

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

In the Matter of the Arbitration *

Between

Township of North Bergen

and

**International Association of
Firefighters, Local 1387** *

**Docket No. IA-96-107
Jeffrey B. Tener
Interest Arbitrator**

Appearances

**Township of North Bergen:
Mark S. Ruderman, Esq.
Ellen M. Horn, Esq., on the Brief**

**For IAFF Local 1397:
Bruce D. Leder, Esq.**

OPINION AND AWARD

Background and Procedural History

I was appointed as the interest arbitrator in this matter by letter dated March 13, 1996 from Timothy Hundley, Acting Director, Arbitration, Public Employment Relations Commission ("PERC"). Following an informal meeting with the parties on June 20, 1996, which was an unsuccessful effort at mediation, a formal hearing was held on September 24 and December 16, 1996 and March 4, May 15, and June 9, 1997. Following receipt of the transcript, the parties filed post-hearing briefs. These were received by September 8, 1997 and this marked the close of the hearing.

This proceeding is governed by the Police and Fire Public Interest Arbitration Reform Act, P.L. 1995, c. 425, which was effective January 10, 1996. That Act at

N.J.S.A. 34:13A-16f(5) calls for the arbitrator to render the opinion and award within 120 days of selection or assignment. The parties, however, agreed to extend the time for the issuance of a decision to November 1, 1997, as set forth in a letter dated September 11, 1997 from Mr. Ruderman to Mr. Hundley.

The parties did not agree to an alternative terminal procedure. Therefore, the terminal procedure in this case is conventional arbitration. The arbitrator is required by N.J.S.A. 34:13A-16d(2) to "separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria in subsection g. of this section."

Statutory Criteria

The statute requires the arbitrator to:

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

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

(8) The 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. (N.J.S.A. 34:13A-16(g))

Final Offers

Township The Township has included a number of economic items in its final offer as follows:

1. Article XXXI, Duration: January 1, 1996 to December 31, 1999.
2. Article IV, Promotions and Vacancies: For the first 90 working days an employee is placed in an acting capacity, the employee shall be considered in training and ineligible for any acting pay.
3. Article V, Wages:
 - A.
 1. 1-1-96 2.5%
 2. 1-1-97 2.5%
 3. 1-1-98 2.5%
 4. 1-1-98 2.5%
 - B. Implementation of a training step of \$22,000; an additional step at \$25,000 and an eight (8) step salary guide.
4. Article VI, Working Hours and Work Week:
 - A. Change 24-hour schedule to 10/14 and change all time off accordingly.
 - B. Administrative employees shall start the work day at 7:00 a.m. and shall quit at 5:00 p.m.
5. Article VIII, Longevity:
 - A. All employees hired after 1/1/96 shall not receive longevity. Delete existing language in Paragraph No. 1 of Article VIII.
 - B. Delete current language and add the following:
 1. All current employees of the Fire Department shall be compensated for their years of service within the Department in accordance with the following schedule:

0 to 5 years completed	0.0%
Completion of 5 years through 10 years	2.0%
Completion of 10 years through 15 years	4.0%
Completion of 15 years through 20 years	6.0%
Completion of 20 years through 24 years	8.0%
Completion of 24 years	10.0%

2. Longevity will be paid in accordance with this section. Firefighters whose anniversary date falls between January 1st and June 30th shall be paid their longevity increment as of July 1st. Firefighters whose anniversary date falls between July 1st and December 31st shall be paid their longevity increment as of January 1st of the succeeding year.

6. Article IX, Service Differential:

- A. Employees hired after 1/1/96 shall not receive service differential.
- B. Firefighters hired prior to 1/1/94 shall receive service differential pursuant to the following schedule:

0 - 5 years of service	\$0.00
6 - 10 years of service	\$500.00
11 - 15 years of service	\$900.00
Over 15 years of service	\$1400.00

7. Article X, Clothing Allowance: Half a clothing allowance because of OSHA requirements.

8. Article XI, Educational Incentive:

- A. Change percentages to flat dollars, as follows:

Each employee shall receive the following amount for attaining the various degrees in Public Safety or Fire Science:

Associates Degree	\$450.00
Bachelors Degree	\$700.00
Masters Degree	\$1000.00
Doctorate	\$1300.00

- B. Prorate during first and last year of service.

9. Article XII, Hospitalization:

- A. Remove: The major medical plan includes a catastrophic provision.

- B. Add the following:

1. In accordance with Chapter 88, P.L. 1974, N.J.S.A. 52:14-17.38, the Township agrees to pay the premium charges for certain eligible

pensioners and their dependents, including surviving spouse until the completion of her or his 65th year of age, if such employees retired on a benefit based on 25 years or more of service credited in the retirement system, but including employees who retired on disability pensions based on fewer years of service credited in such retirement system. Dependents mean spouse, children, or stepchildren 19 years of age and a full-time student living at home.

2. The cost of an optical plan for members and family shall not exceed \$125 and is payable directly to each member.
3. The Township shall provide hospitalization insurance coverage, dental and major medical insurance in effect during 1995. Any increase in premiums shall be borne by the individual employee or retiree.
4. Prescription Plan:

Raise co-pay to \$10 in Paragraph C.1. Employee must use generic drugs unless otherwise specifically ordered by doctor.

