

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between:

CITY OF PASSAIC

“Employer,”

- and -

PASSAIC FIREFIGHTERS ASSOCIATION

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2002-027

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Mark S. Ruderman, Esq.
Ellen M. Horn, Esq.
Ruderman & Glickman, PC

For the Union:

David I. Fox, Esq.
Gregory A. Busch, Esq.
Fox and Fox, LLP

I was appointed arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, in this matter involving the City of Passaic [the "Employer" or "City"] and the Passaic Firefighters Association [the "PFA" or "Association"]. A pre-arbitration mediation was held on December 17, 2001. Because the impasse was not resolved, formal interest arbitration hearings were held on May 20, 21 and July 2, 2002. Testimony was received from financial expert Dr. Raphael J. Caprio, and the City's Chief Financial Officer Edward Routel. Both parties introduced voluminous documentary evidence and argued orally. Post-hearing briefs were filed on or about February 14, 2003. I also received additional submissions from both parties through October 16, 2003.

FINAL OFFERS OF THE PARTIES

The City and the PFA submitted the following final offers:

ASSOCIATION'S FINAL OFFER

Economic

1. Duration of Term of Contract: 4-year contract effective July 1, 2001 through June 30, 2005. Although the PFA's proposal was for a 4-year contract, in light of the changed circumstances explained below, the PFA is now seeking a 5 year contract.
2. Salary and other Payments:
 - A. Salary increases:
6% effective July 1, 2001

6% effective July 1, 2002
6% effective July 1, 2003
6% effective July 1, 2004
6% effective July 1, 2005

The above salary increases shall be applied to all steps in the firefighter salary guide as set forth in Article XIX, Wages, Section A of the CBA.

B. Special Parity Adjustment – Three percent over the life of the contract.

C. Firefighter Senior Pay:

Establish senior pay equal to one half of the difference of Lieutenant's pay and firefighter pay effective upon completion of 20 years of service.

3. Emergency Medical Technician Stipend: 3.0% stipend in base pay for maintenance of the required EMT Certification.
4. Holiday Pay: Holiday Pay to be included in base pay without reduction.
5. Assistant Training Officer and Fire Prevention Personnel Stipend: Increase from \$3,500 to 15% of base pay included in base pay.
6. Fire Inspector's Certification: Article IX, B(2)(2), Increase from \$500 to \$750.
7. Vacations: Increase vacation leave by one day.
8. Sick Leave: Increase all members sick leave in Article XIII to ten (10) days.
9. Sick Leave: Amend Article XIII(f)(a) to remove "incur a negative sick leave balance" and replace with "request sick leave donation program."
10. Insurance: Increases in coverage as follows: basic benefit (80%); crowns, inlays and gold restoration (75%); prosthodontics (75%); annual maximum (\$2,000); orthodontics maximum (\$2,500).

11. Department Mandated Training: Time off from duty for department mandated training.
 1. The employer shall provide time off from duty whenever personnel are required to attend a class during work hours. This is to include all personnel regardless of their time in service.
 2. Personnel who are required to maintain certifications will not in any way have to secure another firefighter to work in their place while attending class.
 3. The current practice as to compensation for such training, at premium rates, shall continue.
12. Dispatch and Office Personnel Sick Days: New Article. The Dispatch and Officer Personnel sick days shall be converted to hours.
12. Special Events: The selection of Special Events shall be chosen by seniority pursuant to the following:

Currently firefighters who provide services at organized gatherings are paid at a rate of one and a half (1 ½) times their hourly rate for each hour of service. Assignments shall be done by seniority through a committee established by the Firefighters Association.
14. Uniform Allowance: Increase from \$850 to \$1,000.

Non-Economic

15. Deletion of Language in Miscellaneous, Article XXXIV: The PFA has proposed that this language "except in emergency situations" in Article XXXIV(a) should be deleted.
16. Non-Discrimination: The PFA has proposed adding an additional paragraph to Article IV, non-discrimination which shall provide that religious beliefs are protected insofar as they do not hinder job performance.
17. Overtime: The PFA has proposed amending Article VIII, paragraph C to change the word "employees" in C(1) to "volunteers" and to change the word "employees" in paragraph C (2) to "volunteers". The PFA has further proposed that Article VIII(e) be changed to read "... only

those firefighters who signed up ..." instead of as it currently reads which is: "... only those firefighters who volunteered".

18. Approval of Vacations: Article XII does not provide that approval of vacations must be rendered within a specified time period. The PFA proposes that the approval of requested vacation days shall be given within 48 hours of the request.
19. Word Change to Article XIV, Supplemental Compensation Upon Retirement: The PFA has proposed that Article XIV (b) should read, in part, as follows: "The formula to be used to calculate the supplemental compensation to be paid upon retirement shall be 260 annual work days divided ..." instead of "multiplied."
20. Article XXIX, Employee Duties: The PFA proposes changing the word "overall" to "overhaul".
21. Personnel Files: Article XXXIII does not place any restrictions on the amount of time discipline documentation. Discipline documentation may be permanently maintained by the department.

The PFA proposes that the following documentation discipline shall be placed in the employee's personnel file and shall remain in the file for the following time periods.

1. Written record of oral reprimand, 6 months.
2. Written reprimands, 1 year.
3. Suspensions, 4 years.
4. If a subsequent discipline of a written reprimand or greater occurs during this period of time, all disciplinary action will remain in the employee's personnel file until the last disciplinary action is removed in accordance with the time frames set forth above.
5. After this period, the documents will be placed in a separate file and will not be accessible to anyone viewing the employee's personnel file. This information will not be available to promotion boards or to anyone outside the City for employment

reference checks or other purposes unless the employee has given written authorization or the Employer is legally required to provide it.

6. If the documentation of a disciplinary action is removed from the employee's personnel file, the action cannot be relied upon as the basis for progressive disciplinary action should another incident occur warranting discipline. However, the Employer reserves the right to use of such documentation to refute a claim that the employee did not have knowledge of a policy, rule or standard.
22. Discipline and Discharge: The PFA proposes amending paragraph B of Article III to expand the time necessary for filing formal charges from 45 days to 30 days.
23. Successorship: The PFA has proposed the following new paragraph to be added to Article XXXV as paragraph B.

SUCCESSORSHIP: This Agreement shall be binding upon the successors and no provisions, terms and obligations here in shall be effected, modified, altered, or changed in any respect whatsoever by consolidation, merger or annexation.

24. Drug Testing: The PFA has proposed to amend Article XXXVII as follows:
 - a. Drug Testing, Article XXXVII(c) methods of implementation. The language should be added to (C)(1)(b) to indicate that the vehicular accident while the firefighter is driving is "a vehicular accident exceeding \$2,000 in property damage or fatality in which the firefighter is driving on duty."
 - b. Voluntary Testing; amnesty period Article XXXVII(d) remove this entire paragraph as the amnesty period no longer exists.
 - c. The Fire Department Personnel Rights, Article XXXVII, drug testing (f) add language establishing that if a firefighter is sent for drug testing due to probable cause, that member shall be sent home and shall not be allowed to return to duty until a result of the drug test is received. The City shall provide the

location of where drug testing will be held when the Medi-Center is closed.

- d. Article XXXVII, Drug Testing Advisory Committee shall read: "The drug testing advisory committee shall not consist of police personnel."
 - e. Article XXXVII(l), Testing Process, any new drugs to be tested shall be subject to negotiations.
 - f. Article XXXVII(o)(2). Subparagraph 2 of subparagraph O shall be amended to reflect that there is no longer an amnesty period.
25. Minimum Staffing Levels: The PFA proposes to add a new article to the Agreement providing that there be a goal for minimum manning which shall be as follows:

MINIMUM STAFFING LEVELS: The City shall recognize the importance of maintaining a minimum level of fire personnel. The number of firefighters on duty shall not fall below the number of 18. In the event the level of firefighters scheduled for duty on any given day falls below the number of 18, the City agrees to rehire (at the rate of time and a half) enough personnel to reach the minimum number of 18 personnel on duty.

CITY'S FINAL OFFER

- 1. Article 3 – Discipline and Discharge
 - a. Delete reference to time period to file disciplinary charges.
- 2. Article 4 – Grievance procedure and arbitration
 - a. If the fire chief and fire director are the same person, skip to step 3
 - b. Establish time period of ten (10) days to file for arbitration
- 3. Article 8 – Overtime
 - a. In C-3 and C-5, employee who puts name on list, must remain on list for a full year absent disability.

4. Article 9 – Wages
 - a. July 1, 2001, three (3%) percent, July 1, 2002, three (3%) percent, July 1, 2003, three (3%) percent.
 - b. Establishment of a ten (10) step salary guide with equal-distant steps, between the minimum and maximum.
 - c. Eliminate fire inspection's certificate payment of \$500.00 and add \$150.00 to clothing allowance effective July 1, 2003.
5. Article 10 – Longevity
 - a. All employees hired after July 1, 2002 shall not receive longevity
6. Article 12 – Vacation
 - a. Employees hired after July 1, 2002, each step will be reduced by three (3) days.
7. Article 13 – Sick Leave
 - a. Limit use of sick leave for attendance upon person and family to emergency situations only.
8. Article 18 – Special Leave
 - a. The employee must be able to secure another employee qualified to perform his duties to work in his place.
 - b. The department reserves the right to deny any swaps if the qualifications are not met, or if the employee abuses his privileges.
9. Article 22 – Insurance (change paragraph F on page 7 to read as follows:)
 - a. Generic drug \$0;
 - b. Brand name drugs \$10;
 - c. Drugs by mail order \$0;
 - d. Family maximum/year unlimited

10. Article 27 – Transfers

- c. Delete everything in paragraphs A, B, and C except for the first sentence in paragraph A

11. Article 34 – Miscellaneous

- a. Delete any limitations due to temperature and inspections
- b. Delete paragraphs F-1, F-5 and F-7

The City and the PFA have offered testimony and extensive documentary evidence in support of their final offers. Hundreds of City and PFA exhibits were received in evidence. I am required 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 (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor. 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.

BACKGROUND

The City of Passaic is a municipality located in Passaic County. It is a densely populated urban municipality covering 3.2 square miles, having a population of 67,861 plus a substantial population of undocumented workers. The City's population is the most dense in the County with approximately 18,711.5 people per square mile. The City has a per capita income of \$11,057. The City has the lowest median income in Passaic County with a median household income of \$26,669. Passaic's housing stock includes several low income housing projects, such as Aspen Place which is comprised of five eight story high rise apartment buildings with approximately 325 apartments, each housing an average of four or five individuals. The City is designated as an Urban Enterprise Zone and this designation has sparked renewal and revitalization of its industrial base. The City is home to several industrial centers

including Big Apple West, Passaic Industrial Center and the Willett Street industrial complex.

The City's total municipal tax rate increased from 3.84 in 1997 to 4.32 in 2001. At the same time the equalization ratio has decreased from 1.02125 to 0.8771. The tax collection rate has remained stable, increasing slightly from 98.72% in 1998 to 98.95% in 2001. The City maintains a surplus and increased its surplus balance from \$1,682,070.00 in Fiscal Year 2001 to \$2,420,766.00 in Fiscal Year 2002 or \$738,696.00.

The total number of runs made by the City's Fire Department varies from year to year and has increased from 2,330 in 1992 to 3,161 in 2001, although, in 1994 there was a total of 5,185 runs.

The Passaic Fire Department is composed of 91 rank-and-file firefighters represented by the PFA, as well as 17 Lieutenants, 11 Captains, 4 deputy chiefs represented by the SFOA, and the Fire Chief. Members of the Passaic Fire Department have distinguished themselves in the line of duty on many occasions in fire and rescue operations and in doing so, have saved the lives of several individuals. On May 9, 2001, Passaic Firefighter Tirado died attempting to rescue a mother and two children from an apartment in a tenement fire. Passaic Firefighters assisted in the search and rescue operations at the World Trade Center site in New York City after September 11, 2001.

POSITIONS OF THE PARTIES

PFA

The PFA contends that its final offer forms the most reasonable basis for resolution. The PFA emphasizes that it does not receive wages and benefits substantially equivalent to the City's Patrolmen and other rank-and-file firefighters in the region including Clifton and Paterson, the City's municipal aid partners, as well as other municipalities throughout the greater Passaic and Bergen region. The PFA emphasizes that despite the disparity between the wages and benefits received by the City's Patrolmen and its rank-and-file Firefighters, the City settled the most recent contract with the PBA after only three meetings. The PFA points out that the PBA contract included increases of 4.0% in each year effective January 1, 2003, January 1, 2004, January 1, 2005 and January 1, 2006. Citing an article in the Herald News, the PFA points out that the increases included in the PBA contract will cost the City between \$480,000 and \$500,000 in the first year of the agreement.

The PFA also notes that the City of Clifton offered the FMBA 4% annual increases over four years as well as other benefits and no give backs.

The PFA relies upon these recent events in seeking a five-year agreement from July 1, 2001 through June 30, 2006. The PFA's rational for a five-year

agreement includes that the PBA agreement settled in three meetings and that the City relied upon Arbitrator Weisblatt's decision in the PBA interest arbitration. The PFA notes that Arbitrator Weisblatt found that "[c]onsistency between the two [the PFA and the PBA] is good, sound labor relations policy." The PFA notes that the City argues strongly in favor of pattern bargaining. The PFA points out that the City takes the position that the PFA's and the PBA's agreements should expire at the same time. The PFA notes that a five-year agreement will serve to allow the PBA and the PFA agreements to expire in the same year. The PFA notes that a five year agreement will allow some time before returning to the bargaining table and will promote stability and continuity in labor relations and negotiations. The PFA maintains that a five-year duration will also permit more time to remedy the substantial salary disparity between the PFA and the PBA. The PFA contends that a five year agreement would better allow for the elimination of the salary disparity between Passaic firefighters and firefighters in Clifton and Paterson.

In seeking salary increases of 6% effective July 1 of each year applied to all steps on the firefighter salary guide, the PFA explains that its salaries are far below the PBA's salaries as well as the salaries of other paid fire departments in Northern and Central New Jersey. The PFA explains further that it made sacrifices in the agreements from July 1, 1999 through June 30, 2001 and from July 1, 1995 through June 30, 1999 to assist the City, which was then in fiscal

crisis. Since the fiscal situation has improved dramatically, the PFA asserts that it should be compensated "above the going rate".

The PFA asserts that its salary increases for 1995 through 2001 were below the average reported salary increase in all awards reported in the recent biennial report of the Public Employment Relations Commission and well below the average salary increase of all reported voluntary settlements included in the biennial report.

Although there was a history of parity with the PBA, the PFA notes that PBA salaries jumped past the PFA in 1992. The PFA recounts the difference in holiday pay, noting that the PFA members receive holiday pay for holidays they work but the PBA receives ten paid holidays off scheduled at the request of the officer. The PFA notes that the PBA contract permits police to carry holidays over to the next calendar year.

The PFA compares increases received by the PBA with those proposed by the City, noting that the City proposes increases of 3.0% effective July 1, 2001, July 1, 2002 and July 1, 2003. The PFA notes that the City's police received increases of 3.9% effective January 1, 2001 and January 1, 2002 and recently settled its agreement with increases of 4.0% effective January 1, 2003, January 1, 2004, January 1, 2005 and January 1, 2006. The PFA compares the PBA top salary on January 1, 2000 of \$62,081 with the PFA top salary on July 1,

2000 of \$57, 361. In addition to less wages, the PFA notes that its members work two hours more per week than do the City's patrolmen, which totals 110 hours per year or a total of 5%. The PFA contends that if the City's proposals are awarded, its firefighters will fall further behind the City's police. The PFA contends further that if the City's proposals are awarded, its firefighters will fall further behind firefighters in Clifton and Paterson. Specifically, the PFA asserts that its firefighters are approximately 14% behind the Paterson firefighter maximum salary and over 7.0% behind the firefighter maximum salary in Clifton. The PFA also asserts that when total compensation is compared, including maximum salary, longevity, clothing allowance, and holiday pay, Passaic firefighters earned the lowest maximum base salary and benefits in the County in 2000. The PFA asserts that including Passaic firefighters in the average, Passaic firefighters earned \$4001 less than the county-wide average annual top salary of \$61,362. The PFA contends that if the City's final offer of 3.0% annual increases is awarded, the disparity will grow.

Accordingly, the PFA proposes a 3% special parity adjustment over the life of the Agreement. The PFA asserts that a parity adjustment would begin to close the total compensation gap between the PFA and firefighters in surrounding municipalities and would ease the burden of this protracted arbitration.

Turning to the testimony of Dr. Ronald Caprio, its financial expert, the PFA points out that Dr. Caprio demonstrated that the City can afford the costs of 3.9% salary increases through July 1, 2005 and the difference between 3.9% and 6.0% is minimal. Based upon a total payroll for the PFA for the 2001-2002 fiscal year of \$4,076,053 the PFA calculates the costs of increases of 3.9% through SFY 2005.

The PFA also relies upon Dr. Caprio's testimony that in Fiscal Year 2001, the first year of this contract, the City had a tax surplus of \$700,000 because it collected more than was budgeted. In contrast, the PFA points out that Dr. Caprio testified that the cost of a 6.0% across the board increase in each year from 2001 through 2005 would be \$557,149 more than the cost of a 3.9% increase. The PFA notes Dr. Caprio's testimony that there are sufficient funds in the fund balance without any replenishment of the fund balance to cover the difference between 3.9% and 6.0%. The PFA cites Dr. Caprio's testimony that only 57.61% of the residential property owners would be burdened approximately \$111 per residential property cumulatively over four years. The PFA notes that this would total less than \$2.00 per month for the typical homeowner. According to Dr. Caprio, the average monthly impact per residential property owner would be \$1.87 per month for FY 2003, \$3.05 per month for FY 2004 and \$4.39 per month for FY 2005.

