in general public employment (g)(2); and the overall compensation received by the employees (g)(3). It was the City's position that these were the statutory criteria most pertinent to this case.

With respect to vacation, it was the City's position that the current level of vacation time received by Fire Fighters is excessive and not at a level that could be justified under any of the statutory criteria. Comparison of the percentage of total work hours as vacation for a Fire Fighter with five years of service (fifteen, twenty-four hour tours represents 16.48%<sup>9</sup> of total work hours as vacation time) with a typical private sector employee (assuming 30 vacation days of 8 hours equal

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7. Local 1066 has filed a lawsuit seeking to rescind the prior agreement (U-15) because the City had not incorporated a pay deferral with other uniform police units, after the Mayor had promised Local 1066 it would not be subject to a pay deferral without the agreement of all City unions.

8. Local has filed an unfair labor practice charge against the City with PERC.

9. 360 hours divided by 2,184 total tour hours of work per year.



240 hours of vacation equates to 11.58%<sup>10</sup> of total hours worked as vacation) was 4.94% greater. When compared with Police Officers employed by the City (who work 1939 hours annually), the Fire Fighters receive 4.1% more vacation time (16.48% less 12.38%).<sup>11</sup> Thus, the City submitted that Fire Fighters as compared to City employed Police Officers and private sector employees receive greater amounts of vacation.<sup>12</sup>

The City maintained that, by evaluating vacation entitlements in terms of total hours off as compared total hours worked and finding that Fire Fighters fared better than City Police Officers and private sector employees, the current amount of vacation received by Fire Fighters is excessive and not at a level that can be justified under the criteria. However, the City proposed its moderate change applicable only to Fire Fighters hired after January 1, 1997. At the same time, the City's proposal would not effect vacation benefits for those Fire Fighters hired before January 1, 1997.

In further support of its position, the City relied on the interest arbitration award concerning (with the Police unit) issued in March 1996<sup>13</sup> and cited the maximum vacation entitlement for newly hired police officers. The City submitted evidence of twenty (20) eight (8) hour tours (commencing in the eleventh year of employment), which are limited to fifteen (15) eight (8) hour tours between the second and tenth year.

With respect to Terminal Leave, the City agreed that the present level (of cash payment to Fire Fighters who retire) of five (5) calendar days for each year of service with the City should be maintained. The City contended that, for those Fire Fighters hired after July 1, 1992, terminal leave should similarly be maintained at three (3) days for each year of service with the City. According to the City, the present level is reasonable and the Union's attempt to have the Arbitrator restore the additional two days should not be granted.

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10. 240 hours divided by 2,080 total hours (40 hours per week x 54 weeks per year).

11. 30 vacation days times 8 hour tours equal 240 tour hours of vacation per year divided by 1,939 total work hours per year. ( $240 \div 1939 = 12.38\%$ ).

12. The City also cited the commonly recognized ability of Fire Fighters to rest and sleep in beds supplied by the employer during work hours. While the City argued that this practice should be taken into effect in the present matter, this Arbitrator is not convinced that rest subject to interruption and anxiety is necessarily relevant to determining the appropriate level of vacation time.

13. Arbitrator Jack Tillem.

The City also contended that the present level of Terminal Leave should be maintained, since it was negotiated in good faith and as a *quid pro quo* for other entitlements and because the issue found support and was sustained through an interest arbitration award with the POBA (and the City).

### CONSIDERATIONS UNDER THE STATUTORY CRITERIA

**N.J.S.A. 34:13-16(g)(1) requires consideration of the "interests and welfare of the public."**

Although a "silent party" to the interest arbitration,<sup>14</sup> the public inevitably carries the weight of its outcome. Both parties asserted, however, that the limited nature of the present procedure has a correspondingly limited impact on the public.

As the Union argued, there is no rational for the City's position nor explanation for the "wide differential" in the salary and benefits granted to the Police Officers in comparison with Fire Fighters. While not seeking to make up the difference, the Union is striving to add some measure of comparability in the two (vacation and terminal leave issues). Thus, as Union President Krajnik testified, Local 1066 was attempting to insure that all Fire Fighters receive 30 days, or 15 tours, of vacation and restore the full five days of terminal for those Fire Fighters hired after July 1, 1992.

While the Union argued that the public suffers in those circumstances where employees are treated in an inconsistent or unequal manner, this Arbitrator recognizes the import of the interest arbitration award which delineates the value of the present benefit. As Arbitrator Tillem noted:

... the notion of providing a terminal leave benefit in the context of an entitlement to bank the time without limit and regardless of the amount of sick leave used by a fire Fighter is "unique". No other community provides for terminal leave except as a portion of sick leave and all other communities cap the entitlement. The only justification for a terminal leave payment is typically that the accrual of terminal time acts as an incentive an employee not to use sick leave.

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14. See Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994).

**N.J.S.A. 34:13A-16(g)(2) requires "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.**
- (b) In public employment in general.**
- (c) In public employment in the same or similar comparable jurisdictions.**

**N.J.S.A. 34:13A-16(g)(3) requires consideration of 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."**

The above criteria are addressed through overlapping evidence. As such, this Arbitrator will address both subsections concurrently, to facilitate a cohesive and comprehensive analysis of the arguments raised.<sup>15</sup> The IAFF maintained that a comparison of wages and benefits between Fire Fighters and Police Officers employed by the City "graphically demonstrates the fact that Police Officers receive far more favorable treatment than do the City's Fire Fighters". The IAFF detailed a comparison of the Local 1066 and POBA contracts (see IAFF Brief, pp. 10-19).