5. As an alternative to item 3, the Township proposed to initiate Network Comprehensive Major Medical Plan based on PACE Network and Select Hospital Network. The proposed plan has a \$100 deductible and provides reimbursement at 80% to \$2000. The deductible and coinsurance apply to all services.

C. Delete reference to named insurance carrier in Paragraph A.

10. Article XV, Retirement: Delete Paragraph B in its entirety.
11. Article XVII, Sick Leave:
 - A. Define maximum salary in Paragraph B-2 to mean exclusive of service differential and longevity.
 - B. Establish dollar cap instead of percentage in Paragraph B-2.
12. Article XXIX, Liability Insurance: Delete this Article in its entirety.

In addition to the above-listed economic items, the Township has proposed the following non-economic items:

1. Article X, Clothing Allowance: Add to Paragraph B: "At the Chief's discretion."
2. Article XIV, Vacations: Add to Paragraph B: "At no time shall more than four (4) men be allowed off in the same vacation period for the purpose of vacation."

3. Article XVI, Injury Leave:

A. Specify maximum payment of one year. Employees receive only Worker's Compensation payments after one year.

B. Add the following to Paragraph F:

To be eligible for injury leave, an employee must report his injury within twenty-four (24) hours of the injury and must report to the designated physician or group, if possible.

4. Article XVIII, Leaves of Absence: Add the following to Paragraph A:

Each determination pursuant to this Article will be reached after considering the individualized circumstances surrounding such request, once employees have used up their personal business days under Article XIX. Such request shall be granted in the sole discretion of the employer. The granting of such leave shall not set a precedent for the granting of any other such leave. Emergency leave must be totally unforeseen.

5. Article XXVIII, Outside Employment and Activities: Add the following to Paragraph C:

Employees shall notify the Fire Chief where they are working, hours of work, and telephone number for notification of recall purposes.

IAFF The Union's final offer consists of the following economic issues:

1. Article XXXI, Duration: January 1, 1996 to December 31, 1998.

2. Article IV, Promotions and Vacancies: Increase the Acting Captain stipend to \$575.00 in 1996, \$675.00 in 1997 and \$775.00 in 1998.

3. Article V, Wages:

- | | | |
|-------|--------|------|
| A. 1. | 1-1-96 | 4.5% |
| 2. | 1-1-97 | 5.0% |
| 3. | 1-1-98 | 6.0% |

B. Decrease the starting salary to \$25,000 for all three years of the agreement.

C. Modify the step guide as follows:

<u>Step</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Starting	\$25,000	\$25,000	\$25,000
Step 1	\$30,058	\$30,561	\$31,194
Step 2	\$35,116	\$36,122	\$37,388
Step 3	\$40,174	\$41,683	\$43,582

Step 4	\$45,232	\$47,244	\$49,776
Step 5	\$50,289	\$52,803	\$55,971 ¹

4. Article X, Clothing Allowance: Add the current \$590 uniform allowance to base salary.
5. Article XI, Educational Incentive: Change to provide 1% of base salary for 24 credits in fire science.
6. Article XV, Retirement: Retain and increase the retirement compensation of those who retire between the twenty-fifty and twenty-sixth year of continuous service to \$8,000.
7. Article XVII, Sick Leave:
 - A. Increase the compensation for earned and unused sick leave time which is paid to 86% of maximum firefighter salary in 1996, 90% in 1997 and 95% in 1998.
 - B. Increase the payment to employees who take no sick days during the calendar year to \$450 in 1996, \$550 in 1997 and \$650 in 1998; increase the payment for each one-third year perfect attendance to \$150 in 1996, \$183 in 1997 and \$217 in 1998.

Work Schedule

Currently, the firefighters work 24 hours, starting at 7:30 a.m., and then are off 72 hours (hereafter referred to as "24-hour"). The Township has proposed a change in that work schedule to one in which firefighters work combinations of ten-hour days, 8:00 a.m. to 6:00 p.m., and fourteen-hour nights, 6:00 p.m. to 8:00 a.m., (hereafter referred to as "10/14") so that, over an eight week cycle, the work week averages 42 hours under both schedules. The Township has proposed that all time off be adjusted so that there is no net change. This issue, therefore, does not have a direct economic impact and neither party ascribed a cost to the proposal. I shall treat this issue as a separate issue at this time. Over one-half of the testimony related to this issue. The City called as witnesses Walter DeGroot, Fire Chief in Clifton, John DiPaolo, recently

¹ The IAFF has proposed that all salary steps be equal in terms of dollars each year. These figures add the \$590 uniform allowance into the base salary as proposed by the IAFF.

retired Fire Chief in North Bergen, Dr. David Carnow, Director of the Department of Environmental Health and Safety, Pavonia Medical Associates, and Richard Tremitedi, retired Fire Chief in Hoboken; the IAFF called Richard Blohm, Deputy Fire Chief in Hoboken. Additionally, numerous exhibits were introduced which addressed this issue.