Addressing the cost of living criterion, the PFA points out that the average salary increase for Passaic firefighters has been modestly above the CPI. The PFA asserts that if the City's wage proposal is awarded, firefighter compensation would continue to be substantially lower than any other municipality in the County, as well as municipalities outside of the County. The PFA contends that this disparity could result in instability of employment, high turnover of firefighters, or inhibit the hiring of new firefighters, all of which would have a detrimental effect on the City. The PFA also asserts that the relatively dense population and increasing workload make firefighting in Passaic particularly dangerous.

Citing situations in Belleville and North Hudson Regional Fire Department, the PFA asserts that the importance of regional fire and rescue services must be emphasized and that parity between communities providing mutual aid is necessary. The PFA notes that firefighter compensation is higher in most categories in Paterson and Clifton, the municipalities that provide and receive mutual aid from Passaic.

Relying upon the testimony of Dr. Caprio, its financial expert, as well as the testimony of City Chief Financial Officer Edward Routel, the PFA asserts that the City is in financial good health and can afford annual increases of 6.0% in each of five years. Specifically, the PFA emphasizes that Mr. Routel found Dr. Caprio's report accurate, except that it underestimated available budget resources.

The PFA also asserts that the Passaic Fire Department is severely understaffed and this contributed directly to the death of Passaic Firefighter Alberto Tirado on May 9, 2001. The PFA described the circumstances of Firefighter Tirado's death as follows:

Firefighter Tirado was one of only thirteen (13) personnel who responded to a blaze at a multi-unit apartment building. Tirado died on the third floor of the apartment building from asphyxiation. The appropriate response to such a blaze requires at least seventeen (17) men. The inadequate response directly contributed to Tirado's death.

Citing this tragedy and September 11, the PFA asserts that firefighting is the "single most dangerous occupation in the world" and is continuous 24 hours a day, seven days a week. The PFA notes that 102 firefighters, including three in New Jersey, were killed in the United States in 2002.

The PFA highlights its proposal to add a new article to the Agreement covering an EMT certification stipend of 3% to be included in base pay for the maintenance of the EMT certification. The PFA maintains that an EMT certification stipend is the norm in the State and 3% is well within the norm. The PFA emphasizes that its members are required to sign a pre-employment agreement requiring them to obtain an EMT certification within twelve months of the date of employment and to be maintained throughout their career. The PFA notes that the pre-employment agreement provides that failure to maintain an

EMT certification may be grounds for dismissal. The PFA notes further that the municipalities of West Orange, New Brunswick, Teaneck, Westfield, Roselle, Clifton, Belleville, Patterson and Elizabeth receive an EMT certification stipend. The PFA points out that Clifton Firefighters receive a \$1200 per year stipend for maintaining and EMT certification and those who are certified in EMT and defibrillator receive an additional \$1500 per year. The PFA also points out that in West Orange the firefighters receive a 2% stipend added to base pay for maintenance of the EMT certification. The PFA cites an interest arbitration award issued by Arbitrator James Begin involving Teaneck and Teaneck FMBA, Local No. 42. According to the PFA, Arbitrator Begin awarded a 2% EMT certification stipend citing the increase in first medical response workload and EMT/EMS stipends in other communities including Hackensack and Ridgewood in Bergen County. The PFA notes that Arbitrator Begin found that "stipends usually range from \$1,250 to \$3,471 so the two percent awarded here with a current cost of around \$1,000 at a maximum base salary is at the bottom of payments."

The PFA urges rejection of the City's argument that its firefighters do not regularly ride the ambulance and ambulances are manned by paid EMTs or volunteers. The PFA notes that most paid fire departments receive EMT certification stipends for maintenance of the certification, as is the case in Teaneck and West Orange. The PFA contends that in Passaic, the potential for use of the EMT certification is continuous. The PFA cites the following examples

of usage of EMT certification in the Department of Personnel Firefighter job specification:

- Aids victims at the scene of emergency by administering medical treatment such as first aid, CPR, or EMT treatment.
- May request advice from hospital physician or emergency department.
- Reports to the dispatcher the nature and extent of injuries to ensure prompt medical care on arrival.
- Prepares victims for transportation in an ambulance.
- May be required to transport victims to hospital or other emergency treatment facility.
- Maintains radio communications with emergency personnel and relays information to facilitate firefighting and rescue operations.

The PFA lists the following Firefighter requirements from the Department of Personnel job specification:

- Appointee may be required to possess a current and valid CPR Certification issued by the American Red Cross or the American Heart Association.
- Ability to understand and apply principles of emergency medical and first aid treatment after a period of training.
- Ability to prioritize emergency medical treatment needs after a period of training.
- Ability to understand and apply techniques used to administer pulmonary and cardiac resuscitation after a period of training.
- Ability to apply appropriate emergency treatment depending upon the patient's condition after a period of training.
- Ability to establish rapport with the patient.

Further, the PFA points to increased reliance on EMT certification since September 11, 2001. The PFA explains that many calls to the Passaic Fire Department are from Emergency Voice Response System boxes [EVR]. EVR boxes are located throughout the City's 17 high rise buildings, 42 schools, three hospitals, two nursing homes, two large mill complexes and three Title III hazmat facilities. The PFA cites examples of instances when the City, the public and the firefighters have benefited from maintaining EMT certification as detailed by PFA President Lawrence Dostanko:

- Since July 1, 2002, Captain Joseph Nayda has been in charge of the Emergency Medical Technicians. He was promoted from Lieutenant to Captain for this purpose. He is in charge of the civilian EMTs who are not members of the PFA. There is a new EMS building on Grove Street that is still under construction and expected to be completed within one month. Captain Nayda will run the EMS from that building and his office will be there.
- All dispatching for the ambulances is performed by the Police Department. There are two ambulances which are continuously in service and manned by the civilian EMTs under the authority and direction of Captain Nayda.
- In 1997, there were three separate occasions in which regular firefighters, each possessing their Emergency Medical Technician certifications, were taken out of combat, which is the normal duty of fire suppression, and assigned to a fire apparatus, and called into Emergency Medical Service manning an ambulance. For a twelve hour tour, Christopher Freeman, Ronald Jones and Kevin Colavitti, each rode with an ambulance.
- In approximately June, 2002, Edwin Sanchez, a Passaic firefighter who is a former Emergency Medical Technician, was approached by Chief Imperata to ride a shift with an ambulance. Firefighter

Sanchez rode the shift as an EMT and manned the ambulance. Sanchez was off duty and worked an eight (8) hour shift. He was not compensated.

- Since the anthrax scare following September 11, 2001, the Fire Department has responded to many anthrax calls. This requires that the firefighter responding to such a call be fitted in a Tyrex suit. In the event that there is anthrax, emergency medical services will have to be immediately delivered.

Additionally, the PFA emphasizes EMT certification is important because firefighters must be trained so that they can assist each other in critically dangerous situations. The PFA points out that when Firefighter Tirado was killed he was unresponsive and not breathing when his body was discovered in an apartment bedroom.

The PFA also proposes to amend Article XI, covering holidays to include holiday pay in base pay effective July 1, 2001 for all firefighters. The PFA notes that at present, holiday pay is included in base pay after the completion of the firefighter's 19th year of employment. The PFA cites a trend to include holiday pay in base pay and notes that holiday pay has been included in base pay in New Brunswick, Trenton, Union Township, Newark, Ridgewood, Bloomfield, Jersey City, Clifton and Roselle. The PFA asserts that none of the municipalities that have included holiday pay in base pay have included it at a reduced rate. The PFA acknowledges that the Passaic Fire Officers Association negotiated to have holiday pay folded into base pay at the rate of current holiday pay less 12%. The PFA asserts that such an arrangement is the exception rather than the rule.

Turning to its remaining proposals, the PFA proposes the establishment of Senior Firefighter pay which would be equal to one half of the difference between lieutenant pay and firefighter pay effective upon completion of 20 years of service. The PFA notes that senior pay is provided in Paterson and Newark and would be a minimal expense for the City because relatively few firefighters are eligible for the benefit at any given time. The PFA points to the agreement in Paterson which effective July 1, 1999 provided \$1,000 senior firefighter pay and effective July 1, 2002, the amount was increased to \$2,000. In Newark, the PFA explains, senior step pay of 3% commences on the first day of the tenth year of service.

The PFA proposes to increase the Assistant Training Officer and Fire Prevention Personnel stipend from \$3500 to 15% of base pay. The PFA explains that its members began receiving the stipend on January 1, 1994. According to the PFA, if this stipend had increased at the same percentage rate as the salary increases since that time, the stipend would have almost doubled. The PFA maintains that the Fire Prevention Bureau and Life Hazard Inspections make money for the City. Additionally, the PFA points out that these firefighters work a normal day shift without the benefits of a 24/72 schedule. According to the PFA, there must be incentive for a firefighter to accept a position that produces revenue for the City while foregoing other benefits available to firefighters. The PFA notes that only two firefighters fall in this category, and the City received

\$120,000 from the State in 2001 for Life Hazard Inspection. The PFA points out that there is only one full-time inspector in the Fire Prevention Bureau and that the Fire Inspector position requires a Fire Inspector Certificate, Fire Official Certification and an Arson Certification. The current Fire Inspector, David Montalvo has all three certifications. The PFA explains that Montalvo obtained a Fire Inspector Certification after completing a 60 hour course at West Essex Community College, which Inspector Montalvo paid for. The Fire Official course, also paid for by Montalvo, was a 30 hour course at West Essex Community College and the Arson Certification required a 120 hour Basic Arson course at the State Trooper Barracks, Division of Criminal Justice in Sea Girt. According to the PFA, Montalvo traveled to Sea Girt every day for three weeks to complete this course and attends an annual seminar to maintain his Arson Certification. Montalvo must be recertified every three years for the Fire Official Certification and the Fire Inspector Certification. Additionally, Montalvo is on call to investigate the fire scene seven days a week even though he works a conventional five day week. Firefighter John Lewis was the assistant to the Training Officer until the end of 2002 and also has an Arson Certification and is a Certified Fire Instructor. The PFA notes that Lewis did not and Montalvo does not receive the holiday pay all other firefighters receive.

The PFA proposes that the Fire Inspector's Certification be increased from \$500 to \$750. The PFA notes that Firefighter Montalvo was required to complete a course at West Essex Community College and must complete continuing

education credits to be recertified. The PFA notes that the Fire Inspector Certification is paid directly from Fire Prevention Bureau revenues.

The PFA seeks to increase vacation leave by one day at each step because vacation benefits for the PFA are below the norm of vacation benefits for firefighters in other departments. The PFA seeks to increase vacation benefits by one day at each step so that Firefighters will receive vacation benefits as follows:

5 days	After completion of 1 year of service
7 days	After completion of 5 years of service
8 days	After completion of 10 years of service
9 days	After completion of 15 years of service
10 days	After completion of 20 years of service

In support of this proposal, the PFA prepared the following chart comparing vacation benefits received by Firefighters to those received by the PBA as well as those received by firefighters in other fire departments;

Municipality	Vacation
Passaic PFA	1-20 years 4-9 days (96 hours to 216 hours)
Passaic PBA	0-25 years 12-25 days
Paterson – 24/72 schedule	0-24 years – 6-11days
West Orange – 24/72 schedule	8 Days
Ridgewood – 24/72 schedule	0-20 years – 6-9 days
Jersey City – 24/72 schedule	1-5 years – 15 days after five years
Union City – 24/72 schedule	1-15 years – 5-12 days
Roselle – 24/72 schedule	1-20 years – 5-9 days
Ocean City – 24/72 schedule	0-21 years – 6-17 days
Gloucester – 24/72 schedule	1-24 years – 144-300 hours

Hackensack – 10/14 schedule (for years 2002-2006)	0-20 years – 11-20 days – conversion 5 ½-10
Clifton – 10/14 schedule	0-25 years – 18-30 days – Conversion 9-15
Belleville – 10/14 schedule	1-19 years – 12/22 days – Conversion 6-11
Teaneck – 10/14 schedule	0-20 years – 12-20 days – Conversion 6-10
Newark – 10/14 schedule	1-22 years – 14-20 days – Conversion 7-10
Bloomfield* - 10/14 schedule	0-21 years – 12-24 days – Conversion 6-12
Trenton – 10/14 schedule	0-19 years – 12-26 days – Conversion 6-13

* The vacation data is based on the 10/14 although effective January 1, 2002 Bloomfield began the 24/72 hour tour.

The PFA proposes to amend Article XIII covering sick leave so that all firefighters receive 10 sick days. At present, the agreement provides that firefighters hired before January 1, 1998 receive ten sick days and those hired before January 1, 1998 receive eight sick days. The PFA maintains that these firefighters perform the same job and should receive the same pay. The PFA asserts that if two firefighters sustain the same on the job injury, one should not receive a great sick leave benefit than the other. The PFA notes that sick leave is uniform for all Passaic blue and white collar employees and sick leave is equalized for all PBA members as well.

The PFA also seeks to amend Article XIII(f)(3)(a) to eliminate the phrase "incur a negative sick leave balance" and to replace it with "request sick leave donation program". Article XIII(f)(3)(a) currently provides:

Once a firefighter uses up accumulated sick leave, he shall next be required to utilize vacation, compensatory and holiday time and only thereafter may incur a negative sick leave balance.

The PFA's proposal would provide:

Once a firefighter uses up accumulated sick leave, he shall next be required to utilize vacation, compensatory and holiday time and only thereafter request the sick leave donation program.

The PFA points out that all of the municipal employees in Passaic have a sick leave donation program and members of the PFA have donated their sick leave to other employees in the municipality but are not able to donate their sick leave to one another or to receive sick leave from those in other bargaining units. The PFA asserts that many municipalities have donated sick leave programs and the State's donated leave program is established under N.J.A.C. 4A:1.22.

The PFA proposes to amend Article XXII covering insurance to increase dental coverage as follows: basic benefit (80%); crowns, inlays and gold restoration (75%); prosthodontics (75%); annual maximum (\$2000); orthodontics maximum (\$2500). The PFA notes that at present the dental plan includes 50% coverage for crowns, inlays and gold restoration, 50% coverage for prosthodontics, an annual maximum per patient of \$1,000 per year and an orthodontics maximum of 50% of costs and up to \$1,500 lifetime benefit. The PFA maintains that its proposal is reasonable in light of recent inflation and increases in the cost of living. The PFA notes that the maximums for orthodontics and annual patient visits have not increased since January 1, 1994 and the costs of dental care has increased dramatically during that period. The PFA asserts that these maximums are no longer reasonable or consistent with the trends of other police and fire safety contracts.

The PFA seeks to include a new article covering department mandated training in the Agreement. The PFA proposes the following provision:

1. The employer shall provide time off from duty whenever personnel are required to attend a class during work hours. This is to include all personnel regardless of their time in service.
2. Personnel who are required to maintain certifications will not in any way have to secure another firefighter to work in their place while attending class.
3. The current practice as to compensation for such training, at premium rates, shall continue.

The PFA asserts that its proposal is consistent with recent trends in police and fire contracts. The PFA contends that it is reasonable that an employee maintaining a required certification should not be burdened to maintain the certification. The PFA also asserts that the current practice of compensating PFA members at one and one half pay for all mandated training should continue.

The PFA proposes a new provision that would convert Dispatch and Office Personnel sick days to hours. The PFA explains that dispatchers work 10s and 14s and office personnel work eight hours, five days a week. Firefighters who work 24/72 receive 240 hours of sick leave. However, according to the PFA, dispatchers and office personnel are not able to use 240 hours of sick leave, but rather office personnel are able to use only 80 hours of sick leave and

dispatchers are able to use 140 hours of sick leave because sick leave must be used in a 24 hour block.

The PFA proposes that the selection of Firefighters for special events be chosen by seniority. The PFA notes that other contractual benefits are determined by seniority. Additionally, the PFA notes that the proposal that it take over the administrative duties regarding the assignment of special events will alleviate the burden on management. The PFA also proposes that firefighters who work special events such as festivals should be compensated at one and one half times their hourly rate for each hour of service. The PFA notes that the PBA receives this benefit.

The PFA proposes to increase the uniform allowance from \$850 to \$1,000 per year. In support of this proposal the PFA relies upon the 2001 agreement between the City and the Fire Officers Association which increased the clothing allowance to \$1000 retroactive to July 1, 1998. The PFA points out that the clothing needs of fire officers are no different than those of firefighters. The PFA maintains that since its agreement begins on July 1, 2001, firefighters have been deprived of an increase of \$150 a year for the years 1998, 1999 and 2000.

The PFA contends that the giveback explicitly included in the Superior Officers' agreement has no effect. Specifically, the Superior Officers agreement states that the \$150 increase in the clothing allowance is "in lieu of fire inspectors

stipend as specified in the Firefighter Collective Bargaining Agreement, Article IX, D.” However, as of July 1, 1998, no Superior Officer received any fire inspector stipend. Accordingly, the PFA argues that there was no giveback in exchange for the increase in the clothing allowance. The PFA acknowledges that the exchange might apply to firefighters who are promoted to Superior Officers.

Turning to its non-economic proposals, the PFA seeks to delete the phrase “except in emergency situations” in Article XXXIV(a), which currently provides:

When the temperature goes below the number forty degrees Fahrenheit (40°F) or above the number eighty degrees Fahrenheit (80°F), there shall be no outside training except in emergency situations. In-service inspections may be held when the temperature is from the number 40 degrees Fahrenheit (40°F) to the number eighty-five degrees Fahrenheit (85°F).

According to the PFA, the City has abused the “except in emergency situations” exception. The PFA alleges that the emergency situation exception has been used “maliciously and knowingly as a punitive measure”. Although the PFA agrees that training is essential to the operation and performance of the members of the fire department, the PFA cites an example of the danger of training in extreme weather. The PFA points to a 23 year old Maryland firefighter recruit who collapsed and died towards the end of a three mile training run on July 5, 2002 when the air temperatures and humidity approached dangerous levels. According to the PFA, the temperature was at least 84 degrees

Fahrenheit (84°F) and the heat index was 96 degrees when the recruit collapsed. The PFA cites an article from the Washington Times stating that the recruit's body temperature was 107.4° when he arrived at the hospital and that he died from heat stroke.