The City, on the other hand, argued that the IAFF enjoy contract benefits which may not be identical to the Police units but are nevertheless comparably better in many instances.

**N.J.S.A. 34:13A-16(g)(4) requires consideration of "stipulations of the parties."**

There were no substantive stipulations submitted by the parties. However, in accordance with the terms of Articles 10 and 28, the parties stipulated that the hearing, evidence, record and Award would be limited in scope to the two issues presented.

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15. In its brief, the PBA likewise combined its arguments on both criteria.

**N.J.S.A. 34:13A-16(g)(5) requires consideration of the "lawful authority of the employer."**

In contemplating this criterion, the Arbitrator looks to both legislative and fiscal constraints imposed by the legislature, including N.J.S.A. 40A:4-45.1 et. seq. (hereinafter, the "Cap Law").<sup>16</sup> It is well settled that the State Legislature has imposed specific guidelines which "require local governments to follow sound business principles in their budgetary practices." Morris County v. Skokowski, 86 N.J. 419, 423 (1981). This issue is not of significance to the instant determination.

There is no dispute that the two issues are within the lawful authority of the City (and the IAFF) to negotiate. Similarly, the issues of terminal leave and vacation are appropriate issues to address in arbitration and by this Arbitrator.

The proofs and arguments clearly infer that the City has utilized reasonable means by which to address the two contract items within their ability to budget. Certainly, this is an approach based on business principles.

**N.J.S.A. 34:13-16(g)(6) requires consideration of the "the financial impact on the governing unit, its residents and taxpayers".**

The issue of financial impact is less critical to the instant matter, since there has been neither argument nor evidence to establish that the decision herein will have any detrimental impact on the City, its residents or the City's taxpayers. By maintaining or expanding the entitlements, this Arbitrator views the decision with limited financial impact.

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45. N.J.S.A. 34:13a-16g(5) does not necessarily limit this Arbitrator's analysis to the Cap Law but, as in the instant case, this is the primary focus of discussion by the parties and the arbitrator.

**N.J.S.A. 34:13A-16(g)(7) requires consideration of the "cost of living".**

The cost of living does not provide any significant measurement to affect the Arbitrator's decision in the instant matter.

**N.J.S.A. 34:13A-16(g)(8) requires consideration of 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.**

The final criterion requires this Arbitrator's consideration of the continuity and stability of employment. The IAFF is of the belief that, along with the issue of comparability, this was entitled to the most weight in the present proceeding. The focus of the Union's arguments relate to the comparison of wages and conditions of employment between Jersey City Police Officers and Fire Fighters which, in the opinion of Local 1066, reveals a "wide gap" and leads to instability and detriment within the Fire Department.<sup>17</sup> In addition to these issues, the IAFF raises their agreement to defer pay in light of the City's decision not to seek the same term of agreement with the Police.

### **OPINION**

Having considered the testimony and exhibits offered in the context of the relevant statutory criteria, this Arbitrator notes that the parties have provided a limited record<sup>18</sup> of pertinent evidence.

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17. Counsel argued that the gap in wages and benefits has been exacerbated by the unilateral action of the City to add to the workload of Fire Fighters without negotiation.

18. In seeking this Award, the parties have requested this Arbitrator to limit the scope of the proceeding within the confines of the Agreement as opposed to the strict adherence to the statutory criteria.

Nevertheless, the parties have met their obligations imposed in Fox v. Morris County Policemen's Association, PBA 151, 266 N.J. Super. 501, 517 (App. Div. 1993), cert. denied, 137 N.J. 311 (1994) and this Arbitrator has endeavored to comply with relevant statutory guidelines by identifying and commenting on those criteria found relevant to his decision.

Based on a review of the evidence submitted, inclusive of testimony, documents and post-hearing briefs and after due consideration of the offers of the parties taken together with the statutory criteria of N.J.S.A. 34:13a-16, this Arbitrator hereby renders the following:

## AWARD

### PERC DOCKET IA-97-34 CITY OF JERSEY CITY -and I.A.F.F. LOCAL 1066

1. **Article 28, Terminal Leave**, Paragraphs B and C, shall read:

All Fire Fighters hired after July 1, 1992 who retire, will receive a mandatory cash payment in lieu of time off for the number of years of service to the City based upon three (3) calendar days for each year of service.

Fire Fighters hired after July 1, 1992, but before November 1, 1994 will receive a one time credit, effective March 1, 1997, of one (1) calendar day of compensatory day for 1992 and of two (2) calendar days of compensatory time for each of years 1993, 1994, 1995 and 1996 for a total credit of nine (9) calendar days of compensatory time. Fire Fighters hired after November 1, 1994 but before February 1, 1997, will receive a one time credit, effective March 1, 1997, or two (2) calendar days of compensatory time for each of years 1995 and 1996 for a total credit of four (4) calendar days of compensatory time. Notwithstanding any other provision of this contract, the additional compensatory time calendar days credited to these two categories of Fire Fighters under this Article must be used by those Fire Fighters before December 31, 1998 or be lost and must, in addition, be used in accordance with Article 21 of this Agreement.

Existing paragraph C shall become paragraph D and existing paragraph D shall become paragraph E.