Position of the Township In support of its request to change the current schedule,² the Township made a number of arguments. First, it discussed communications difficulties which it contends are associated with the 24-hour schedule. With firefighters reporting to duty only one day in four, it is said to affect continuity in management. DeGroot testified that it could work out that a shift commander would not see the Chief for a month. If a firefighter is out one day due to illness or if he takes a vacation day, then he works only one day in eight. Two of the four platoons in North Bergen never come into contact with each other. Therefore, the firefighters do not get to know each and this affects their teamwork which is essential for effective fire suppression. Under the 10/14 schedule, all firefighters would see all of the firefighters on all of the platoons. Furthermore, reports are not always completed at the end of a shift. If a firefighter does not complete a report before the shift ends, he will not be able to complete it until 72 hours later when he returns to duty. Often reports are required in less than 72 hours for investigative purposes, arson follow-up or insurance reasons. Each of these problems, it is claimed, would be reduced with the 10/14 schedule proposed by the Township.

Second, the Township cites limitations on attention or interest. It is said that a firefighter's interests must wane in under a 24-hour schedule. Thus, they lose their

² Each of the assertions advanced was the subject of testimony from one or more of the Township's witnesses and some were supported by documentary evidence.

intensity for job responsibilities which include not only fighting fires but also performing inspections and participating in training. Additionally, with a work year of only 91 days, before vacations and sick leave and other leave time, it is difficult to retain an interest in this job. Second jobs become more important and frequently take precedence over fire fighting. There is said to be less opportunity to pursue full-time occupations under the 10/14 schedule.

Third, the 24-hour schedule is said to result in the use of more sick time. A short sickness results in the loss of 24 hours of work under the 24-hour schedule but only the loss of ten or fourteen hours under the 10/14 schedule. Overtime costs also are said to be greater if minimum manning levels are not met because a person would have to be called in for 24 hours rather than for ten or fourteen hours. The cost of transfers also is higher because an extra day off must be granted when there is a transfer and this costs 24 hours of work under the current schedule but would cost only ten or fourteen hours under the 10/14 schedule.

Fourth, the Township is particularly concerned about training and its effectiveness. Training is achieved through repetition. Under the 24-hour schedule, firefighters cannot train on consecutive days. Also, because of attention span limitations, training on the 24-hour schedule cannot be for extended times. The Township asserts that productive time would double under the 10/14 schedule because firefighters would come to work twice as many times. If training has to be canceled because of weather, it cannot be rescheduled the next day with the 24-hour schedule so it has to be further delayed.

Fifth, discipline and morale are detrimentally affected by the 24-hour schedule. Firefighters are in close contact and if they are in such contact for 24 hours as opposed to only ten or fourteen hours, the chances of irritability and arguments are said to

increase. Thus, the possibility of conflicts between and among the firefighters is said to be less under the 10/14 schedule. Also, it is more difficult to follow up quickly on discipline under the 24-hour schedule. The minimal overlap and long time between tours may prevent the superior officer from meeting with an accused employee, investigating a disciplinary matter and preparing charges in a timely manner.

Sixth, and most important to the Township, the elimination of the 24-hour schedule would increase fire safety. Dr. Carnow's testimony was particularly significant in this area. The likelihood of being exposed to multiple working fires is much greater on a 24-hour schedule than on a 10/14 schedule. Multiple fires increase fatigue and fatigue is related to injury. Injuries, of course, not only hurt the individual but they cost the Township money in the form of medical and compensation expenses as well as lost time. Exposure to health hazards and especially multiple health hazards also is greater with the 24-hour schedule and such exposure requires time for rehabilitation. Recovery begins at the end of a shift and by delaying the start of recovery, the recovery period is prolonged.

The Township also cited the recent amendments to the Public Employees' Health and Safety Act ("PEOSHA") as a factor. Under the regulations, firefighters are required to wear uniforms which provide them with greater protection from burns. While this is obviously desirable, the new uniforms provide improved protection by encapsulating the body which makes it more difficult for the firefighters to expel heat. Bunker pants now are required whereas in the past they were optional. These pants, which do provide increased protection, also prevent air from circulating at the upper thighs and under the turn-out coat. The new helmets and hoods have longer flaps to protect the neck and ears but they also reduce air circulation. The clothing now worn under the uniforms also retains more heat and moisture than the previously worn cotton

and polyester. The use of these uniforms is cited as another reason for changing to the 10/14 schedule so that firefighters can begin rehabilitation after half of the exposure that results under the 24-hour schedule. Dr. Camow cited the greater effort which is required in wearing the new uniforms because of the increase of heat and decrease of airflow. Thus, both thermal and physical stressors are increased. He concluded that the 10/14 schedule would increase fire safety.

A seventh reason advanced by the Township involves public relations. Most of the citizens work a traditional five-day week and it is claimed that there would be more respect for the firefighters if they worked the 10/14 schedule which is closer to a normal work week than the 24-hour schedule.

Eighth, the Township asserts that recall and mutual aid problems are exacerbated by the 24-hour schedule. The Township believes that firefighters tend to live further from the community with the 24-hour schedule because they do not have to come to work often. Over one-third of the firefighters live outside of Hudson County and 15% live in Ocean County. It obviously takes longer for a firefighter to respond to a recall if he lives far from North Bergen than if he lived in the community or the County. It also is said that firefighters are less available for recall when they live far away.