The PFA notes that a few days later, on July 8, 2002 a drill was conducted in Passaic near the intersection of Randolph Avenue and Mead Avenue. The temperature was 86°F and a proficiency drill was performed over the objections of Firefighter Henry Roon. Firefighter and PFA President Dostanko described the incident in an affidavit as follows:

Upon arriving at the intersection, Firefighter Henry Roon stated that the drill was in violation of the contract and asked Captain James McBride if in fact the drill was an emergency. Captain McBride responded by saying "NO...I DON'T GIVE A FUCK ABOUT THE CONTRACT." Firefighter Roon followed by saying "WE SHOULDN'T BE DOING THIS" to which Captain McBride stated "I'M ORDERING YOU TO DO THIS". At which time the drill commenced and was completed.

The PFA filed a grievance and Chief Louis Imparato responded that it was an "emergency drill" that he had ordered "to clean up several items pertaining to the safe operation of the vehicle...". The PFA asserts that although three tours had completed the drill by July 17, when Chief Imparato replied to the Grievance, by July 26, 2002, the fourth tour had yet to complete the drill. Accordingly, the PFA asserts that the drill did not fall within the "emergency situation" exception.

The PFA also relies upon the affidavit of Firefighter and PFA President Dostanko for explanation of additional incidents of training in extreme weather that it characterizes as punishing and dangerous. That affidavit provides as follows:

On July 3, 2002, firefighter recruits Gloria Maldonado, Angel Castillo and Kevin Cook were detailed to the Westside Fire station. These recruits had anticipated riding along with the companies in service. Instead they were made to clean the roof of the Westside Firehouse along with the exterior grounds. The roof is over 11,000 square feet. The temperature at that time was approximately 95 degrees with 90% humidity. During lunch they were made to eat on a bench located outside the firehouse. At no time were they permitted to enter the firehouse except to use the bathroom. Later in the afternoon they were ordered to walk from the Westside Firehouse, a distance of approximately 1.5 miles, to the Eastside Firehouse in full turnout gear, including boots, bunker pants, turnout coat, flashflood, helmet, and gloves. This gear weighs approximately forty (40) pounds. During that time they were not permitted to remove any of the gear. To ensure that they did not remove any gear while walking, they were followed by Engine Company No. 1 and then met by Deputy Chief Alexander Hastick to further ensure their gear was not removed.

Additionally, on or about July 1, 2002, the Training Division was conducting a live burn drill with five (5) recruits at the Eastside Firehouse. The temperature was approximately 95 degrees with 90% humidity. The recruits were in full turnout gear including boots, bunker pants, turnout coats, flash hood, helmet, gloves, and a Self Contained Breathing Apparatus (SCBA) Scott 2.2 Air Pack along with any tools necessary for conducting the drill. The full turnout gear including the Scott 2.2 Air Pack weighs approximately sixty (60) pounds. They were only given five minutes after each evolution to rest and drink water. Upon completion of the third evolution, the recruits began to experience nausea, fatigue, dizziness and sweating. At no time were the recruits permitted to cool off and enter the firehouse. One recruit had perspired so much that it was visible through the turnout gear which is an extraordinary amount perspiration.

The PFA notes that it has filed a Complaint with the State Public Employees Occupational Safety and Health regarding these incidents. The Complaint is unresolved.

The PFA proposes to add a paragraph to Article IV, Non-discrimination which would provide that religious beliefs are protected insofar as they do not hinder job performance.

The PFA proposes to amend the overtime provisions in Article VIII, paragraph C to change the word "Employees" in C(1) to "volunteers" and to change the word "employees" in paragraph C(2) to "volunteers". The PFA also proposes to change the provision in Article VIII(e) which currently reads "...only those Firefighters who volunteered" to provide "only those firefighters who signed up...". The PFA notes that the City has not objected to this proposal.

The PFA proposes to amend Article XII covering vacations to include that approval of requested vacation must be given within 48 hours of the request. At present, there is no time limit. The PFA asserts that 48 hours gives management reasonable opportunity to approve or disapprove vacation and does not burden management. The PFA maintains that its proposal allows PFA members to make appropriate travel and vacation plans, although most

vacations are picked at the beginning of the year and not subject to this requirement.

The PFA proposes that to amend Article XIV(b) covering supplemental compensation upon retirement to provide as follows:

The formula to be used to calculate the supplemental compensation to be paid upon retirement shall be 260 annual work days **divided**...”

The PFA notes that at present the contract erroneously states that the workdays shall be “multiplied”. The PFA points out that the City does not oppose this proposal.

Similarly the PFA proposes to change the work “overall” to “overhaul” in the provision covering Employee Duties in Article XXIX. This word change is a correction that is not opposed by the City.

The PFA proposes to amend Article XXXIII to place restrictions on the documentation of discipline in personnel files. Specifically, the PFA proposes the that discipline remain in personnel files for the following time periods:

1. Written record of oral reprimand, 6 months.
2. Written reprimands, 1 year.
3. Suspensions, 4 years.

4. If a subsequent discipline of a written reprimand or greater occurs during this period of time, all disciplinary action will remain in the employee's personnel file until the last disciplinary action is removed in accordance with the time frames set forth above.
5. After this period, the documents will be placed in a separate file and will not be accessible to anyone viewing the employee's personnel file. This information will not be available to promotion boards or to anyone outside the City for employment reference checks or other purposes unless the employee has given written authorization or the Employer is legally required to provide it.
6. If the documentation of a disciplinary action is removed from the employee's personnel file, the action cannot be relied upon as the basis for progressive disciplinary action should another incident occur warranting discipline. However, the Employer reserves the right to use of such documentation to refute a claim that the employee did not have knowledge of a policy, rule or standard

The PFA points out that the time scale proposed by the PFA for record maintenance allows for a firefighter to overcome a mistake which may have been made earlier in his career and is consistent with progressive discipline principles.

The PFA seeks to amend Article III, Paragraph B to change the time necessary for filing formal discipline charges from 45 days to 30 days. The PFA asserts that this amendment would allow discipline issues to be resolved more quickly and closer in time to the misconduct.

The PFA proposes to add a new paragraph B to Article XXXV which would provide:

SUCCESSORSHIP: This Agreement shall be binding upon the successors and no provisions, terms and obligations here in shall be effected, modified, altered, or changed in any respect whatsoever by consolidation, merger or annexation.

The PFA asserts that this proposal is reasonable and justified and its logical that in the event of a merger with another fire department, the benefits in the current agreement should remain in effect until the terms of the contract have expired.

The PFA proposes the following amendments to Article XXXVII covering drug testing:

Drug Testing: The PFA has proposed to amend Article XXXVII as follows:

Drug Testing, Article XXXVII(c) methods of implementation. The language should be added to (C)(1)(b) to indicate that the vehicular accident while the firefighter is driving is "a vehicular accident exceeding \$2,000 in property damage or fatality in which the firefighter is driving on duty."

Voluntary Testing; amnesty period Article XXXVII(d) remove this entire paragraph as the amnesty period no longer exists.

The Fire Department Personnel Rights, Article XXXVII, drug testing (f) add language establishing that if a firefighter is sent for drug testing due to probable cause, that member shall be sent home and shall not be allowed to return to duty until a result of the drug test is received. The City shall provide the location of where drug testing will be held when the Medi-Center is closed.

Article XXXVII, Drug Testing Advisory Committee shall read: "The drug testing advisory committee shall not consist of police personnel."

Article XXXVII(I), Testing Process, any new drugs to be tested shall be subject to negotiations.

Article XXXVII(o)(2). Subparagraph 2 of subparagraph O shall be amended to reflect that there is no longer an amnesty period.

The PFA proposes that a new article be added to the Agreement that would cover minimum staffing levels. The PFA's proposal is as follows:

The City shall recognize the importance of maintaining a minimum level of fire personnel. The number of firefighters on duty shall not fall below the number of 18. In the event the level of firefighters scheduled for duty on any given day falls below the number of 18, the City agrees to rehire (at the rate of time and a half) enough personnel to reach the minimum number of 18 personnel on duty.

The PFA explains that a minimum manning requirement would alleviate the dangers of firefighting in Passaic where low manning may have contributed to the death of Firefighter Tirado in 2001 when only 13 personnel responded to a multi-unit apartment blaze. The PFA contends that this provision would eliminate past dangers that have resulted where a truck has been put out of service rather than rehire per minimum manning.

The PFA responds to the City's proposals, beginning with its salary proposal. The PFA contrasts the 3.0% increases effective July 1, 2001, July 1, 2002 and July 1, 2003 with the 3.9% increases received by the PBA effective January 1, 2001 and January 1, 2002. Additionally, the PFA points to the January 2003 settlement of the police contract including increases of 4.0% effective January 1, 2002, January 1, 2003, January 1, 2004, and January 1, 2005. The PFA also points to the City's settlement with the Passaic Fire Officers

Association which includes increases of 3.9% effective July 1, 2001 and 3.9% effective July 1, 2002. The PFA emphasizes that the City's proposal would continue the trend of the PFA falling behind the PBA in Passaic and the Firefighters in Clifton, Paterson and other large municipalities throughout northern and central New Jersey. The following chart illustrates the PFA's argument that Passaic Firefighters have fallen behind the maximum salary for the PBA, and firefighters in Newark, Ridgewood, Clifton, Jersey City, Westfield, and Paterson.

MAXIMUM SALARY FOR POLICE AND FIREFIGHTERS

Municipality	1/99	7/99	1/00	7/00	1/01	7/01	1/02	7/02	1/03	1/04	1/05	1/06
PFA		54,690		57,361								
PBA	60,273		62,081		64,502		67,017					
Newark	58,877		61,085		63,376		65,594					
Ridgewood	64,102		66,506		69,079		71,753					
Clifton	60,137		62,091		64,109		66,353					
Teaneck					64,800		67,787					
Hackensack*					71,582		74,581		70,490	73,318		
Jersey City	60,032		62,103		65,083				77,709	80,969	84,367	87,702
Westfield	56,462		58,382		60,000		63,024		65,482			
New Brunswick	60,137		62,091		64,109		66,353					
Clifton	57,913		59,940		62,188		64,520					
Paterson		61,095		62,898		65,064		68,466				

The PFA has also prepared the following chart to illustrate the difference between the report of increases in voluntary settlements and in interest arbitration awards and the salary increases its members have received from 1993 through 2001.

YEAR	AVERAGE SALARY INCREASE IN ALL AWARDS	AVERAGE SALARY INCREASE OF REPORTED VOLUNTARY SETTLEMENTS	PFA'S INCREASE
2001	3.75%	3.9%	
2000	3.64%	3.87%	3%
1999	3.69%	3.71%	3%
1998	3.87%	3.77%	3%
1997	3.63%	3.95%	3%
1996	4.24%	4.19%	3%
1995	4.52%	4.59%	4.5%*
1994	5.01%	4.98%	4%
1993	5.65%	5.56%	5.5%

The PFA cites the testimony of Dr. Caprio, its financial expert that the City “is in a position to fund a fair improvement wage contract without any dire or negative financial impact.” The PFA points out that Dr. Caprio testified specifically that the City could fund the difference between 3.9% each year and 6.0% annual without negative consequences. The PFA cites Dr. Caprio’s testimony that while the tax rate is high, the City has taken aggressive steps to reduce the delinquency rate and the City should not be compared to a beleaguered or distressed municipality. The PFA emphasizes Dr. Caprio’s testimony that the gross property tax rate has increased, but the “effective tax burden per thousand dollars or hundred thousand dollars of actual market value has actually gone down.” The PFA also points out that tax collections represent 101% of the amount budgeted. In opposing the City’s wage proposals, the PFA specifically incorporates its arguments in support of its final offer on wages.

Turning to the City's proposal to delete the reference to the time period for filing disciplinary charges, the PFA asserts that this proposal would allow the City to hold officers "hostage" and allow the filing of disciplinary charges years after the offense. The PFA notes that the City did not submit exhibits in support of this proposal and urges its rejection.

The PFA objects to the City's proposal that an employee who puts his name on the overtime list must remain on the list for a full year absent disability. According to the PFA, this lack of flexibility in this proposal would dissuade firefighters from signing up for overtime. The PFA notes that the City did not submit exhibits in support of this proposal and urges its rejection.

The PFA objects strenuously to the City's proposal to eliminate longevity for all employees hired after July 1, 2002. The PFA notes that the City's recent settlement with the PBA does not reduce longevity or other benefits for new hires. The PFA points out that both the PFA and the PBA have eliminated the top step of 14% longevity, except for those who already receive payment at that step. However, the PFA notes that the 14% step was closed for firefighters in 1997, but did not close for police until 2002. Borrowing a phrase from the City's position, the PFA points out that "what's good for the goose is good for the gander" and asserts that elimination of longevity for new hires was not proposed or included in the City's agreement with the PBA. The PFA notes that firefighter

morale would be impacted if some employees receive greater benefits for the same work and the concept of teamwork would be eroded.

The PFA urges rejection of the City's proposal to reduce vacation by three days at each step for employees hired after July 1, 2002. Reiterating that such a proposal would divide the firefighters and destroy the concept of teamwork, the PFA points out that the City has not provided evidence in support of this proposal. The PFA contrasts this lack of evidence with the detailed exhibits it submitted showing that the PFA's vacation benefit is below State-wide averages and less than that received by the PBA. The PFA notes that the PBA agreement does not include a reduction in vacation benefits.

The PFA objects to the City's proposal to limit the use of sick leave for attendance upon person and family to emergency situations only. The PFA asserts that this proposal does not serve a legitimate management purpose and the City has not provided evidence in support of this proposal. The PFA points out that the recent PBA settlement does not include a modification, reduction or elimination of sick leave.

The PFA objects to the City's proposal to add to the Special Leave provision the requirement that the substituting employee be "qualified" and that the department reserves the right to deny the special leave if the qualifications are not met or if the employee abuses his privileges. The PFA considers this

proposal unreasonable, notes that the PBA settlement did not include any such amendment and the City has failed to provide evidence in support of the proposal. Additionally, the PFA points out that firefighters all have the same civil service title and are all qualified.

The PFA urges rejection of the City's proposal to amend Article XXII(f) to modify the prescription co-payments. The PFA asserts that the recent settlement with the PBA did not include a modification or reduction in prescription benefits.

Turning to the City's proposal to delete Article XXVII covering transfers, except for the provision that "transfers will be made at the discretion of the Director or designee", the PFA asserts that this proposal would effectively eliminate transfers, except for managerial whim. The PFA notes that no such change was included in the recent PBA agreement and asserts that the City did not provide evidence in support of this proposal.

The PFA objects vehemently to the City's proposal to amend Article XXXIV, Miscellaneous, to eliminate limitations due to temperature, to eliminate inspections, to discontinue current practices including those regarding the use of beds, and nighttime inspections, and no drill on Sundays and holidays. The PFA asserts that this proposal is unreasonable and notes that the PBA agreement did not include modifications to past practices. The PFA points out that the City did not provide evidence in support of this proposal and asserts that the proposal is

designed to prolong negotiations and to harass the PFA. The PFA points to the evidence and argument submitted in support of its proposal to modify the temperature and weather limitations to protect the health and safety of firefighters and the public.

The PFA asserts that Article XXXIV has been abused for at least the past 16 years and that the emergency situation exception has been used "maliciously and knowingly as a punitive measure in situations unrelated to necessary training in emergency situations."

The City of Passaic

Initially, the City reviews the salary proposals of both parties as well as the relative costs of these proposals. Costing out the Union's proposal for 6% annual increases effective July 1 of each year commencing on July 1, 2002, the City calculates that the maximum firefighter salary would increase by \$15,056 to \$72,417 on July 1, 2004. The City calculates further that based upon the PFA's proposal for a total increase of 24% over four years, the bargaining unit amounts to an actual increase of 26.25% compounded over the four year period.

Based upon the current eight-step salary guide, the City asserts that total payroll for firefighters for the year from July 1, 2000 through June 30, 2001 is \$2,871,927. The City calculates that the cost of salary increments will add \$239,444 to firefighters base salary cost without any across the board increase,

thus increasing total PFA Firefighters' salaries to \$3,111,371 for the year ending on June 30, 2002. The City points out that this calculation excludes the costs associated with the hire of 14 new firefighters during the year ending on June 30, 2002. Continuing its calculations, the City notes that if no new firefighters are hired before June 30, 2003, increments will add an additional \$195,498 or 6.28% to firefighter base salary costs.

The City calculates that the PFA's proposal to increase the Fire Inspector Certification, which is received by 60 Firefighters, by \$250 from \$500 to \$750 annually will cost \$15,000 per year or \$60,000 over the four year period.

The City also calculates the costs of the PFA's proposal to create a senior firefighter pay which would be equal to one half of the difference between the maximum firefighter salary and Lieutenants pay upon completion of 20 years of service. Assuming a 6% increase to base salary in each year, the City calculates that one half of the difference between the maximum firefighter salary and a Lieutenant's salary would be \$5,388 for the year beginning July 1, 2001 and \$4,959 for year beginning July 1, 2002. Applying senior firefighter pay, the City calculates that effective July 1, 2001, four firefighters would be eligible for the differential and the cost for that year would be \$21,552 or .75% of total base salary for the year. In the year commencing July 1, 2002, the City calculates that four firefighters would be eligible for the differential at a cost of \$19,836. The City

points out that since the Passaic Fire Officer Association and the City do not have an agreement beyond June 30, 2002, future costs are speculative.

Addressing the PFA's proposal to increase the annual stipend for employees assigned to the Fire Prevention Bureau from \$3500 to 15% of base pay to be included in base pay, the City notes that at present, one firefighter receives this stipend. The City calculates that the PFA's proposal would increase the stipend by \$5,104 for the year beginning July 1, 2001, which represents .18% of total payroll. The City notes that over the life of a four-year agreement, the total cost of this proposal would be \$20,416.

The City calculates that its proposals cost out to 11.43% in the year ending June 30, 2002; 9.37% in the year ending June 30, 2003; and 10.11% in the year ending June 30, 2004 for a three year total of 30.91% or 10.13% per year.