The Township cited a report prepared by the New Jersey Career Fire Chiefs' Association which discussed and developed a number of the points listed above. That organization has adopted a resolution opposing the implementation or continuation of the 24-hour schedule. A study by the International City Managers Association entitled "Managing Fire Services" concluded that no management change offered more of an opportunity for increasing the productivity of paid firefighters than a change from the 24-hour schedule. Accordingly, the Township asks that the arbitrator eliminate the 24-hour schedule in favor of the 10/14 schedule.

Position of the IAFF The IAFF strongly opposes the proposed change in the schedule and contends that it was unsupported with any competent evidence. Chief DeGroot referred to a report that was 25 years old when he first reviewed it in 1986. His testimony regarding the deficiencies of the 24-hour schedule was not supported. He offered no examples of delays in investigative or insurance reports as a result of that schedule. Most incidents do not occur just as a tour is ending. DiPaolo conceded that an injured firefighter could be reached at home if necessary to complete an injury report which was his example of an administrative problem with the 24-hour schedule.

There was no evidence regarding the limited attention spans of firefighters under the 24-hour schedule and neither DeGroot nor DiPaolo is qualified to testify about learning methodology. What is really important is that there is no evidence that the North Bergen firefighters are not properly trained or that they are not receiving the required training at the present time. Also, both DeGroot and DiPaolo agreed that the 24-hour schedule does provide adequate time for training, including repetitive training if that is what the Township desires. No inspections are performed during five months of the year so training opportunities during that period are even greater. Most training is done in the daytime and there are as many times that a firefighter works days on the 24-hour schedule as on the 10/14 schedule. There are 91 day tours on both schedules.

There was no support for the Township's assertion that the 24-hour schedule has a negative impact on productivity. The same is true of the claim regarding discipline and morale problems. There is no reason to believe that firefighters do not get along because they are together for 24 hours.

With the 24-hour schedule, a tour has contact with the tour that precedes it as well as the one which succeeds it so each tour has contact with two other tours. Shifts

often overlap. Supervisors come into contact with all firefighters at least one day between Monday and Friday each week and this is not guaranteed to happen under the 10/14 schedule.

Mutual aid agreements reduce the impact of fatigue so this is not the factor that DeGroot would have one believe. The Union asserts that the real cause of fatigue in North Bergen is the shortage of manpower. It cited figures which show how the number of firefighters has declined. Mutual aid pacts also address any problem associated with firefighters living some distance from the community. The Township provided no evidence to show that where firefighters live has impacted negatively on recall or work performance. Where a person chooses to live is said to be more a function of a spouse's employment, safe neighborhood, good school system, access to transportation and proximity to other family members than to work schedule.

DiPaolo testified that his negative opinion of the 24-hour schedule came after the implementation of the newly mandated OSHA fire gear and equipment. When pressed, he could not say that the 24-hour schedule was related to fatigue when fighting fires. The new gear does provide better protection against burns and other injuries and it does permit firefighters to go deeper into fires but there was no evidence of greater fatigue associated with that gear. Furthermore, fatigue is a function of fighting fires and not the 24-hour schedule. DiPaolo could not provide any example of a heat-related injury caused by the OSHA gear regardless of the work schedule. What is important is to provide rehydration to the firefighters at the fire scene. The Township elected, for budgetary reasons, not to purchase the most breathable fabric for its station wear.

Dr. Carnow, while clearly an expert in the field of occupational health and safety, was not able to testify meaningfully regarding the 24-hour schedule issue. He

cited no comparative evidence regarding the two work schedules at issue. He acknowledged that there was little research on 24-hour periods of work. In testimony which was much more credible and reliable than that offered by DeGroot and DiPaolo, he said he had seen no studies comparing health, safety or environmental hazards on the two schedules. Dr. Carnow's review of the file of an injured firefighter did not permit him to determine whether the injury was related to the equipment or the schedule.

DiPaolo disagreed with DeGroot that the 24-hour schedule makes it easier for firefighters to have second jobs. The Union agrees but points out that, because the firefighters have made arrangements based on the 24-hour schedule, a change at this time would be disruptive. These jobs, as DiPaolo recognized, are often financially necessary for the firefighters. There would be an increase in commuting time if the schedule were changed to the 10/14 schedule.

The IAFF notes that while the Township cited what it claimed were many problems with the 24-hour schedule, the overwhelming majority of fire departments not only in Hudson County (all but three) but also nationally use the 24-hour schedule. This indicates that the benefits outweigh any shortcomings. If the Township were correct, all of these other departments, including North Bergen, would be in great disarray. That is simply not the case.

Contrary to the Township's witnesses, Deputy Chief Blohm, the officer in charge of operations and day-to-day affairs in the Hoboken Fire Department, testified that the 24-hour schedule was superior to the 10/14 schedule and he has had experience with both schedules. He cited overtime, sick leave and tardiness as areas which are greater problems under the 10/14 schedule. Blohm also cited health advantages of the 24-hour schedule because the 72 hours between tours gives the body time to expel carbon monoxide, an asphyxiant to which firefighters are exposed regularly. This is

better than risking re-exposure by returning to work in a much shorter period of time. Sleep patterns also are less disrupted on the 24-hour schedule than the 10/14 schedule with rotating tours.