The City emphasizes that although there are many issues in dispute, the significant distinction between its proposals and the PFA's proposals is their dramatic cost differential. According to the City, the PFA's salary demands alone will cost it \$764,781 more than the City's proposal. The City notes that its cost comparison for the first three years of the contract includes in the differential in the City and the PFA's proposed wage increases, the cost of all step increases. Based upon these calculations, the City asserts that the cost of the PFA's wage

proposal for the year ending June 30, 2002 exceeds the cost of the City's salary proposal by \$106,059. Similarly, in the year ending June 30, 2003, the City calculates that the cost of the PFA's wage proposals exceeds the cost of the City's proposal by \$246,888. For the year ending on June 30, 2004 the City calculates that the PFA's salary proposals exceed the cost of the City's salary proposal by \$411,834. In sum, the City calculates that the PFA's salary demand exceeds the City's salary proposal by \$764,781. The City also emphasizes that any across-the-board salary increase will increase longevity benefits by the same percentage thus resulting in hidden additional costs. The City asserts that the PFA has, over the past thirteen years, received salary increases that outpace the cost of living and, in more recent years, private sector wage increases. The City developed the following chart to compare increases received by the PFA to increases in the CPI:

Year	PFA Increase	CPI
2000	3.00%	2.6%
1999	3.00%	2.0%
1998	3.00%	1.6%
1997	3.00%	2.7%
1996	3.00%	2.9%
1995	1.50%/3.00%	2.7%
1994	4.00%	2.7%
1993	5.50%	2.9%
1992	6.00%	3.4%
1991	7.50%	4.3%
1990	4.00%/4.00%	6.0%

1989	4.00%/5.30%	5.6%
1988	4.00%/3.00%	4.5%
Average	5.13%	3.37%

Addressing the PFA's proposals regarding Ambulance Service and EMT stipend, the City points out that 48 firefighters currently maintain an EMT certification. Based upon salaries on July 1, 2000, the City calculates that a 3% stipend would cost \$1,721 per EMT certified firefighter per year or \$82,608 in each year of the four year agreement or 2.88% of base salaries for the year ending June 30, 2001. The City acknowledges that it requires Firefighters to acquire an EMT certification within twelve months of hire, but asserts that it does not require Firefighters to perform EMT duties. To the contrary, the City points out that it employs civilian EMTs at an annual cost of \$640,000 to perform all EMT work. Except for a few isolated incidents over the past several years, the City asserts that PFA members do not perform EMT duties.

The City also notes that it pays for EMT certification training, and if the training occurs on a day when the firefighter is not scheduled to work, the firefighter receives compensatory time for the training time. Accordingly, the City asserts that Firefighters do not incur any expenses in achieving EMT certification. Citing the affidavit filed by Greg Hill, the City maintains that if an EMT stipend is awarded, it will eliminate the requirement that all firefighters possess an EMT certification.

In response to the PFA's evidence that other municipalities provide EMT stipends to firefighters, the City points out that there is no evidence as to whether any of these municipalities maintain a civilian EMT staff and the extent of EMT responsibilities performed by Firefighters. The City asserts that in the absence of this evidence, no meaningful comparison can be made. Accordingly, the City urges rejection of the PFA's proposal to pay an EMT Certification Stipend to Firefighters.

Addressing the PFA's proposal to fold holiday pay into base pay effective July 1, 2001, the City asserts that this proposal has a financial impact because it is required to contribute 12% of base salary to the Division of Pensions. Accordingly, the City asserts that the holiday fold-in would cost it 12% in addition to increasing firefighters' hourly rate of pay for purposes of overtime calculation. The City notes that in April of 2001, it and the SFOA agreed to fold holiday pay into base salary at the current rate of holiday pay minus 12%. The City proposes to provide the same benefits to firefighters and to incorporate firefighter holiday pay into base pay minus 12%.

Turning to the PFA's proposal to increase vacation leave by one day effective July 1, 2001, the City points out that firefighters who work a 1-3 schedule currently receive the following vacation leave each year:

4 days	After completion of 1 year of service
6 days	After completion of 5 years of service
7 days	After completion of 10 years of service

8 days	After completion of 15 years of service
9 days	After completion of 20 years of service

Firefighters working a 10-14 shift receive:

8 days	After completion of 1 year of service
14 days	After completion of 5 years of service
16 days	After completion of 10 years of service
18 days	After completion of 15 years of service.

Noting that the PBA's proposal does not distinguish employees working a 1-3 schedule and those working a 10-14 schedule, the City points out that under this proposal firefighters working a 1-3 schedule would receive a greater increase in vacation time than those working a 10-14 schedule simply by virtue of their work schedule. The City asserts that accepted labor principles would attribute a .33% cost to the vacation proposal.

The City points out that it can not calculate the cost of the PFA's proposal to increase sick leave for firefighters working a 24-hour shift who were hired on or after January 1, 1998 from 8 to 10 days per year. The City notes that firefighters hired before January 1, 1998 receive 10 sick days each year.

The City asserts that the PFA's proposal to increase the basic dental benefit for firefighters and eligible members of their immediate family from 75% to 80% of cost, as well as increases in coverage for crowns, inlays, and gold restoration, prosthodontics and orthodontics would impose significant costs on the City. However, the City points out that the PFA did not introduce evidence or

provide information that would allow the City to estimate the costs of the proposed increase benefits.

The City opposes the PFA's proposal to add a new provision covering department mandated training. The City points out that the PFA's proposal would require payment at time and one half for all training, whether while on duty or on off-duty time.

Turning to issues involving dispatchers, the City points out that the PFA has proposed an alternative work schedule for four firefighters who work 10 and 14 hours for dispatch work, but the PFA has not provided its proposed alternative work schedule. The City objects to the PFA's proposal that the City give first preference for dispatcher work to injured or ill employees who are limited in their ability to perform line firefighter duties, but are able to perform dispatch duties.

The City's objection to the PFA's proposal focuses on the remainder of the proposal, which would require that assignments be made by seniority through a committee established by the PFA, because it does not preserve the City's managerial right to deviate from seniority when there is a need for specialized qualifications or skills.

The City objects to the PFA's proposal to shorten the time period allotted filing disciplinary charges from 45 to 30 days. The City notes that the PFA did

not provide evidence in support of its position and that the PFA's proposal would unnecessarily restrict management's ability to discipline its employees.

The City opposes the PFA's proposal to add a provision covering religious belief hindering job performance. The City notes that Article VI, Paragraph B currently prohibits the City and the PFA from discriminating against any employee on the basis of religion and asserts that the proposal would not add to the substantive rights of firefighters.

The City also opposes the PFA's proposal to require the City to approve a requested vacation day within 48 hours of the request. The City asserts that this proposal would interfere with its ability to plan shift coverage and ensure adequate manning on each shift. Also, if a firefighter requested vacation on a Friday, the City would have to respond by the following Sunday, when administrative personnel do not work.

The City does not oppose the PFA's proposal to change the word "multiplied" to "divided" in Article XIV, Section B, Supplemental Compensation Upon Retirement. To the extent that the PFA has other unspecified wording changes, the City is unaware of the nature of those proposals.

The City opposes the PFA's proposal to remove the record of discipline from personnel files after a certain period, depending upon the level of discipline.

Citing Borough of Highland Park, P.E.R.C. No. 99-93, 25 NJPER 30 (¶ 30099 1999) and Montgomery Township, P.E.R.C. No. 99-19, 24 NJPER 452 (¶ 29209 1998), the City asserts that a provision requiring an employer to remove disciplinary material from a police officer's personnel file if no further disciplinary action occurred after a specified period of time, is not mandatorily negotiable.

The City opposes the PFA's proposal to restrict the circumstances under which the City can conduct reasonable suspicion drug testing. Specifically, the PFA proposes to limit drug testing after a vehicular accident to when there is an "on duty vehicular accident exceeding \$2000 in property damage or fatality in which Firefighter is driving." The City points out that the PFA's proposal would restrict the City from conducting reasonable suspicion drug testing when an accident results in a personal injury, but not death, or when property damage is less than \$2,000. The City notes that it does not oppose the PFA's proposal to delete the amnesty period from Paragraph D of Article XXXVII because it has expired.

The City opposes the PFA's proposal to add a new article to the Agreement titled "Safety Issues" which is comprised of a provision to require minimum staffing.

Adding the costs of each of the new and or increased stipends proposed by the PFA, as well as the salary increase and the compounding of the increases

and salary increments, the City estimates that the total cost of the PFA's proposals is 19.50% for the year ending on June 30, 2002; 12.84% for the year ending on June 30, 2003; 14.21% for the year ending on June 20, 2004 and 10.98% for the year ending on June 30, 2005.

In contrast, the City calculates its proposal for 3.0% increases effective July 1, 2001, July 1, 2002 and July 1, 2003 to total 9.27% when the costs of its proposal are compounded. The City notes that even without a percentage increase, the costs of salary increments will cost 8.34% for the year ending on June 30, 2002, 6.28% for the year ending June 30, 2003 and 7.65% for the year ending June 30, 2004. Additionally, the City proposes to add two steps to the salary guide, thus expanding the guide from eight to ten steps. Under the City's proposal, the new salary guide, which would apply only to newly hired employees, would contain equidistant steps from the "First Six Months" starting salary to maximum firefighter salary.

The City proposes to eliminate the Fire Inspection certificate payment of \$500 per year, which is currently received by 60 Firefighters. The City calculates that this would save the \$30,000 per year and would provide the PFA and the SFOA with uniform benefits because neither would receive the payment.

The City proposes to increase the clothing allowance from \$850 to \$1000 per year, effective July 1, 2003. The City asserts that the increased clothing

allowance coupled with the elimination of the Fire Inspection Certificate mirrors the City's agreement with the SFOA reached on September 8, 2000. Under this proposal, the City calculates that it would spend an additional \$12,450 or 0.43% (based upon 2001 salaries) on the clothing and maintenance allowance for the year ending June 30, 2004.

The City proposes to modify the prescription plan to decrease the prescription co-pay for generic drugs to \$0.00; to increase the co-pay for brand name drugs from \$5.00 to \$10.00 and to eliminate the \$3500 family maximum per year cap. The City asserts that this proposal mirrors the prescription plan agreed to by the SFOA, the PBA and the Passaic Employees Association. The City asserts that this prescription plan would simplify the City's management of its prescription insurance plan and would provide a cost savings to the City, though the amount is speculative.

The City proposes to eliminate the longevity benefit for employees hired after July 1, 2002. The City currently has a two step longevity schedule. The City points out that although this proposal will result in long term savings, it will not receive any economic benefit from this proposal during this contract term because no employees hired after July 1, 2002 would have been eligible for longevity during the term of the Agreement.

The City proposes to reduce vacation benefits for employees hired after July 1, 2002 by three days at each step. Under the City's proposal, Firefighters hired after July 1, 2002 who work a 10-14 schedule would receive the following vacation benefits:

5 days	After completion of 1 year of service
11 days	After completion of 5 years of service
13 days	After completion of 10 years of service
15 days	After completion of 15 years of service

Firefighters working a 1-3 schedule would receive:

1 day	After completion of 1 year of service
3 days	After completion of 5 years of service
4 days	After completion of 10 years of service
5 days	After completion of 15 years of service.
6 days	After completion of 20 years of service.

The City asserts that this proposal would result in cost savings during the contract term, but the amount of the savings is speculative depending upon how many employees are hired during the contract term.

The City proposes to narrow the definition of sick leave to limit the use of sick leave for attendance upon an ill or injured family member to emergency situations only. At present, Firefighters are permitted, under Article XIII, Paragraph C to use sick leave for the Firefighter's attendance upon the person who is ill or injured.

The City proposes to delete Section B of Article III which provides a time period to file disciplinary charges for a violation of internal rules and regulations.

The City proposes to amend the current grievance procedure to add language that would provide that if the Fire Chief and the Fire Director are the same person, the PFA or the Grievant should skip Step 2 of the grievance procedure and proceed to Step 3. At present, a Step 2 grievance is filed with the Fire Chief while a Step 3 grievance is filed with the Fire Director. The City asserts that its proposal would eliminate unnecessary duplication of effort and delay.

The City also seeks to implement a ten-day time limit for the PFA or the City to file for arbitration. At present, the contract does not include a time limit to file for arbitration.

The City seeks to amend the Overtime provisions in Article VIII, paragraph C(3) to add a requirement that employees who place their name on the volunteer list for rehire must do so for a minimum of one year absent disability. At present, employees may add or remove themselves from the volunteer list at any time upon written notice.

The City proposes to amend Article XVIII covering Special Leave to include a requirement that an employee seeking to use special leave find another

employee "qualified" to perform the duties in his place. The City seeks to reserve the right to deny swaps if qualifications are not met or if the employee abuses his privileges. According to the City, this proposal will facilitate its ability to manage the department.

The City proposes to delete Article XXVII covering transfers except for the first sentence of paragraph A which currently provides, "[t]ransfers will be made at the discretion of the director or his designee." The City contends that this proposal will facilitate its ability to manage the department.

The City proposes to amend Article XXXIV, Miscellaneous, to delete any temperature restrictions on training and in-service inspections included in paragraph A. At present, paragraph A provides:

When the temperature goes below the number forty degrees Fahrenheit (40°F) or above the number eighty degrees Fahrenheit (80°F), there shall be no outside training except in emergency situations. In-service inspections may be held when the temperature is from the number 40 degrees Fahrenheit (40°F) to the number eighty-five degrees Fahrenheit (85°F).

The City notes that it filed a Scope of Negotiations Determination Petition with PERC to delete this paragraph and that petition was pending when the City filed its post-hearing brief.

The City also proposes to delete subparagraphs (1), (5) and (7) from paragraph F of Article XXXIV. These subparagraphs currently require the City to maintain existing practices with respect to (1) beds and use of beds; (5) no nighttime inspections except for places of business which operate at night; and (7) no drill on holidays. Again, the City asserts that these proposed amendments would facilitate its ability to manage the department.

Turning to the statutory criteria, citing Hillsdale PBA, Local 207 v. Borough of Hillsdale, 263 N. J. Super 163, 168 (App. Div. 1993); rev'd on other grounds, Hillsdale PBA, Local 207 v. Borough of Hillsdale, 137 N. J. 71 (1994), the City asserts that the interest and welfare of the public criterion deserves proper weight and must include consideration of the effect of the award on the City's citizens and taxpayers.

Addressing the statutory criteria covering comparability and overall compensation, the City urges that consideration be given to compensation provided to employees in public and private sector jobs generally as well as to those within and outside of Passaic. In support of this argument, City points out that in the Reform Act, the Legislature reordered the subfactors for comparison to list private employment first. The City contends that this amendment shows legislative intent to reduce reliance on wage and benefit comparability to public employees in the same or similar jurisdiction and to increase emphasis on comparability. The City also emphasizes that consideration must be given to

evidence of the employer's settlements with other unionized groups as well as its non-unionized employees, and any internal pattern of settlement. The City cites several examples of interest arbitrators recognizing the concept of pattern settlements.

The City maintains that wages and benefits in the private sector serve to highlight the reasonableness of its offer in comparison to the PFA's demands. The City points out that on June 24, 2002 BNA reported that the Wage Trend Indicator had dipped to 3.5% continuing a six consecutive quarter trend. The City also points to BNA's report that on March 4, 2002, the cost of living allowance paid to UAW-represented workers at the Big Three automakers declined by \$.11 per hour due to a 0.5% decline in the consumer price index during the three months that ended in January 2002. The City also points to a report in the December 6, 2001 New York Times that tens of thousands of unionized employees find themselves fighting pay freezes. The City points to reports in that article that Detroit, Michigan and Riverside, California withdrew or decreased offers of wage increases to employees.

Also citing an April 2002 article in the New York Times, the City points out that health insurance costs were increasing by double digits for the third consecutive year. The City asserts that increases of 25% were common in 2002 and increases will range from 12 to 15% in 2003. More specifically, the City cites a December 10, 2001 article in the New York Times reporting that employer

health care costs increased by 11.2% to \$4,924 per employee in 2001. The City asserts that as a result of rising health care costs employers are requiring employees to contribute towards premiums and/or pay higher deductibles. The City also cites a report in the Star-Ledger on December 10, 2001 that New Jersey employers with 500 employees or more incurred a 13.4% increase in health insurance costs, exceeding the national average by 1.3% and resulting in an average premium of \$5,588. The City cites another April 2002 article in the New York Times reporting that eight out of ten companies require retirees to pay all or part of the costs of their health insurance.

Similarly, the City asserts that prescription drug costs have soared. The City cites a December 10, 2001 article in the Star-Ledger, reporting that the cost of prescription drugs has increased by almost 20% annually. Again relying upon the New York Times, the City asserts that employers have required employees to share the increased costs through increased co-payments.

The City emphasizes that it continues to provide its firefighters and their dependents with fully-paid major medical, hospitalization, dental, prescription and vision coverage. The City points out that it also provides PFA retirees and their dependents with comprehensive medical insurance benefits including major medical, hospitalization and prescription coverage and dental insurance, but not vision coverage. The City compares these benefits with its agreement with the PBA which provides that PBA new hires are not eligible for dependent dental,

prescription or vision coverage until the fourth anniversary of employment. Additionally, the City points out that the PBA agreement provides that PBA new hires may opt for dependent dental, prescription and/or vision coverage, but must pay for the coverage. The City emphasizes that it does not seek to share the increased costs of medical insurance with PFA members through increased deductibles or contributions. However, the City does seek to modify the prescription drug co-pay so that the PFA unit receives the same prescription drug benefits as the PBA unit, the Fire Superiors, the Passaic Employees Association and the non-union municipal employees. The City notes that the SFOA agreed to the modification on September 8, 2000, the PBA agreed to the modification on April 27, 2000 and the PEA agreed to the modification on October 13, 1999. The modification proposed by the City includes a reduction in the co-payment for generic prescription drugs from \$2.00 to \$0.00, an increase in the co-payment for brand-name prescription drugs from \$5.00 to \$10.00 and an elimination of the \$3,400 family maximum annual cap. Under the City's proposal, drugs by mail order would continue to carry a \$0.00 co-payment. The City emphasizes that an award of this proposal would allow it to provide uniform prescription drug coverage to all employees.