The IAFF introduced an arbitration decision issued by Arbitrator John Sands in The City of New Brunswick and FMBA Local No. 17, Docket No. IA-96-120 (June 28, 1996) in which he awarded a 24-hour schedule. It also cited a March 3, 1997 memo from Patrick Keating, Business Administrator, City of Camden, in which Keating said that the Camden Fire Department had been working a 24-hour schedule since April 6, 1996 and that the City had realized substantial savings because of far less use of sick time. Finally, it cited a study reported in a newsletter entitled "Firestation Management Advisor," Volume 6, No. 2, February 1996, which stated that 24-hour shifts boosted morale. Other advantages listed were unit cohesion, more control over the firefighter's day because he is rested and fresh and ready for work, fewer sick days and more family time for the firefighter.

The total number of hours worked is the same under both schedules. The Township has failed to justify a change in the schedule upon which these professional firefighters have built their careers and lives. The IAFF urges that the status quo be retained.

Discussion It is difficult to apply the statutory criteria to an issue such as this one which does not have any direct economic consequences in terms of dollars or hours worked. I believe, however, that the interests and welfare of the public would be ill-served by changing the current 24-hour schedule. Any such change would be detrimental to the morale of the firefighters who have come to accept the 24-hour schedule, which has been in effect since 1978, as their work schedule. It does not matter what schedule would be ideal if this were a brand new department with no

history and no expectations. Perhaps, in the abstract, eight-hour tours would be the best, as the former Chief opined. That is not the issue. A change in the current schedule to 10/14 would adversely affect morale and productivity and the effectiveness of fire suppression in North Bergen.

Safety, both of the firefighters and of the community, is vitally important. The former Chief, a late convert to the negative side of the 24-hour schedule issue, testified that he changed his mind because of the change in gear mandated by PEOSHA. That change, which was accomplished by January 1995, applies not only to the firefighters of North Bergen but to all firefighters in New Jersey. There is certainly no reason to believe that the impact of that change will be more negative in North Bergen than elsewhere. There also is no correlation between injuries since the adoption of the new gear and the work schedule. There is no indication that other municipalities have changed schedules as a result of the new requirements. Dr. Carnow was not able to link the 24-hour schedule with any injuries and DiPaolo agreed that there had been no reports in North Bergen of heart attacks, strokes or medical reports of stress as a result of the use of the new gear. In short, there was much speculation by the Township's witnesses regarding the new uniforms and a connection with the 24-hour schedule but this was not supported with hard evidence.

Comparisons with other public employees and with private employees, of course, suggests not a 24-hour schedule or a 10/14 schedule but an eight-hour schedule. That is not an issue in this proceeding. Looking at other firefighters, the evidence is overwhelming that the 24-hour schedule is the norm. All but three of the paid departments in Hudson County have the 24-hour schedule. Importantly, there is no evidence of a reversal of the trend toward the use of the 24-hour schedule. The Township did not cite a single example of a fire department which had gone from a 24-

hour schedule to a 10/14 schedule. Nationally, some 70% of the fire departments work some form of a 24-hour schedule, although often with more tours than is the norm in New Jersey.

Overall compensation is not affected by the schedule. There is no logical reason for overtime to increase under the 24-hour schedule and there is evidence that overtime decreases under this schedule.

There were no stipulations of the parties on this issue.

The lawful authority of the employer is not implicated.

Any financial impact of a change in schedule would be minimal and there is evidence that there is less sick time and overtime with the 24-hour schedule than the 10/14 schedule, thus indicating an adverse impact on the governing unit, its residents and taxpayers if the schedule were to be changed.

Cost of living is not connected to the work schedule.

Continuity and stability of employment will be enhanced by a continuation of the current schedule and would be negatively affected if there were to be a change in that schedule.

Thus, the conclusion is obvious and overwhelming, based on a consideration of the statutory criteria, that no change in the schedule should be ordered by the arbitrator. The party seeking to change the status quo, particularly on an issue as important as the work schedule, bears a very heavy burden and the Township fell far short of meeting its burden on this issue. I shall not order a change in the work schedule.

Arguments of the Township

The Township contrasted the cost of its offer with that of the IAFF. The Township's wage proposal would cost 10% over four years without compounding and 10.38% with compounding. The offer of the IAFF would cost 15.5% over three years without compounding and 16.31% with compounding. The 1995 salary base, with 73 firefighters, was \$3,289,670. There were 69 firefighters in 1996 and there are 66 firefighters in 1997. Based on those numbers, the total four-year salary cost of the Township's salary proposal is \$13,365,844 whereas the total three-year salary cost of the IAFF's salary proposal is \$10,381,216. The differences in costs are \$63,990 in 1996, \$144,576 in 1997 and \$269,628 in 1998 or a total of \$478,194 over the first three years.

The Township notes that even without any increase in salary, there will be increment costs in the coming years as employees move up the salary guide. Increments cost \$98,775 or 3% of the base in 1996, \$44,220 or 1.31% in 1997 and will cost \$27,564 or .80% in 1998.

Both parties have proposed a lower starting salary and the addition of one or more steps. The Township states that the effect of these changes cannot be known because it will depend upon the number of firefighters hired.

If the clothing allowance is added to the base salary, as proposed by the IAFF, the Township's costs will increase because salary increases will take place on a higher base and longevity, service differential and education benefits, all of which are percentage payments, will increase. In contrast, the Township is seeking to cut the clothing allowance in half to \$295 per year because of PEOSHA requirements that the employer provide uniforms at its expense. This would result in a savings to the Township of \$21,830 annually or .66%.

The Union is seeking to increase the cap on terminal leave benefits from 75% to 86% in 1996, 90% in 1997 and 95% in 1998. While only one firefighter is eligible to retire in 1997 - which would cost the Township an additional \$8,413 or .26% that year - and none retired in 1996 and none is eligible in 1998, the Township is concerned about the future costs of this proposed change. Rather than increase this benefit, the Township has proposed that the maximum salary used in Article XVII, Paragraph B 2 exclude both longevity and service differential. It also proposes that the present percentage be eliminated and replaced with a dollar cap figure determined by the arbitrator in order to control costs.

The increases in the sick leave incentive proposed by the Union would cost the Township an additional \$5,200 or .16% in 1996 and, based on the average of 1995 and 1996 experience, an additional \$10,699 or .33% in 1997 and \$15,301 or .47% in 1998.

The IAFF seeks to increase the acting captain stipend from \$375 annually in 1995 to \$575 in 1996, \$675 in 1997 and \$775 in 1998. This would increase costs by \$14,800 or .45% in 1996, \$7,400 or .22% in 1997 and \$7,400 or .22% in 1998. In contrast, the Township seeks to require employees to serve for the first ninety days in an acting capacity without additional compensation with this time to be considered as training time. The Township pays \$27,375 annually in acting captains stipends and this amount, which represents .83%, would be saved each year.

The Union has proposed that the \$7,000 retirement payment, which specifically expired at the end of the last contract, be not only continued but increased to \$8,000. The Township views this as a new benefit since the previous one expired. Thus, it places a cost of this benefit at \$8,000 per retiree of whom, in the first three years of the agreement, there is one potential one in 1997. This would cost .24%. Again, the

Township notes that future costs will be much greater as more firefighters retire. The Township seeks the elimination of this provision from the agreement.

The final Union proposal relates to the educational incentive. The Union is seeking the initial payment upon the completion of 24 credits rather than the current 30 credits. The cost cannot be determined. In contrast, the Township has proposed that the current benefit be changed from a percentage to flat dollars. Based on the Township's proposed amounts, this would result in savings of \$3,000 or .17% each year.

The Township has proposed additional changes. One relates to longevity. The Township wants to eliminate longevity entirely for all employees hired after January 1, 1996 and to modify the longevity schedule for employees hired before that date. The savings associated with the Township's proposed change for current employees would be \$61,196.82 or 1.86% annually. It also seeks to change the eligibility date for longevity to July 1 for those employees hired between January 1 and June 30 and to January 1 of the following year for those hired between July 1 and December 31. Currently the anniversary date is used. The Township did not compute the savings associated with this proposed change but contends that it would simplify bookkeeping.

Another proposed change would eliminate the service differential for employees hired after January 1, 1996 and convert the existing percentage figures to dollars for current employees. Without including the affect of future salary increases, this would save the Township \$38,701.84 or 1.18% per year.

The Township has proposed a number of changes in medical insurance. First, it wants to eliminate Article XII, Section D which refers to the provision of catastrophic coverage. According to the Township, there has been no catastrophic coverage for

many years and the change would simply conform the contract language to the practice.

Second, it wants to add language regarding retiree health benefits which it also claims would reflect the current practice.

Third, it wants to give each employee directly \$125 each year for an optical plan for the employee and his family rather than itself providing such a plan at that cost.

Fourth, and most significantly, the Township wants employees to assume increases in premium costs over 1995 rates for hospitalization insurance, dental insurance and major medical insurance. Alternatively, it asks that the Township adopt a different insurance plan known as Network Comprehensive Major Medical Plan based on a PACE Network and Select Hospital Network. This would result in savings to the Township of \$94,528 or 2.87% per year which is a 15% savings compared to the current plan.

Fifth, the Township asks that the co-pay on prescription drugs be increased from \$5.00 to \$10.00 and that generic drugs be used unless specifically ordered otherwise by the doctor.

Sixth, the Township asks that the reference to the named insurance carrier in Article XII, Section A be removed because it has no effect on the level of coverage provided.

The last economic change proposed by the Township is the elimination of Article XXIX which requires the Township to provide insurance coverage up to \$500,000 for incidents occurring on duty as well as for off-duty but job-related activities.

As computed by the Township, the total cost of the IAFF's proposal is 8.38% in 1996, 7.63% in 1997 and 7.76% in 1998. This is 23.77% or an average of 7.92% over

the three years and those figures do not include the dollar cost of the increases in longevity and service differential which also rise with salaries.

The total net cost of the Township's proposal is -1.97% in 1996, -3.67% in 1997, -4.17% in 1998 and -4.70% in 1999 or a total of -14.51% over four years, an average of -3.63% per year.

The differences in the two offers are significant and just looking at the salary component, the costs are dramatically different: \$63,990 in 1996, \$144,576 in 1997 and \$269,628 in 1998. The higher salaries proposed by the IAFF will, of course, continue forever; they will not end with the expiration of the new agreement.

The City points out that, under the new legislation, the arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria to which due weight must be given.