In light of the evidence of double-digit increases in medical insurance costs, the City opposes the PFA's proposal to increase family dental benefits. The City points out that this proposal would impose significant costs, but the PFA did not introduce any comparability or pattern argument in support of its proposal.

The City contends that this proposal contradicts national trends where employers seek to share the increased costs of medical and dental benefits with their employees. The City concludes that comparison to wages and benefits in the private sector supports its final offer as more reasonable when contrasted with the demands posed by the PFA.

Citing the Biennial Report of the Public Employment Relations Commission on the Police and Fire Public Interest Arbitration Reform Act dated January 2002, the City points out that voluntary settlements for calendar year 2001 averaged 3.91%, which is well below the 6.0% per year sought by the PFA. The City also points out that the seventeen interest arbitration awards issued in 2001 resulted in average annual increases of 3.75%, or 2.25% below the 6.0% sought by the PFA. The City maintains that settlements in New Jersey's urban centers in 2001 and 2002 support its proposal. According to the City, in 2002 the municipalities of Elizabeth, Clifton, Newark, Paterson, Jersey City, New Brunswick and Rahway provided firefighters with average salary increases of 3.5%, with the highest increases of 3.75% being provided in Elizabeth, Clifton and Newark. The City emphasizes that Paterson firefighters received an increase of 3.5% in 2001.

Similarly, firefighter increases averaged 3.5% in 2002 in Elizabeth, Clifton, Newark, Paterson, Jersey City, New Brunswick and Rahway according to the City. Specifically, the City notes that Paterson's firefighters received an increase

of 3.5% in 2002. The City asserts that these increases underscore the reasonableness of its proposal.

Looking to its internal settlements, the City asserts that it seeks to provide PFA members with salary increases that maintain the pattern it has established with the SFOA and the PBA. The City maintains that it seeks to continue a pattern that follows the SFOA agreement. The City asserts that the PFA has not offered rationale for deviation from the established pattern with other police and fire bargaining units in the City.

The City reviews the terms of its September 8, 2000 memorandum of agreement with the SFOA. That memorandum of agreement covers the five year period from July 1, 1998 through June 30, 2003 and provides the following salary increases:

Effective July 1, 1998	3.0%
Effective July 1, 1999	3.0%
Effective July 1, 2000	3.0%
Effective July 1, 2001	3.9%
Effective July 1, 2002	3.9%

The City points out that the second and third year of the Agreement provided the Superior Officers with the same increase as the City provided to the Firefighters in their August 12, 1999 agreement. The City points to further evidence of a pattern in that the 3.0% included in the first year of the SFOA agreement is the

same as the 3.0% increase received by the PFA in the last year of its agreement with the City signed on August 12, 1997. The City emphasizes that the increases provided to the SFOA mirror exactly the increases provided to the PFA in the first three years of the SFOA agreement.

The City notes that the SFOA agreed to the modifications in the prescription benefit that the City seeks in this proceeding as well as a \$150.00 increase in the clothing and maintenance allowance in lieu of the \$500 fire inspector certification. The City details the give and take of the negotiations with the SFOA as follows:

In negotiations, the SFOA sought to obtain the \$500 fire inspector certification stipend agreed to by the City in a Memorandum of Agreement with the PFA on August 12, 1997. Instead of the fire inspector certification stipend the SFOA accepted a \$150 increase in the clothing and maintenance allowance, increasing the clothing and maintenance allowance from \$850 to \$1,000 annually.

The City notes that the agreement with the SFOA explicitly provides that the increase in clothing allowance is provided in lieu of the fire inspector stipend provided to the PFA. The City proposes the \$150 increase in the clothing and maintenance allowance in lieu of the \$500 fire inspector certification stipend which would increase the firefighter clothing and maintenance allowance from \$850 to \$1,000.

Turning to the folding of holiday benefits into base wages proposed by the PFA, the City points out that the SFOA agreed to fold holiday benefits into base salary at the rate of current holiday pay less 12%, which is the Employer's contribution to the Division of Pensions. The City asserts that by deducting the 12% from holiday pay, the fold-in is rendered cost neutral to the City. In its efforts to maintain consistent benefits between the SFOA and the PFA, the City does not oppose the holiday fold-in proposal, but does seek to have the 12% deducted from the base holiday rate to make the proposal cost neutral to the City and the City seeks to have the fold-in implemented prospectively.

The City emphasizes the focus on pattern bargaining that was included in a July 29, 1997 interest arbitration award with the SFOA by Interest Arbitrator Jeffrey Tener. In that proceeding the City explains, it sought to eliminate the 14% longevity step for superior officers earning 10% or less longevity. The City explains further that it argued that its proposal would bring the SFOA "longevity schedule into line with the longevity benefits provided by many other municipalities and with the new longevity schedule accepted by the [PFA] on behalf of the rank and file fire fighters." The City emphasizes that Arbitrator Tener found that "longevity should be changed to conform to the agreement reached by the City and the [PFA]. City of Passaic and SFOA award. P. 42. The City relies upon this Award in urging an award of the same salary and benefits to the PFA as provided to the SFOA.

Also citing the August 12, 1997 agreement between the City and the PFA, the City asserts that there is a history of pattern bargaining that dates back to at least January 1, 1995. The following chart illustrates the City's position that the SFOA and the PFA have received the same increases since January 1, 1995.

<u>Year</u>	<u>PFA</u>		<u>SFOA</u>	
7/01/02			3.9%	
7/01/01			3.9%	Memorandum dated 9/8/00
7/01/00	3.0%	Memorandum dated 8/12/99	3.0%	
7/01/99	3.0%		3.0%	
7/01/98	3.0%		3.0%	
7/01/97	3.0%	Memorandum dated 8/12/97	3.0%	Interest Arbitration Award dated 7/29/97
7/01/96	3.0%		3.0%	
7/01/95	3.0%		3.0%	
1/01/95	1.5%		1.5%	

The City also points to a provision in the July 19, 1997 agreement between the City and the PFA that amended sick leave benefits "as per the Passaic Fire Officers Interest Arbitration Award 7/29/97 by J. Tener." As further evidence of a pattern between the PFA and the SFOA the City cites the August 12, 1997 PFA Memorandum of Agreement that increased the PFA clothing and maintenance allowance to \$850 effective January 1, 1998 to bring it to the same amount as the SFOA clothing and maintenance allowance.

The City asserts that the April 25, 2000 interest arbitration award issued by Arbitrator Joel Weisblatt covering the City and the PBA provided the PBA with the same wage increases as the PFA for those years covered by a PFA

settlement with the City. That Award provided the PBA with the following wage increases:

Effective January 1, 1999	3.0%
Effective January 1, 2000	3.0%
Effective January 1, 2001	3.9%
Effective January 1, 2002	3.9%

The City notes that also consistent with the Agreement with the PFA, Arbitrator Weisblatt eliminated the 14% longevity step. The City cites Arbitrator Weisblatt's Award which expressly identified consistency in negotiations as integral to the public interest:

Another element of the public interest of the public interest is the need for a sound structure for labor relations policy within the employer's domain. In the case of the City this especially translates into maintaining a rational relationship among the negotiations of all the public safety bargaining units ...

Consistency in negotiation is a concept that is generally in the public interest. It provides for greater morale among public employees and provides a predictability factor in the bargaining and budgetary process. Presumably, difference in the responsibilities of various jobs are already reflected in the base wage rates that have developed over time. Therefore, the application of consistency in bargaining is most often a rational approach to maintaining the existing balance in compensation, reflective of the requirements of the job.

The common relationship between police and fire units in the collective bargaining process is so engrained that it needs no lengthy explanation herein. It is an accepted fact of line in the negotiations of public safety agreements. It may not mean that there will always be an identical settlement or rate of pay but it does mean that negotiations in police and fire departments of the same employer will always take significant cognizance of each other. The City's two year agreement with the [PFA] is of important

significance under the public interest criterion because reasonable consistency between the two units is good, sound labor relations policy.

Comparison with other bargaining units having the same employer are of particular importance in any interest arbitration. Comparisons among uniformed or public safety units are of quire special significance. Historically, police and fire bargaining units have been closely aligned in the negotiations process. There are numerous reflections of this importance in arbitration awards and in general practice Police and fire compensation may not always be locked in a direct relationship but it frequently is. Negotiations for terms and conditions of employment for the two groups, where both are present in the same municipality, inevitably require substantial consideration of the relative position of the two units.

The City emphasizes that Arbitrator Weisblatt awarded 3.0% increases in 1999 and 2000 even though the average increase for Police in the nine Passaic County municipalities was 3.84% in 1999 and 3.87% in 2000. According to the City, Arbitrator Weisblatt rejected the argument that police should receive the going rate and instead awarded the City's internal pattern.

The City reiterates that six months later, the SFOA reached an agreement on September 8, 2000 which mirrored the 3.0% received by the PFA. The City emphasizes that the increases received by the SFOA from July 1, 1999 through June 30, 2002 mirrored the increases awarded to the PFA by Arbitrator Weisblatt. The City asserts that "pattern settlements figure significantly in setting precedent for wage increases and benefits in the City of Passaic and specifically in public safety."

The City also contends that its pattern bargaining extends to its white-collar non-supervisory employees represented by the PEA. The City asserts that its settlements with the PEA are relevant and "must be 'given some measure of consideration'". The City notes that it had a four-year agreement with the PEA from July 1, 1998 through June 30, 2002 providing the following wage increases:

Effective July 1, 1998	3.0%
Effective July 1, 1999	3.0%
Effective July 1, 2000	3.0%
Effective July 1, 2001	3.0%

Noting that these increases mirror the increases provided to the PFA, the City points out that the PEA agreed to the prescription plan modification it proposes for the PFA. The City points out that the PEA also agreed to the implementation of a two-tiered dental, vision and prescription plan for dependents of new hires. Under this agreement, new hires who want dependent dental, vision and prescription coverage during the first three years of employment have the option to pay for such coverage. Under the agreement, the City assumes these costs on the employee's fourth anniversary of service. The City notes that it does not seek to implement two-tiered dental, vision or prescription plan coverage for dependents of newly hired firefighters.

The City also points out that its agreement with the PEA includes elimination of the 14% longevity step except that employees at the 14% step would be grand fathered at that level. The City also notes that its agreement with the PEA includes a cap of vacation benefits at 20 days.

In sum, the City seeks an award that mirrors the SFOA's Memorandum of Agreement with the City. The City maintains that pattern settlements permeate its labor relations. According to the City, the PFA has not presented evidence that justifies deviation from its well-established pattern.

Addressing the lawful authority of the employer, the City notes that the Cap allowed increase is 5%. In contrast, the City points out that the PFA's total package averages 14.38% per year. The City maintains that to the extent that the PFA's total package exceeds 5%, it would require the City to reduce other expenditures that fall within the Cap. The City asserts that if the PFA's demands are granted, the City might have to lay-off personnel or reduce budgetary appropriations through non-payroll costs to keep its budget within the 5% cap. The City contends that its final offer more closely reflects the increases permitted within the Cap and is more reasonable than the package proposed by the PFA.

Citing Hillsdale, 137 N. J. at 85, the City emphasizes that consideration of the financial impact on the governing unit, its residents and taxpayers is not the same as the ability to pay. The City asserts that its final offer takes into account Passaic's specific economic condition and the State's economy. To that end, the City cites the national unemployment rate of 6.0% in May of 2002. The City also notes that New Jersey residents pay the highest per capita property taxes in the

nation. The City points out that one cause of property tax increases is a freeze in state aid to local governments to help close a \$5.3 billion budget gap. The City notes that layoffs have accompanied the economic downturn and that Moody's Investor Service modified its outlook for New Jersey's economy from "stable" to "negative". The City points to layoffs in New Jersey, including Ford's plan to layoff 600 employees from its Edison plant as well as the State's plan to layoff 1,000 state workers.

The City asserts that Passaic County's socio-economic statistics show the City's difficult financial situation. The City points out that it has the lowest median household income among the 16 Passaic County municipalities. The City notes that its median household income is \$26,669 and its per capita income of \$11,057 is the second lowest in Passaic County. According to the City, its low per capita income and median household income limit its ability to increase revenues through taxes to provide larger salary increases and more generous benefits to Firefighters.

The City asserts that the cost of living supports its final offer. The City compares its final offer to increases in the CPI for the New York region increased by 2.5% for the twelve month period ending March 2002 and the national CPI for that period increased by 1.5%. The City also points out that the CPI increased by 1.6% in 2001. Additionally, the City emphasizes that from 1988 through 2000, the PFA consistently received wage increases dramatically in excess of

increases in the CPI. According to the City, over the thirteen-year period from 1988 through 2000, PFA salary increases totaled 21.9% and averaged 1.76% above the CPI. The City points to the "dramatic gap" between the PFA salary increases and the CPI and asserts that even with a 3.0% increase in three years, the PFA will remain significantly above the CPI.

The City argues that the continuity and stability of employment criterion supports its final offer because its proposal is in line with the pattern of settlements it has reached with its other unionized workers. The City points out that PERC has recognized that deviation from a pattern of settlement can affect the continuity and stability of employment by discouraging other internal collective bargaining units from reach future settlements with the employer and undermines employee morale in other bargaining units. The City asserts that the PFA did not introduce evidence that would warrant deviation from the settlement pattern established in Passaic.

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The City and the PFA have expertly articulated their positions on the issues and have submitted comprehensive evidence and argument on each statutory criterion to support their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

The PFA's final offer includes an economic package including wage increases, holiday fold-in, senior firefighter pay, special parity adjustment, and an EMT stipend, as well as increases in the clothing allowance vacation and sick leave, dental insurance, and stipends for the Assistant Training Officer and Fire Prevention Personnel and the Fire Inspector's certification, as well as numerous non-economic issues. The City's final offer includes a proposal for a modest wage increase, and a new salary schedule and the elimination of longevity pay for new hires, elimination of the fire inspector's certification stipend in exchange for an increase in the clothing allowance, as well as several non-economic proposals. In reviewing these proposals, I apply a principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process, namely that a party seeking such change bears the burden of establishing the need for such modification.

The PFA and the City both propose to amend Article XIII covering sick leave. The PFA proposes to increase the sick leave allotment for all members to ten days annually; to implement a sick leave donation program and to convert sick leave from days to hours for dispatch and office personnel. The City proposes to limit the use of sick leave to care for a member of the family or the household to emergency situations only.

Turning first to the PFA's proposal to increase the sick leave allotment for all members working a 24/72 work schedule to ten days, the agreement currently provides that firefighters hired before January 1, 1998 receive ten (10) sick days and those hired after January 1, 1998 receive eight (8) sick days. The PFA contends that these firefighters perform the same job and should receive the same pay. The PFA notes that sick leave is uniform for all Passaic blue and white collar employees and sick leave is equalized for all PBA members as well. The City does not support this proposal, noting that its costs depend upon sick leave usage and are uncertain.

That firefighters hired before January 1, 1998 receive a more generous sick leave allotment than those hired after January 1, 1998 is not sufficient justification to change the sick leave allotment for the newer firefighters. These differences were at by mutual agreement during prior negotiations and should not be disturbed during this contract term.

The PFA also proposes to amend Article XIII(f)(a) to permit participation by firefighters in the City's sick leave donation program. Currently, Article XIII(F)(3)(a) provides:

Sick leave shall be used in the following order:

3. When all available accumulated unused sick days from prior years have been exhausted, then the employee shall be entitled to unlimited sick leave up to the maximum of one (1) year.

- a. Once a Firefighter used up accumulated sick leave, he shall next be required to use vacation, compensatory and holiday time, and only thereafter may incur a negative sick leave balance.

The PFA seeks to replace "incur a negative sick leave balance with "request sick leave donation program". The PFA emphasizes that all of the municipal employees in Passaic have a sick leave donation program. Additionally, PFA asserts that its members may donate their sick leave to other employees in the municipality but are not able to donate their sick leave to one another or to receive sick leave from those in other bargaining units.

The PFA has not submitted evidence that either the Police or the Fire Superior Officers have a sick leave donation program. Nor has the PFA submitted evidence regarding the number of firefighters who have found it necessary to incur a negative sick leave balance. For these reasons, I find that implementation of a sick leave donation program for Firefighters at this time is not warranted and it is not awarded.

The PFA proposes a new provision that would convert Dispatch and Office Personnel sick days to hours. The PFA explains that dispatchers work 10s and 14s and office personnel work eight hours, five days a week. Firefighters hired before January 1, 1998 and who work 24/72 receive 240 hours of sick leave. However, the PFA represents that because dispatchers and office personnel do not work 24 hour blocks of time office personnel are able to use only 80 hours of

sick leave and dispatchers are able to use only 140 hours of sick leave apparently based upon the length of each workday. The City does not agree to this proposal but has not submitted evidence concerning this proposal.

The current practice, which requires all firefighters to use sick leave in 24 hour blocks has resulted in a situation where those firefighters who work as dispatchers or office personnel receive less sick leave than those firefighters who work 24/72. However, it appears that their sick leave days are calculated by the length of their workday and to convert the sick leave calculation to 24 hour days would double or triple their sick leave time. The PFA has established a basis to increase sick leave time but not to the extent proposed. I award an additional two (2) sick days annually to dispatchers and office personnel based upon the current calculation of the value of a sick day. Accordingly, the PFA's proposal to convert sick days to hours for Dispatch and Office personnel is granted. The new provision to be added to Article XIII, Section B covering Sick Leave shall provide as follows;

Dispatchers and office personnel who work a 10/14 work schedule or five eight-hour days shall receive twelve (12) sick days. The calculation of a sick day shall be based upon the length of the day in which the dispatcher would have worked.

The City proposes to amend Article XIII covering sick leave to limit the use of sick leave to care for a member of the family or the household to emergency situations only. Article XIII, paragraph C currently provides:

Sick leave may be used by an employee for personal illness or injury of a member of his family or household which requires his attendance upon the person who is ill or injured, or which requires his being quarantined by a physician because of disease which is certified by the local health department of the jurisdiction where the employee resides as being a contagious disease.

The PFA urges rejection of this proposal because it does not serve a legitimate management purpose and the City has not provided evidence supporting this proposal. There is no evidence that any unit member has abused the provision permitting attendance on family or household members who are ill or injured nor is there justification or rationale in support of this amendment to the existing provision. Accordingly, the City's proposal to amend Article XIII, Section C is denied.

The City proposes to amend Article XVIII covering Special Leave. Article XVIII currently provides, "[a]ny employee, upon notice to the Officer in charge, may take leave without loss of pay for any days on which he is able to secure another employee to work in his place. The City proposes to add the following provisions:

- a. The employee must be able to secure another employee qualified to perform his duties to work in his place.
- b. The department reserves the right to deny any swaps if the qualifications are not met, or if the employee abuses his privileges.

The City asserts that this proposal will facilitate its ability to manage the department. The PFA considers these proposals unreasonable. The PFA points out that the PBA settlement did not include any such amendment and the City has failed to provide evidence in support of the proposal. Additionally, the PFA asserts that firefighters all have the same civil service title and therefore, are all qualified.

The City's proposal to require the employee working in place of the employee taking special leave be qualified to perform the work is reasonable and will facilitate its ability to manage the department and is therefore in the public interest. Because firefighters are presumed to be qualified, the application of this provision will be limited to where special skills or qualifications are required to perform the job which is the subject of the swap. There is no need for the language proposed in Section B because the City, subject to the grievance procedure, may deny a swap based upon special skills and/or qualifications and there is no evidence of abuse warranting the language the City has proposed. The City's proposal regarding employee abuse is vague which is another basis for denial. For these reasons, City's proposal to amend Article XVIII is granted to the extent that paragraph (a) of its proposal is awarded and denied to the extent that paragraph (b) is denied.

The City proposes to amend Article XXVII covering Transfers to delete the entire article except for the first sentence. Article XXVII provides as follows:

A. Transfers will be made at the discretion of the Director of his designee. On a request for transfer initiated by the employee, there must be an existing vacancy before such transfer can be made.

B. The director or his designee will not unreasonably deny mutual swaps between companies. The Director or his designee shall act reasonable in making such transfers and seniority, physical ability and qualifications shall be considered by the Director or his designee in making, granting or denying such transfers.

C. As vacancies occur, notice of such vacancy will be posted in each firehouse.

The City contends that this proposal will facilitate its ability to manage the department. The PFA asserts that this proposal would effectively eliminate transfers, except for managerial whim. The PFA points out that no such change was included in the recent PBA agreement and asserts that the City did not provide evidence in support of this proposal.

The City's proposal would eliminate most if not all procedures for transfers and mutual swaps. The City has not provided evidence in support of this proposal, asserting only that it would enhance its ability to manage the department. In the absence of evidence that this article has interfered with the City's ability to manage the department, the City's proposal to modify Article XXVII is denied.

The PFA proposes that the a new article be added to the agreement covering Special Events as follows:

Currently firefighters who provide services at organized gatherings are paid at a rate of one and a half (1 ½) times their hourly rate for each hour of service. Assignments shall be done by seniority through a committee established by the Firefighters Association.

The PFA points out that that other contractual benefits are determined by seniority. Additionally, the PFA notes that the proposal that it take over the administrative duties regarding the assignment of special events will alleviate the burden on management. The PFA also proposes that firefighters who work special events such as festivals should be compensated at one and one half times their hourly rate for each hour of service. The PFA notes that the PBA receives this benefit.

The City does not object to the portion of the PFA's proposal for a new provision addressing payment for fire fighting services at special events at a rate of time and one half per hour. The City's objection focuses on the remainder of the proposal, which would require that assignments be made by seniority through a committee established by the PFA, because it does not preserve the City's managerial right to deviate from seniority when there is a need for specialized qualifications or skills. In the absence of a need for specialized qualifications or skills, a seniority provision for allocation of these assignments will benefit those firefighters who have contributed greater years of service to the department with this modification exempting assignments based upon seniority for those where special skills or qualifications are required, I award this proposal. I do not award

specific contract language implementing this proposal but defer this task to the parties.

Both the City and the PFA propose to modify the current vacation allotment provided in Article XII. The PFA proposes to increase the vacation leave allotment by one day at each step. The City proposes that for firefighters hired after July 1, 2002, each vacation step will be reduced by three days. The PFA also proposes to amend Article XII to specify that the approval of requested vacation must be given within 48 hours of the request.

The City seeks unspecified cost savings from reducing vacation benefits for new hires while the PFA seeks additional vacation benefits so that their benefits are more comparable to those received by PBA members and by paid firefighters throughout the State. Review of vacation benefits provided to firefighters throughout the State as well as to the City's police leads to the conclusion that the vacation benefits received by the City's Firefighters are comparable to the range of vacation benefits received by firefighters throughout the State and comparable to those received by the City's police. Given that the City's Firefighters currently receive benefits within these ranges and, in view of the remaining items awarded herein, there is insufficient justification for any change in the number of vacation days. Accordingly, both proposals are denied.

Addressing the PFA's proposal to modify Article XII to include a 48 hour time limit for management to approve or disapprove vacation, the PFA maintains that its proposal allows PFA members to make appropriate travel and vacation plans and provides management an adequate opportunity to approve or disapprove a vacation request. The City asserts that this proposal would interfere with its ability to plan shift coverage and ensure adequate manning on each shift. Also, if a firefighter requested vacation on a Friday, the City would have to respond by the following Sunday, when administrative personnel do not work.

This proposal addresses a small amount of vacations since most vacations are picked at the beginning of the year and the contract refers to openings that are still vacant pursuant to Sections F and I. Awarding a time limit for the Employer's decision as to whether the vacation is approved or disapproved allows the firefighter to plan his time off and the Fire Department to plan shift coverage. The current proposal would require a response within less than a full tour of duty. This, in a 24/72 operation, is impractical. Accordingly, the PFA's proposal is granted to the extent that a time limit on responding to vacation requests is awarded. However, that time limit is modified to one full tour of duty. Accordingly, a new paragraph shall be added to Article XII as follows:

Approval or disapproval of requested vacation days shall be given by the end one full tour of duty following the request.

Both parties propose amendments paragraph A of Article XXXIV "Miscellaneous", which provides as follows:

When the temperature goes below the number forty degrees Fahrenheit (40°F) or above the number eighty degrees Fahrenheit (80°F), there shall be no outside training except in emergency situations. In-service inspections may be held when the temperature is from the number 40 degrees Fahrenheit (40°F) to the number eighty-five degrees Fahrenheit (85°F).

The PFA seeks to remove the language "except in emergency situations" and the City seeks to delete any limitations due to temperature and inspections. The PFA argues persuasively that the City has defined "emergency situations" broadly. However, that argument does not diminish the need for the City to retain its discretion to require outside training in weather conditions beyond the constraints of the current agreement in emergency situations. In the event that the PFA believes that the City is applying the term "emergency" too broadly. It may raise this argument in the context of a grievance over the interpretation of "emergency situations" rather than by elimination of the provision. The City did not provide evidence or argument in support of its proposal to delete any limitations due to temperature and inspections, although it did submit a Petition for a Scope of Negotiations Determination to PERC seeking to remove the provision from the Agreement. That Petition was dismissed as untimely. City of Passaic and Passaic Firefighters Association, P.E.R.C. No. 2003-50 (2003). For these reasons, both proposals to modify Article XXXIV, Section A are denied.

The City also seeks to modify Article XXXIV, Section F to delete the provisions providing for the maintenance of the following existing practices: (1)

beds and use of beds; (5) no nighttime inspection except for places of business which operate only at night; and (7) no drill on Sundays and holidays. The City has not submitted evidence or argument in support of these proposed modifications. The PFA objects to any change to existing practices. In the absence of justification altering the cited contractual practices, this proposal is denied.

The PFA proposes to add a new paragraph to Article IV covering Non Discrimination that would provide for the protection of religious beliefs insofar as they do not hinder job performance. The City notes that Article VI, Paragraph B currently prohibits the City and the PFA from discriminating against any employee on the basis of religion. Because Article IV already prohibits discrimination on the basis of religion, the PFA's proposal is redundant and would not add to the substantive rights of firefighters. Accordingly, the proposed amendment to Article IV is denied.

Both parties propose amendments to Article VIII covering Overtime. The PFA proposes to amend Paragraph C to change the word "employees" subparagraph 1 and 2 to "volunteers". Paragraph C (1) and (2) provides as follows:

1. Re-hire shall be at the discretion of the Director or his designee. Employees may be re-hired when manpower falls below minimum requirement, to man the apparatus. Re-hire shall be done at a ten (10) – fourteen (14) work schedule basis.

2. The PFA will supply the Fire Chief with a list of volunteers who will be the first employees called for re-hire. If no volunteers except the re-hire, the Chief or his designee shall be able to order an employee back to work on a re-hire from the availability list.

Since Paragraph C covering re-hire for overtime purposes, already provides for the use of volunteers prior to ordering an employee back to work, the PFA's proposal is redundant and could limit the City's ability to require employees to return to work in order to maintain minimum manpower requirements. Accordingly, this proposal is denied.

The City seeks to amend the Overtime provisions in Article VIII, paragraph C(3) to add a requirement that employees who place their name on the volunteer list for rehire must do so for a minimum of one year absent disability. At present, employees may add or remove themselves from the volunteer list at any time upon written notice. Paragraph C (3) currently provides that "[e]mployees shall be permitted to add or remove their name from the volunteer list at any time upon prior written notice to the Fire Chief and the Director and the PFA. The PFA objects to this proposal noting that the City has not provided supporting evidence or argument. In the absence of evidence or argument in support of this proposal it is denied.

The PFA also proposes to amend the second sentence or Paragraph E of Article VIII to replace the current language "only those firefighters who

volunteered" with "only those firefighters who signed up". Paragraph E currently provides:

Twice per year, Firefighters shall indicate whether or not they will to be on the overtime list. If they so indicate, only those Firefighters who volunteered will be required to work overtime in the event that no one volunteers for the overtime. Nothing in this section or this article restricts the City's right to require overtime by any firefighter whenever required for the health and welfare of the City or its residents.

Although the City has not specifically opposed this proposal, the PFA has not provided sufficient justification for this change and it is denied.

The PFA has proposed to change the word "multiplied" to "divided" in Article XIV (b), Supplemental Compensation Upon Retirement, so that the effected provision will read, in part, as follows: "The formula to be used to calculate the supplemental compensation to be paid upon retirement shall be 260 annual work days divided ..." instead of "multiplied." This proposal corrects current contract language. The City agrees with this modification and it is awarded.

Similarly, the PFA proposes to change the word "overall" to "overhaul" in Article XXIX, Employee Duties, which provides:

In addition to the limitations set forth above, employees covered by this Agreement shall be assigned only to duties which are related to fire-fighting, fire prevention, rescue, salvage, **overall** work, care and maintenance of firefighting equipment and the present daily

work scheduled for each firehouse, and surrounding firehouse property, which duties shall not include the performance of any patrol work.

The City did not take a position on this proposed modification. This proposal corrects current contract language. This proposal is awarded.

The PFA proposes to add a new section to Article XXXII covering Personnel Files to place time limits on the amount of time that disciplinary documentation may be maintained in an employee's personnel file. The PFA emphasizes that under its proposal, disciplinary documentation may be permanently maintained by the Department. The PFA points out that the time scale proposed by the PFA for record maintenance allows for a firefighter to overcome a mistake which may have been made earlier in his career and is consistent with progressive discipline principles. The City opposes the PFA's proposal to remove the record of discipline from personnel files after a certain period asserting that this proposal is not mandatorily negotiable. The PFA has not demonstrated a need to include its proposal for limits on the amount of time that disciplinary documentation may be maintained in an employee's personnel file. Although the PFA's argument that its proposal would allow a firefighter to clean up a record marred by a minor infraction, there is no evidence that the City has abused its authority or that a firefighters has been adversely affected in inappropriate fashion as a result of prior discipline. Accordingly, the PFA's proposal to Amend Article XXXII is denied.

Both the PFA and the City seek to amend the time limits for discipline and discharge that are included in Paragraph B of Article III. The PFA seeks to change the time limit from 45 days to 30 days and the City seeks to eliminate the time limits. A 45 day time limit is specified for police officers in N.J.S.A. 40A:14-147 and is a useful guideline supporting the existing provision. Accordingly, both proposals to modify that time limit are denied.

The PFA proposes to add a new paragraph to Article XXXV to address successorship in the event of consolidation, merger or annexation. The PFA asserts that this proposal would permit the benefits in the current agreement to remain in effect until the terms of the contract have expired. The City does not take a position on this proposal. This proposal is not necessary at this time as no prospects for such an event during the term of this agreement is in evidence. The PFA's successorship proposal is denied.

The PFA proposes several modifications to Article XXXVII covering Drug Testing. First, the PFA seeks to eliminate Paragraph D which provided an amnesty period before the implementation of the current drug testing policy. The PFA and the City agree that the amnesty period has past and the provision should be eliminated. Accordingly, Paragraph D of Article XXXVII shall be eliminated. Additionally, references to the amnesty period in subparagraph 2 of Paragraph O shall be deleted.

The PFA also proposes to amend Paragraph C.1.b, which currently provides that the City may test Firefighters for drug use when "there is a vehicular accident while Firefighter is driving." The PFA seeks to limit testing to "a vehicular accident exceeding \$2,000 in property damage or fatality in which the firefighter is driving on duty." The City asserts that this proposal would restrict it from conducting reasonable suspicion drug testing when an accident results in a personal injury, but not death, or when property damage is less than \$2,000. This proposed amendment would limit the City's ability to conduct drug testing in a situation where there is reasonable suspicion but an absence of a fatality and more limited property damage than proposed. Accordingly, this proposal is denied.

The PFA proposes to amend Paragraph F to add language establishing that "if a firefighter is sent for drug testing due to probable cause, that member shall be sent home and shall not be allowed to return to duty until a result of the drug test is received. The City shall provide the location of where drug testing will be held when the Medi-Center is closed." The City does not specifically address this proposal. This proposal is granted to the extent that a Firefighter tested under Paragraph F shall be sent home. This language is justified because firefighter should not be operating equipment nor performing firefighter services while undergoing testing procedures. However, Paragraph F deals with testing upon "reasonable suspicion" not "probable cause" and I do change this standard.

The exact location of the drug test is subject to change and need not be included in the drug testing provision. Accordingly, the new language to be added to Paragraph F shall provide:

If a firefighter is sent for drug testing due to reasonable suspicion, that member shall be sent home and shall not be allowed to return to duty until a result of the drug test is received.

The PFA also proposes to amend Paragraph G which creates a Drug Testing Advisory Committee to provide that the Committee shall not consist of police personnel. Paragraph G currently provides that the Committee "shall include a representative of each of the collective bargaining units of uniformed fire and police personnel..." as well as medical specialists. The PFA has not articulated sufficient rationale warranting a change the composition of the Committee. Accordingly, this proposal is denied.

The PFA also proposes to amend Paragraph I to provide that "any new drugs to be tested shall be subject to negotiations." This proposal is speculative and no evidence has been presented reflecting a need for justification for this proposal. It is denied.

The PFA proposes to add a new article to the Agreement that would provide a goal for minimum manning levels as follows:

The City shall recognize the importance of maintaining a minimum level of fire personnel. The number of firefighters on duty shall not

fall below the number of 18. In the event the level of firefighters scheduled for duty on any given day falls below the number of 18, the City agrees to rehire (at the rate of time and a half) enough personnel to reach the minimum number of 18 personnel on duty.

The PFA explains that this proposal would alleviate the dangers of firefighting in Passaic where low manning may have contributed to the death of Firefighter Tirado in 2001 when only 13 personnel responded to a multi-unit apartment blaze. The PFA contends that this provision would eliminate past dangers that have resulted where a truck has been put out of service rather than rehire per minimum manning. The City opposes this proposal.

The record demonstrates that the City has experienced some staffing shortages in the Fire Department. However, the City has taken affirmative steps to alleviate the staffing shortages, hiring 13 new firefighters on May 7, 2001 and an additional 9 firefighters in 2002. The manning shortages that the PFA seeks to address with its proposal should be minimized thus making a provision setting minimum staffing goals unnecessary. If this is not the case, this proposal may be revisited in the future. The minimum staffing proposal is denied.

The PFA has proposed that time off from duty be provided for department mandated training as follows:

1. The employer shall provide time off from duty whenever personnel are required to attend a class during work hours. This is to include all personnel regardless of their time in service.

2. Personnel who are required to maintain certifications will not in any way have to secure another firefighter to work in their place while attending class.
3. The current practice as to compensation for such training, at premium rates, shall continue.

The PFA asserts that its proposal is consistent with recent trends in police and fire contracts. The PFA contends that it is reasonable that an employee maintaining a required certification should not be burdened to maintain the certification. The City opposes the proposal to add a new provision covering department mandated training, pointing out that it would require payment at time and one half for all training, whether while on duty or on off-duty time.

The PFA has not submitted evidence that firefighters have had difficulty receiving adequate time or compensation needed to maintain required certifications. Additionally, this proposal would require payment at time and one half for all training even when on duty. Accordingly, this proposal is denied.

The City proposes to amend the Grievance Procedure to provide that if the Fire Chief and the Fire Director are the same individual, the Grievance should be moved to step 3. At present, grievances are presented to the Fire Chief at Step 2 and to the Fire Director at Step 3. The PFA does not oppose this proposal. This proposal is would avoid duplication of time and effort in the event that one person serves as both the Fire Chief and the Fire Director and it is

awarded. The following language shall be added at the end of Article IV, Paragraph D, Step 2:

This step may be skipped if the Fire Chief and the Fire Director are the same person.