The three major themes expressed in the legislation and the preceding Supreme Court decisions³ are the public interest, comparability and financial ramifications. No one factor is to be dispositive. The impact of the New Jersey Local Government Cap Law, N.J.S.A. 40A:4-45.1 et seq. ("Cap Law"), must be considered and the effect on local property taxes and the employer's ability to maintain existing services must be considered.

The Township addressed each of the statutory criteria in arguing in favor of its final offer. First is the interests and welfare of the public. This must include a consideration of the limitations imposed by the Cap Law. The wages and benefits of the employees must be considered within an employer's limited budget and its plans. A

³ Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994) and Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994).

balance must be struck so that employees are satisfied, thereby avoiding labor strife, and maintaining a stable level of government services. Essential governmental services should not be sacrificed to meet excessive employee demands.

The Supreme Court stated that the public is a "silent party" to an interest arbitration proceeding because of the impact of the process on the public in terms both of services received and the costs of those services and their taxes. The public interest must be considered.

Next, the Township considered comparability and overall compensation. Comparisons must be made with employees in private employment in general, in public employment in general and in public employment in the same or comparable jurisdictions. Overall compensation also must be considered. As the court noted in Hillsdale, Id. at 86, an arbitrator should not over-emphasize comparability with similar communities. The full range of comparisons must be made. Furthermore, it is argued that under the new law, the priority has been changed by the rearrangement of the listing of the criteria. Private employment in general is first, public employment in general is second and only third is similar comparable jurisdictions listed. This is said to indicate that the last factor is not to receive undue emphasis.

Following the statute, the Township begins by looking at private sector wages and benefits. Private sector wage increases fall well below the proposal of the IAFF. These increases, as reported by the Bureau of National Affairs, were 3% for contracts negotiated in the first three months of 1996 with second and third year increases in these contracts also equaling 3%. The figure for all of 1996 was 3% and this covered 1.5 million unionized workers nationwide. The increase in 1995 also was 3%. The figure was only 2% for the mid-Atlantic states for the first year of contracts negotiated in

1996. These increases were the lowest in a decade. The Township's 2.5% proposal is said to be in line with these increases.

The Township cited a number of settlements both in New Jersey and in the region which provided for wage cuts, wage freezes, and very modest wage increases. The Bell Atlantic settlement provided wage increases of 2.9% for each of five years.

The Employment Cost Index ("ECI"), which measures changes in compensation per hour worked including employee benefits such as paid leave and insurance, reflected a 3% increase over twelve months as of the third quarter of 1996. It was only 2.8% in 1995, a year when North Bergen's firefighters received a 6% increase.

Private employers have been reducing health insurance benefits as did the State of New Jersey to its employees. Thus, the Township's medical insurance proposals are said to be justified.

Next, the Township reviewed public sector wages and benefits. The ECI for state and local government workers increased 3.2% in 1995, according to the BNA. Negotiated wage increases averaged 3% over the term of agreements reached in the last half of 1994. Numerous public sector settlements were cited which provided wage increases far below those sought by the IAFF and below the offer of the Township. Municipal workers in Philadelphia had a wage freeze in 1993 and 1994 and got increases of 2% in 1995 and 3% in 1996, an average of 1.25% per year or half of the Township's offer. New York City workers received 13% over five years, including a two-year wage freeze. Federal employees received an increase of 2.4% in 1996. Arbitrator J. J. Pierson imposed a wage freeze on 6,000 State of New Jersey PBA employees from July 1, 1995 to June 30, 1996, a wage freeze plus a \$250 cash payment for the next twelve months, and increases of 3.5% in each of the next two years. Similar or less generous settlements were reached with the State's other unions.

Turning to comparable jurisdictions, the Township asserts that its firefighters have average or better than average benefits in virtually all areas and that its proposal is consistent with recent awards. In making comparisons, the Township looked at eight other Hudson County municipalities which have paid fire departments: Kearny, West New York, Hoboken, Bayonne, Harrison, Weehawken, Union City and Jersey City.⁴

Wage increases in 1995 in these communities averaged 4.2% which was 1.8% less than was received by the North Bergen firefighters. North Bergen also was above average in 1994 with a 5% increase when the average was 4.33%. This was true in 1993 as well when the North Bergen firefighters got 5% and the average was 4.63%.

The 1995 base salary of \$47,533 was above the County average of \$46,356. The gap was much greater, however, when total compensation including longevity, service differential - a benefit provided only in Hoboken, and even there it is on a flat dollar basis - and uniform are included. These take the North Bergen figure to \$56,679 whereas the average in the other communities is \$53,398. North Bergen ranks third - a few dollars below Hoboken - and is \$3,281 or 6.14% above the average. With a 3% increase, North Bergen would retain its ranking.

The service differential is said to stick out in North Bergen. In 1995, it provided a maximum benefit of \$2,852 which was \$1,577 above that paid in the only other municipality to pay this benefit at all. North Bergen is not behind in longevity so the service differential is on top of that benefit.⁵

⁴ The Township introduced data regarding the municipalities in Hudson County including population, net valuation taxable, total revenues, percentage of tax levy collected, vacant land, residential and commercial land, debt service, size, and number of firefighters. North Bergen was fairly typical. It is larger than average with less population density. Its 1991 per capita debt service is above the average. Generally, however, it is typical or average.