The City also proposes to establish a period of ten (10) days to file for arbitration. At present the agreement does not include a time limit to file for arbitration from Step 4. The PFA does not specifically object to this proposal. A limit on the amount of time allotted to progress a grievance to arbitration allows for the grievance process to proceed in a timely and expeditious fashion. The City's contract with the PBA includes a fourteen (14) calendar day time period in which to submit a grievance to arbitration. Accordingly, the first sentence of Article IV, Paragraph D, Step 5 shall be amended to provide as follows:

If the grievance is not settled through Steps 1, 2, and 3, either party shall have the right to submit the dispute to arbitration **within fourteen (14) calendar days**, pursuant to the Rules and Regulations of the Public Employment Relations Commission.

The PFA has proposed the following improvements to the current dental benefits received by firefighters: basic benefit (80%); crowns, inlays and gold restoration (75%); prosthodontics (75%); annual maximum (\$2000); orthodontics maximum (\$2500). At present the dental plan includes 50% coverage for crowns, inlays and gold restoration, 50% coverage for prosthodontics, an annual maximum per patient of \$1,000 per year and an orthodontics maximum of 50% of

costs and up to \$1,500 lifetime benefit. The PFA notes that the maximums for orthodontics and annual patient visits have not increased since January 1, 1994 and the costs of dental care has increased dramatically during that period. The PFA asserts that these maximums are no longer reasonable or consistent with the trends of other police and fire safety contracts. The City asserts that the PFA's proposal to increase the dental benefits for firefighters and eligible members of their immediate would be costly. The PFA did not introduce evidence or provide information that would allow the City to estimate the costs of the proposed increase benefits. The dental benefit currently received by the firefighters is identical to that received by the Fire Officers and there is insufficient evidence that this plan is inferior to the dental benefits provided to the City's other public safety or municipal employees. Accordingly, the proposal to improve dental benefits is denied.

The City proposes to modify prescription co-payments to decrease the prescription co-pay for generic drugs to \$0.00; to increase the co-pay for brand name drugs from \$5.00 to \$10.00 and to eliminate the \$3500 family maximum per year cap. The City points out that this proposal mirrors the prescription plan agreed to by the SFOA, the PBA and the Passaic Employees Association. The City asserts that this prescription plan would simply the City's management of its prescription insurance plan and would provide cost savings to the City. The PFA asserts that no change in the prescription plan was included in the City's recent

agreement with the PBA. The PFA's prescription plan presently provides the following co-payments:

Generic Drugs	\$2.00
Brand Name Drugs	\$5.00
Drugs by Mail Order	\$0.00
Family Max./Year	\$3,500.00

Although the recent agreement with the City's Police did not include a change in the prescription co-payments, all City employees including the police (except the firefighters) are covered by the prescription plan proposed by the City. Uniformity on this benefit is a desirable objective. Further, the elimination of the cap will assist those firefighters who must need this benefit. Accordingly, the City's proposal to modify the prescription plan is awarded effective no earlier than thirty (30) days after the issuance of the Award.

Citing the City's agreement with the Fire Officers, which increased the uniform allowance from \$850 to \$1,000, retroactive to 1998, the PFA proposes to increase the Uniform Allowance from \$850 annually to \$1000 per year. The City does not object to this proposal, but asserts, that as in its agreement with the Fire Officers, this improvement should be provided but only in exchange for an agreement to eliminate the fire inspector stipend. Article XIX, Paragraph A of the Fire Officers' agreement provides as follows:

All employees of the Fire Department covered by this Agreement shall be entitled to an annual clothing allowance of one thousand (\$1,000.00) dollars payable semi-annually. The 150 increase

effective July 1, 1998 is in lieu of fire inspector stipend as specified in the firefighter collective bargaining agreement, Article 9, Paragraph D. Said allowance to be paid June 1 and December 1 of each year.

The PFA points out that the Fire Officers did not actually make an exchange or give back any benefit, because the benefit referenced is a Firefighter benefit and there are no Fire Officers who receive the Fire Inspector Certificate stipend. The PFA also notes that there is only one Fire Inspector who receives the \$500 annual stipend in the Firefighters bargaining unit. The PFA also proposes to increase the Fire Inspector Certification stipend from \$500 to \$750 per year.

Under the Firefighters' agreement, an employee holding a Fire Inspector Certificate receives a \$500 annual stipend so long as the following conditions are met:

1. Not in base pay; not eligible for overtime
2. Not in pension
3. To be paid approximately October 1st of each year.
4. These stipends include compensation for all time and all costs for these certifications including:
 - Initial Training
 - Additional Training
 - Re-Certification Training
5. Stipends will be paid only to those Firefighters who are required to obtain or use these certifications by the City.

As both parties agree, improvements in the current uniform allowance are warranted. However, the parties' disagree regarding whether there should be a tradeoff for the Fire Inspector Certification. I note that the cost of providing the

Fire Inspector Certification Stipend to one individual is \$500 annually and includes compensation for the time and costs associated with maintaining the Certification which is required of the Fire Inspector by the City. Eliminating that stipend is not appropriate or necessary as a trade off for an increase in the uniform allowance where the Fire Officers did not make an actual trade off of a benefit in exchange for an increase in the uniform allowance or where any reasonable connection can be drawn for such a tradeoff in this unit. I also find that no increase in the Fire Inspector Certification stipend is warranted at this time. Given this ruling there is no need to resolve the discrepancy between the City's estimate of 60 firefighters receiving the stipend compared to the PFA's estimate of one.

Accordingly, I award increases of \$50 in the uniform allowance effective July 1, 2001, July 1, 2002 and July 1, 2003. The uniform allowance shall increase from \$850.00 to \$900.00 effective July 1, 2001, to \$950.00 effective July 1, 2002 and to \$1000.00 effective July 1, 2003. Based upon a census of 83 firefighters in 2001, the cost of the increase in the uniform allowance in FY 2001 is \$4100. Based upon a census of 91 firefighters in 2002 and 2003, the cost of the increase in the uniform allowance in FY 2002 and FY 2003 is an additional \$4550.00 in each year. The Fire Inspector Certification stipend shall remain \$500.00 per year.

The PFA proposes to increase the stipend provided to those individuals assigned to the Fire Prevention Bureau or who work out of Fire Headquarters to

15% of salary to be included in base salary. At present those individuals receive an additional \$3,500.00 per year. That amount has not changed since January 1, 1994. According to the PFA, if this stipend had increased at the same percentage rate as the salary increases since that time, the stipend would have almost doubled. The PFA maintains that the Fire Prevention Bureau and Life Hazard Inspections generate revenue for the City. Additionally, the PFA points out that these firefighters work a normal day shift without the benefits of a 24/72 schedule. The City objects to the added costs associated with this proposal.

An increase in those stipends is warranted given the fact that ten years have passed without adjustment. At present only two individuals receive this stipend. However, conversion of the stipend to 15% of base salary would unduly increase the size of the stipend. Instead, for the life of this agreement, the stipends shall increase each year by the same percentage as the annual across-the-board increases which are provided herein. Based upon the present amount of \$3,500, the stipends shall increase to \$3,635.50 effective July 1, 2001; \$3,778 effective July 1, 2002; \$3,929.00 effective July 1, 2003; \$4,086 effective July 1, 2004 and \$4,250 effective July 1, 2005.

The PFA and the City have put forth several economic proposals that would impact base wages including wage increases, modifications to the salary guide and longevity, as well as a fold-in of holiday pay, special parity adjustment and firefighter senior pay and an EMT stipend. These proposals must be considered both independently and also as part of an economic package.

Indeed, there is a statutory requirement that total net annual economic change be calculated, which strongly supports the well established principle that changes to a collective bargaining agreement must be considered in their totality. Thus, even when a proposal of the City or the PFA may have independent merit, if an award of that proposal would not be compatible with the collective result compelled by application of all of the relevant statutory criteria, that proposal must be denied for the duration of the contract awarded. For this reason, I first turn to salary, the issue which most dramatically impacts on the City and the PFA.

The PFA seeks increases of 6.0% per year for five years and a 3.0% parity adjustment to base pay in order to begin to close the total compensation gap between the PFA and the City's police as well as firefighters in surrounding municipalities. The City proposes annual increases of 3.0% per year for three years, citing internal comparability, particularly with its Fire Officers.

Initially, I find that given the intensely litigated nature of these proceedings, an award of a three-year agreement would result in the near term commencement of negotiations over a new agreement. A five year agreement with a duration from July 1, 2001 through June 30, 2006 is compatible with the City's goal of having the police and fire contracts to expire in the same year as its agreement with the police is through December 31, 2006. A five-year agreement would also allow the City and the PFA a period of stability to implement the terms

of this Award before engaging in another round of bargaining. Accordingly, I award a five-year agreement with a duration from July 1, 2001 through June 30, 2006 and the salary increases are premised upon that duration.

In evidence there is a long history of comparison between the police and firefighter bargaining units in the City. The PFA compares the PBA top salary on January 1, 2000 of \$62,081 with the PFA top salary on July 1, 2000 of \$57,361. Both parties cite Interest Arbitrator Weisblatt's Award covering the City's police for the contract term of January 1, 1999 – December 31, 2002 where he stated, "reasonable consistency between the two units is good, sound labor relations policy." Arbitrator Weisblatt awarded 3.0% increases to the police in 1999 and 2000, which is the same percentage increase included in the PFA agreement for the same period, as well as increases of 3.9% in 2001 and 2002.

The following table illustrates the relationship between police and fire salaries from 1992 to police increases through 2006.

	PFA Salary	Percentage Increase	PBA Salary	Percentage Increase
1/1/92	\$43,137	6.0%	\$42,323	3.0%
1/1/93	\$45,509	5.5%	\$44,960	3.0%
7/1/93			\$46,696	4.0%
1/1/94	\$47,329	4.0%	\$48,097	4.0%
7/1/94			\$50,021	4.0%
1/1/95	\$48,039	1.5%	\$52,022	4.0%
7/1/95	\$49,485	3.0%		
1/1/96			\$54,103	4.0%
7/1/96	\$50,965	3.0%		
1/1/97			\$56,267	4.0%

7/1/97	\$52,493	3.0%		
1/1/98			\$58,517	4.0%
7/1/98	\$54,068	3.0%		
1/1/99			\$60,273	3.0%
7/1/99	\$55,690	3.0%		
1/1/00			\$62,081	3.0%
7/1/00	\$57,361	3.0%		
1/1/01			\$64,502	3.9%
7/1/01				
1/1/02			\$67,017	3.9%
7/1/02				
1/1/03			\$69,697	4.0%
7/1/03				
1/1/04			\$72,485	4.0%
7/1/04				
1/1/05			\$75,385	4.0%
7/1/05				
1/1/06			\$78,400	4.0%

This table shows that for the years 1995, 1996 and 1997 the PBA received 4.0% per year while the PFA received 3.0% per year. This widened the disparity between police and fire salaries which began in January 1, 1994 as a result of larger annual increases given to police in 1993 and 1994. This disparity is the main basis for the PFA's proposal for a 3.0% special parity adjustment over the life of the agreement. The PFA's proposed adjustment to base wages in addition to annual increases would cost approximately \$142,828 in the first year of the agreement in addition to any annual increase awarded. The City objects to the costs associated with this proposal.

The PFA has met its burden to establish that the increased disparity between police and fire salaries resulting from the lesser salary increases for firefighters during those three years warrants some equity adjustment to base

wages. I also conclude that the cost of any equity adjustment is an important factor as well as the impact of an equity adjustment on remaining economic proposals.

The PFA further contends that if the City's proposals are awarded, its firefighters will fall further behind the City's police because the City has proposed less than what the police have received and denied any parity or equity adjustment. In addition, the PFA contends that if the City's proposals are awarded, its firefighters will fall further behind firefighters in Clifton and Paterson. Specifically, the PFA asserts that its firefighters are approximately 14% behind the Paterson firefighter maximum salary and over 7.0% behind the firefighter maximum salary in Clifton. The PFA also asserts that when total compensation is compared, including maximum salary, longevity, clothing allowance, and holiday pay, Passaic firefighters earned the lowest maximum base salary and benefits in the County in 2000. The PFA asserts that including Passaic firefighters in the average, Passaic firefighters earned \$4,001 less than the county-wide average annual top salary of \$61,362.

The evidence concerning comparability outside the jurisdiction of the City is relevant but is less significant and weighs less than the evidence concerning internal comparability. I need not conclude that there be identical treatment between the police and fire departments given the many contractual differences which currently exist between the two in areas beyond wages but the

"reasonable consistency" standard continues to be "sound labor policy" and furthers the interests and welfare of the public. Thus, across-the-board increases equivalent to those received by the police (as well as to the fire officers in 2001 and 2002) coupled with equity adjustments to be phased in over the last three years of the agreement are justified by the record evidence and represent a reasonable determination of the most significant economic issues proposed herein after full consideration and application of all of the statutory criteria. I stress that any equity adjustments to be awarded are based solely upon the reason stated herein and would not be otherwise justified as an across-the-board increase.

Based upon the arguments and evidence submitted, I have determined that there be a five-year agreement with wage increases of 3.9% effective July 1, 2001, 3.9% effective July 1, 2002, 4.0% effective July 1, 2003, 4.0% effective July 1, 2004 and 4.0% effective July 1, 2005. This represents a total increase of 19.80% over the five-year term representing an average increase of 3.96%. Additionally, as discussed herein, equity adjustments are warranted but in an amount and by an effective date not overly burdensome to the City. Equity adjustments of 1.0% per year effective January 1, 2004, January 1, 2005 and January 1, 2006 are merited and awarded. Based upon 83 firefighters at top step salary, the terms of the annual across-the-board increases provided in the award will cost the City \$185,677 in the year beginning July 1, 2001, an additional \$192,918 in the year beginning July 1, 2002, an additional \$205,582 in

the year beginning July 1, 2003, an additional \$215,943 in the year beginning July 1, 2004 and an additional \$226,826 in the year beginning July 1, 2005. The terms of the annual increases provided in the award are \$42,849 more than the City's proposal in the year beginning July 1, 2001, \$45,805 more than the City's proposal in the year beginning July 1, 2002 and \$54,055 more than the City's proposal in the year beginning July 1, 2003. The terms of the annual increases provided in the award are \$99,980 less than the PFA's proposal for the year beginning July 1, 2001, \$108,879 less than the PFA's proposal for the year beginning July 1, 2002, \$115,383 less than the PFA's proposal for the year beginning July 1, 2003, \$124,779 less than the PFA's proposal for the year beginning July 1, 2004 and \$133,810 less than the PFA's proposal for the year beginning July 1, 2005. The equity adjustments on a calendar year basis will cost the City an additional \$53,451 in 2004, an additional \$56,145 in 2005 and an additional \$58,974 in 2006 although the costs corresponding to each contractual year are less because the initial adjustment will be six months into the 2003-2004 contract year. When the terms of the award are applied to the existing salary schedule, it will cause that schedule to be modified as follows:

<u>Classification</u>	<u>Base Salary</u> 7/1/00	7/1/01 3.9%	7/1/02 3.9%	7/1/03 4.0%	1/1/04 1%*	7/1/04 4%	1/1/05 1%*	7/1/05 4%	1/1/06 1%*
Initial six months of svc	\$27,730	28,811	29,935	31,132	31,443	32,701	33,028	34,349	34,692
2 nd six months of svc	\$32,771	33,986	35,312	36,724	37,091	38,574	38,960	40,519	40,924
2 nd year of svc	\$37,814	39,288	40,821	42,453	42,877	44,592	45,038	46,840	47,308
3 rd year of svc	\$41,585	43,206	44,891	46,687	47,153	49,040	49,530	51,511	52,026
4 th year of svc	\$45,429	47,200	49,041	51,003	51,513	53,573	54,109	56,273	56,835
5 th year of svc	\$49,472	51,401	53,406	55,592	56,097	58,341	58,925	61,282	61,894

6 th year of svc	\$53,416	55,499	57,663	59,970	60,569	62,992	63,622	66,167	66,828
7 th year of svc	\$57,361	59,598	61,922	64,399	65,042	67,644	68,321	71,054	71,764

*Equity Adjustment

The PFA proposes to add a new provision to the Agreement creating an EMT certification stipend of 3% to be included in base pay as compensation for the maintenance of the EMT certification. The PFA maintains that a 3% EMT certification stipend is well within the norm in the State. The PFA emphasizes that, at present, its members are required to sign a pre-employment agreement requiring them to obtain an EMT certification within twelve months of their employment and to maintain the certification throughout their career. The pre-employment agreement provides that failure to maintain an EMT certification may be grounds for dismissal.

According to the PFA, firefighters in many municipalities, including West Orange, New Brunswick, Teaneck, Westfield, Roselle, Clifton, Belleville, Patterson and Elizabeth receive an EMT certification stipend. The PFA points out that Clifton Firefighters receive a \$1200.00 per year stipend for maintaining and EMT certification and those who are certified in EMT and defibrillator receive an additional \$1500 per year. The PFA also points out that in West Orange the firefighters receive a 2% stipend added to base pay for maintenance of the EMT certification. The PFA cites an interest arbitration award issued by Arbitrator James Begin involving Teaneck and Teaneck FMBA, Local No. 42. Arbitrator Begin awarded a 2% EMT certification stipend citing the increase in first medical response workload and EMT/EMS stipends in other communities including

Hackensack and Ridgewood in Bergen County. The PFA notes that Arbitrator Begin found that "stipends usually range from \$1,250 to \$3,471 so the two percent awarded here with a current cost of around \$1,000 at a maximum base salary is at the bottom of payments."

The PFA urges rejection of the City's argument that its firefighters do not regularly ride the ambulance and ambulances are manned by paid EMTs or volunteers. The PFA notes that most paid fire departments receive EMT certification stipends simply for maintenance of the certification, as is the case in Teaneck and West Orange. The PFA contends that in Passaic, the potential for use of the EMT certification is continuous. The PFA cites several examples of the potential for usage of EMT certification in the Department of Personnel Firefighter job specification, such as aiding victims at the scene of an emergency.

Further, the PFA points to increased reliance on EMT certification since September 11, 2001. The PFA explains that many calls to the Passaic Fire Department are from Emergency Voice Response System boxes [EVR]. EVR boxes are located throughout the City's 17 high rise buildings, 42 schools, three hospitals, two nursing homes, two large mill complexes and three Title III hazmat facilities. Relying upon the affidavit of PFA President Lawrence Dostanko, the PFA cites examples of instances when the City, the public and the firefighters have benefited from maintaining EMT certification. On three separate occasions in 1997 firefighters with EMT certifications were called to Emergency Medical

Service to staff an ambulance for a twelve-hour tour. On another occasion in 2002, a firefighter who previously worked as an EMT worked an eight-hour shift on an ambulance while off-duty without additional compensation. The PFA emphasizes that EMTs are dispatched by the police department, but work under the authority and direction of Fire Captain Joseph Nayda. The PFA also points out that since the anthrax scare following September 11, 2001, the Fire Department has responded to many anthrax calls, and if anthrax were to be found, emergency medical services would be delivered immediately. Citing the death of Firefighter Tirado, the PFA emphasizes EMT certification is important because firefighters must be trained so that they can assist each other in critically dangerous situations.

The City objects to the PFA's proposal to create an EMT stipend. The City indicates that recent changes have served to confirm separation of the EMT function from the Fire Department. Citing the Affidavit of City Administrator Gregory Hill and a November 14, 2003 Memorandum from Mayor Samuel Rivera, the City points out that the EMS and civilian EMTs, who have recently become represented by the Teamsters, have become a division of the Police Department. The City also emphasizes that the new Fire Chief has eliminated the requirement that each new firefighter have an EMT certification and had determined that current EMT certifications will not be renewed. Except for a few isolated incidents over the past several years, the City asserts that PFA members do not perform EMT duties.

Based upon the 48 firefighters who currently maintain an EMT certification, using July 1, 2000 salaries, the City calculates that a 3% stipend would cost \$1,721 per EMT certified firefighter per year or \$82,608 in each year.

The City also notes that when it required EMT certification training in the past, if the training occurred on a day when the firefighter is not scheduled to work, the firefighter received compensatory time for the training time. Accordingly, the City asserts that Firefighters did not incur any expenses in achieving EMT certification.

In response to the PFA's evidence that other municipalities provide EMT stipends to firefighters, the City points out that there is no evidence as to whether any of these municipalities maintain a civilian EMT staff and the extent of EMT responsibilities performed by Firefighters. The City asserts that in the absence of this evidence, no meaningful comparison can be made.

The merits of an EMT stipend have been addressed thoroughly by both parties. As emphasized by the PFA, the exigencies of fire fighting have led to the need for and the use of EMT skills. Firefighter job descriptions include reference to coordination with Emergency Medial Services as well as EMT skills. Approximately half of the City's Firefighters currently have EMT certifications. Firefighters receive stipends for EMT certification in municipalities, including Clifton and Paterson. The City indicates that it currently relies upon a civilian

EMT staff and has eliminated the requirement that firefighters obtain and maintain EMT certification. The City urges rejection of comparisons to other communities where EMT stipends have been provided because firefighters perform first responder duties, and/or are required to receive EMT training.

The PFA and the City offer logical and rational agreements on the EMT issue but I am not persuaded to either award or deny EMT stipends based upon the main arguments presented although my clear decision is to deny the proposal. I am persuaded that the element of economic cost above and beyond what has been awarded cannot be justified during this contract term. This weighs against awarding the PFA's proposal which would require an additional annual expenditure of \$82,000 or more based upon a 3% of base salary stipend being awarded to the 48 firefighters who currently maintain EMT certification. In addition, the record reflects that departmental changes have been made concerning EMT requirements demonstrating that departmental needs have been and will continue to be a subject of reevaluation. Accordingly, the EMT issue and the accompanying merits in support of or against the PFA proposal can be re-examined during negotiations for the next agreement in the context of future cost and existing departmental requirements at that time.

The PFA proposes to fold holiday pay into base pay effective July 1, 2001 for all firefighters. Under the current agreement, holiday pay is included in base pay after the completion of the firefighter's 19th year of employment. The PFA

points out that holiday pay has been included in base pay in New Brunswick, Trenton, Union Township, Newark, Ridgewood, Bloomfield, Jersey City, Clifton and Roselle. In response, the City proposes to provide a holiday fold in less the 12% of holiday pay it would be required to contribute to the Division of Pensions. The City asserts there is financial impact because of pension contributions and it also increases firefighters' hourly rate of pay for purposes of overtime calculation. The City argues that any fold-in must minus the fold-in which exists in the SFOA agreement. The City emphasizes that in April of 2001, it and the SFOA agreed to fold holiday pay into base salary at the current rate of holiday pay minus 12% and that its proposal to provide the same benefits to firefighters and to incorporate firefighter holiday pay into base pay must be accompanied by the same arrangement agreed to with the SFOA minus 12%.

Looking also to internal comparisons, I give substantial weight to the City's agreement with the Passaic Fire Officers Association to fold holiday pay into base pay at the rate of current holiday pay less 12%. An award of a holiday fold-in for firefighters based upon a different formula than what exists for the superior fire officers would disrupt the relationship between Firefighter and Fire Officer salaries. Adopting this formula does not negate the overwhelming benefits the firefighters would receive from the fold-in. Accordingly, I award the inclusion of seven paid holidays, less 12.0% of the cost of the holidays, in base pay effective January 1, 2004. I leave it to the parties to reach determine the exact amount of

the holiday fold-in based upon the awarded formula. Article XI, Paragraph A is amended to provide as follows:

1. Employees, other than those assigned to the Fire Prevention Bureau and the Chief's Aide, shall be entitled to a total of seven (7) paid holidays. Effective January 1, 2004, the cost of the seven holidays shall be folded into base pay, less 12.0% of the cost of the holidays.
2. Payments for holidays shall be computed on a twenty-four (24) basis, one day to equal one-ninety first (1/91st) part of the annual base salary, including longevity.
3. Section A2 shall apply so long as the Department shall work what is commonly referred to as the one-three (1-3) schedule as described in Article VII.

As noted by the PFA, Paragraph G of Article XI currently provides that the seven holidays "become part of base salary after completion of the nineteenth (19th) year of employment." Accordingly, by awarding the holiday fold in less 12% of the cost for all Firefighters, those Firefighters with 20 years of service would effectively lose the 12% of holiday pay that they had earned under the previous agreement. This result would be inequitable for these firefighters. As consideration for this potential impact, I note that the PFA has proposed to create a Senior Firefighter rate for those Firefighters who have completed 20 years of service which would be equal to one half of the difference between lieutenant pay and firefighter pay. The PFA notes that senior pay is provided in Paterson and Newark and would be a minimal expense for the City because relatively few firefighters are eligible for the benefit at any given time. The City objects to the PFA's proposal to create a senior firefighter pay rate based upon the increased

costs associated with such a proposal. The City points out that effective July 1, 2001 four firefighters would be eligible for such pay and, based upon the PFA's proposed 6% increase to base salary in each year, the City calculates that one half of the difference between the maximum firefighter salary and a Lieutenant's salary would be \$5,388 for the year beginning July 1, 2001 for a cost of \$21,552 in the first year.

As calculated by the City, the PFA's specific proposal for senior firefighter pay would lead to significant increased costs associated with the creation of a senior firefighter pay rate that are not warranted in light of the costs associated with the equity adjustments and across-the-board increases included in this Award. However, because of the inclusion of holiday pay less 12% in base pay results in a lose of 12% of the value of the seven paid holidays for firefighters who have completed 19 years of service, it is reasonable to ensure that those firefighters do not suffer a loss of compensation as a result of the fold in of holiday pay less 12%. In light of these observations, I award senior firefighter pay equivalent to the 12% of holiday pay at the time of the fold in because this amount would otherwise not be included in their base pay. I have calculated this sum as \$600. This is based upon 12% of 1/91st divided into \$65,042 times seven (7). Accordingly, effective January 1, 2004, firefighters commencing their 20th year of service will be placed upon a senior officer step and receive a sum equivalent to the maximum salary plus \$600 which shall be adjusted thereafter by adjustments which are made to the salary schedule.

The City has proposed to eliminate longevity for firefighters hired on or after July 1, 2002 and to add two steps to the salary guide for newly hired employees. Under the City's proposal the salary guide for newly hired employees would expand from eight to ten equidistant steps. The City asserts that these proposals would provide future cost savings which are not quantifiable at this time. The PFA objects to proposals because they would provide different levels of benefits to firefighters. The City has emphasized internal comparisons with other public safety and municipal employees in support of these economic proposals. On these issues comparisons within the City are entitled to greater weight than those outside the jurisdiction of Passaic. There is no evidence of any such changes in longevity or length of the salary guide for new hires with any public safety bargaining unit in the City through the duration of this agreement. Therefore, I decline to award such changes for firefighters.

The determinations I have made herein represent a reasonable determination of the issues after giving due weight to the statutory criteria I have deemed relevant for the resolution of this dispute.

I have, as indicated in previous portions of this decision, given substantial weight to internal comparisons between firefighters with both the fire officers unit and the police unit and while relevant, less weight to external comparisons,

although the award when viewed on the whole is compatible with those comparisons.

I also conclude that the terms of the award, while adding costs to the City's budget, will not compel the City to exceed its lawful spending limitations [P.L. 1976 c. 68] nor cause adverse financial impact on the City nor its residents and taxpayers. The City has entered a period of financial revitalization after years of financial difficulty. The City has been prudent with its finances and is on a course of rebound. Exhibits reflect that the City has consistently regenerated surplus and remains in a strong cash position. The City's surplus balance increased from \$1,682,070 in fiscal year 2001 to \$2,420,766 in fiscal year 2002 for an increase of \$738,696. While the City's total tax rate has increased, the ratio of assessed value to sales, known as the equalization ratio has decreased from 1.0125 to 0.8771, which represents an effective increase in the value of existing property of 13.4% during that period. The City has a high tax collection rate of about 98.95% and the City's collection of delinquent taxes has exceeded the amount budgeted by 39.9% during 2000 and 2001 and delinquent taxes have decreased to only 2.46% of the total tax levy. The City also has engaged in good control over its expenditures. In fiscal year 2002, the City appropriated \$47,733,778, which is \$2,173,078 under the 4.0% Cap permitted under the "Cap Law."

The interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] which are entitled to substantial weight in the rendering of this award. This factor cannot be precisely defined but it unquestionably includes consideration of maintaining a productive and efficient fire department at a cost level which can be supported by the taxpayers and governing body. It also includes consideration to providing adjustments in terms and conditions of employment which are not inconsistent with terms and conditions of employment the City provides internally within public safety. The public is entitled to stability which has been provided by this award which extends through June 30, 2006, thereby placing future fire and police contracts in a time period in which relevant conditions at that time can be applied during the negotiations process for each department.

The terms of the award will also further the continuity and stability of employment within the fire department. It provides long term stability through a five year award, maintains comparability with departments in other jurisdictions and contributes to more a equitable relationship between the City's police and fire departments.

The cost of living [N.J.S.A. 34:13A-16g(7)] is a factor which is a relevant but is not a controlling factor in this wage determination. This factor does weigh against the awarding of the PFA's salary proposal and other salary related proposals which when combines are well in excess of what can be justified when cost of living data is applied. But I do not conclude that cost of living should be

given identical weight with the other statutory criteria including spending limitations, financial impact and the internal comparability data I have also considered. Both the City and PFA proposals are above the cost of living data and this factor has not been shown to be determinative when the wage data in the record is considered including wage increases provided to other City public safety employees as well as wage increases for firefighters within Passaic County and throughout the State of New Jersey as well as private sector wage increases. The latter factor I find relevant but give less weight to given my analysis on internal comparability.

Accordingly, and based upon all of the above, I respectfully enter the following Award.

AWARD

1. All proposals by the City and the Association 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. The increases in salary shall be retroactive to their effective date and received by all eligible unit employees, including those who have left employment in good standing between the effective date of the salary adjustments and their last date of employment.
3. **Duration** – There shall be a five-year agreement effective July 1, 2001 through June 30, 2006.

4. **Article XIII, Section B** covering Sick Leave shall be amended to include the following provision:

Dispatchers and office personnel who work a 10/14 work schedule or five eight-hour days shall receive twelve (12) sick days. The calculation of a sick day shall be based upon the length of the day in which the dispatcher would have worked.

5. **Article XVIII – Special Leave** – shall be modified to add the following:

The employee must be able to secure another employee qualified to perform his duties to work in his place.

6. **New Article – Special Events**

A new article covering special events shall be added to the Agreement. The parties shall draft specific contract language providing: (1) that firefighters who provide services at special events shall be paid at a rate of one and one half (1 ½) times their hourly rate for each hour of service; (2) that in the absence of a need for specialized qualifications or skills, special event assignments shall be allocated by seniority.

7. **Article XII – Vacation** A new paragraph shall be added as follows:

Approval or disapproval of requested vacation days shall be given by the end one full tour of duty following the request.

8. **Article XIV (b), Supplemental Compensation Upon Retirement**

shall be modified to read, in part, as follows: “The formula to be used to calculate the supplemental compensation to be paid upon retirement shall be 260 annual work days divided ...”

9. **Article XXIX, Employee Duties** shall be modified to change the word “overall” to “overhaul”.

10. **Article XXXVII – Drug Testing**

Paragraph D shall be eliminated. Additionally, references to the amnesty period in subparagraph 2 of Paragraph O shall be deleted.

Paragraph F shall be amended to provide:

If a firefighter is sent for drug testing due to reasonable suspicion, that member shall be sent home and shall not be allowed to return to duty until a result of the drug test is received.

11. **Article IV – Grievance Procedure**

The following language shall be added at the end of Paragraph D, Step 2:

This step may be skipped if the Fire Chief and the Fire Director are the same person.

Paragraph D, Step 5 shall be amended to provide as follows:

If the grievance is not settled through Steps 1, 2, and 3, either party shall have the right to submit the dispute to arbitration **within fourteen (14) calendar days**, pursuant to the Rules and Regulations of the Public Employment Relations Commission.

12. **Prescription Co-Payments**

Article XXII, paragraph F shall be amended to provide:

Effective no earlier than thirty (30) days after the issuance of the Award the prescription co-pay for generic drugs shall be decreased to \$0.00; the co-pay for brand name drugs shall be increased from \$5.00 to \$10.00 and the \$3500 family maximum per year cap shall be eliminated.

13. **Article XXI – Clothing/Maintenance Allowance**

The clothing allowance shall increase from \$850.00 to \$900.00 effective July 1, 2001, to \$950.00 effective July 1, 2002 and to \$1000.00 effective July 1, 2003.

14. **Fire Prevention Bureau Work Stipends**

Article IV, paragraph B.1. shall be amended to provide that those individuals assigned to the Fire Prevention Bureau or who work out of Fire Headquarters shall additionally receive \$3,635.50 effective July 1, 2001; \$3,778 effective July 1, 2002; \$3,929.00 effective July 1, 2003; \$4,086 effective July 1, 2004 and \$4,250 effective July 1, 2005.

15. **Holiday Fold-In**

Article XI, Paragraph A is amended to provide as follows:

1. Employees, other than those assigned to the Fire Prevention Bureau and the Chief's Aide, shall be entitled to a total of seven (7) paid holidays. Effective January 1, 2004, the cost of the seven holidays shall be folded into base pay, less 12.0% of the cost of the holidays.
2. Payments for holidays shall be computed on a twenty-four (24) basis, one day to equal one-ninety first (1/91st) part of the annual base salary, including longevity.
3. Section A2 shall apply so long as the Department shall work what is commonly referred to as the one-three (1-3) schedule as described in Article VII.

16. **Senior Firefighter Pay**

Effective January 1, 2004, firefighters commencing their 20th year of service will be placed upon a senior officer step and receive a sum equivalent to maximum salary plus \$600, which shall be adjusted thereafter by adjustments which are made to the salary schedule.

17. **Wages**

The existing salary schedule shall be adjusted at each step retroactive to the effective dates stated by the following percentages:

July 1, 2001 3.9%
July 1, 2002 3.9%

July 1, 2003 4.0%
 July 1, 2004 4.0%
 July 1, 2005 4.0%

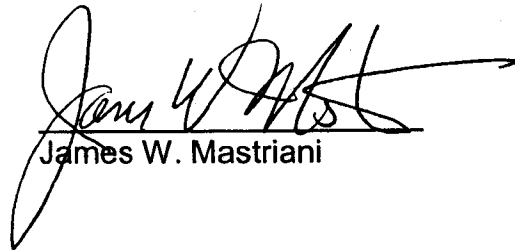
The existing salary schedule shall be modified to reflect equity adjustments of 1.0% effective and retroactive to January 1, 2004, 1.0% effective January 1, 2005 and 1.0% effective January 1, 2006.

The adjusted salary schedule for the terms of this agreement is as follows:

<u>Classification</u>	7/1/01 3.9%	7/1/02 3.9%	7/1/03 4.0%	1/1/04 1%*	7/1/04 4%	1/1/05 1%*	7/1/05 4%	1/1/06 1%*
Initial six months of svc	28,811	29,935	31,132	31,443	32,701	33,028	34,349	34,692
2 nd six months of svc	33,986	35,312	36,724	37,091	38,574	38,960	40,519	40,924
2 nd year of svc	39,288	40,821	42,453	42,877	44,592	45,038	46,840	47,308
3 rd year of svc	43,206	44,891	46,687	47,153	49,040	49,530	51,511	52,026
4 th year of svc	47,200	49,041	51,003	51,513	53,573	54,109	56,273	56,835
5 th year of svc	51,401	53,406	55,592	56,097	58,341	58,925	61,282	61,894
6 th year of svc	55,499	57,663	59,970	60,569	62,992	63,622	66,167	66,828
7 th year of svc	59,598	61,922	64,399	65,042	67,644	68,321	71,054	71,764
Senior Firefighter 20 th year of svc				65,642	68,267	68,950	71,708	72,425

*Equity Adjustment


Dated: February 9, 2004
 Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
 County of Monmouth }ss:

On this 9th day of February, 2004, 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.



GRETCHEN L. BOONE
 NOTARY PUBLIC OF NEW JERSEY
 My Commission Expires 8/13/2008