⁵ The Township's exhibit shows that Union City has a maximum longevity of 21% and that Jersey City and Hoboken at 16% and West New York and Harrison at 14% exceed North Bergen's maximum rate of 12%.

Other benefits also are more generous in North Bergen than in the comparable communities. Vacations, which reach 24 days after 20 years, are unexceeded in the County and are four days above the average at the maximum. The differences are even greater in favor of the firefighters at lower levels of service.

North Bergen provides an educational incentive. Bayonne, Harrison, Hoboken, Jersey City and Kearny do not. Of the four that do provide some benefit, two pay only for credits rather than for degrees.

Terminal leave benefits in North Bergen are generous. There was a \$7,000 retirement payment (although it ended with the prior agreement) as well as payment for unused sick leave up to 75% of one's salary including longevity and service differential. Only Jersey City has as liberal terminal leave benefits and this is true even without North Bergen's \$7,000 payment.

North Bergen is the only municipality to give an acting captain stipend to all firefighters. The Township's proposal is more consistent with the practice. Also, North Bergen is one of only three municipalities to provide sick leave incentive benefits for good attendance, a benefit which the Union is seeking to increase further.

Because the Township now is required to provide uniforms at its expense to firefighters, it is seeking to reduce the uniform allowance. The Township spent almost \$100,000 for work uniforms and turnout gear to comply with the new PEOSHA requirements and it would have spent more had it not joined with other municipalities to obtain reduced costs. As estimated by the Township, the cleaning and laundering costs experienced by a firefighter are well below 50% of the current allowance, thus justifying the reduction of this benefit.

The Township cited several arbitration awards. Arbitrator Jack Tillem awarded Jersey City's police officers 3.75% in 1994, 4% in 1995 and 4.25% in 1996. Arbitrator

Joel Weisblatt awarded the Essex County sheriff's officers a wage freeze in 1995, a 2% delayed increase in 1996, and increases totaling 10% over the next two years, an average of 3% per year. Other cited awards were J. J. Pierson's award of 3% in 1996, 3.25% in 1997 and 3.25% in 1998 to Midland Park's police officers; Arbitrator Barbara Zausner's award of 3.4% in 1996, 3.5% in 1997 and 3.5% in 1998 to Hackettstown's police officers; and Arbitrator Frank Mason's award which averaged 3.8% over three years for patrol officers and 3.3% for superior officers over three years in Rutherford.⁶

The lawful authority of the employer is the next factor and, again, the limitations imposed by the Cap Law must be considered. By limiting the overall budget increases by restricting increases in final appropriations, the Cap Law limits the amount of money available for wage increases. The Cap Law was enacted to control the spiraling cost of local government and protect homeowners.

Final appropriations cannot be increased more than the lesser of the index rate or 5% unless approved by an ordinance or referendum. Each line item is not limited but the total appropriations are limited. Salary expenditures fall within the Cap. Emergency appropriations can be used to fund arbitration awards under very narrow circumstances but even then, the municipality only delays the problem because excess emergency appropriations must be included within the following year's budget and Cap limit. Municipalities generally would prefer to layoff employees rather than rely on emergency appropriations.

Under the law, it is the governing body which is responsible for allocating the available resources among the various services which it chooses to provide.

⁶ The Township discussed the 24-hour schedule under the comparability criteria. I dealt with that issue separately above.

There now are many fewer exceptions to the Cap Law than there used to be. The cost of police vehicles, losses in federal revenue sharing, insurance costs over 1985 levels, solid waste expenses and others now are included within the Cap.

The Township points out that the average increases of 7.92% proposed by the IAFF exceed the 5% Cap maximum by almost 3% a year. An award of that magnitude would require the Township to reduce other expenditures, layoff firefighters or other personnel or some combination.

The financial impact on the governing unit, its residents and taxpayers is the next factor. This is not to be equated with an employer's ability to pay, as the Supreme Court made clear in Hillsdale, Id. at 85. The mere ability to raise taxes does not justify an award in favor of a union and the employer is not required to prove that it cannot pay the increases sought. The Township asserts that its offer takes into account the severe economic recession which has been experienced in the New York metropolitan region in recent years. This award will go back to cover 1996 so conditions at that time are said to be relevant.

While unemployment nationally was 5.4% in 1996, in New Jersey the rate was 6.1% and the rate in Hudson County was 10.1%, far above both the national and state rates. The rate increased in Hudson County between 1994 and 1996. Thus, the New Jersey economy and, even more, the Hudson County economy, lag behind national economic trends.

The Township cited large numbers of layoffs and plant closings in North Bergen and Hudson County. Many hundreds of jobs were lost. The New Jersey Sports and Exposition Authority decided against the construction of a huge retail and entertainment complex - actually in Bergen County - which would have created 6,700 temporary construction jobs and 9,500 permanent jobs. The State of New Jersey has reduced the

size of its workforce through both layoffs and attrition. Professional and administrative employees are being laid off in the private sector.

The Township asserts that the slow economy has affected its ability to raise taxes to pay raises to firefighters. Its surplus balance has been declining and its revenues have declined while its tax rate has increased. It used \$895,000 more of its surplus in SFY 1997 than it used in SFY 1996 and the proportion of surplus utilized has increased from 60% to 67%. Miscellaneous revenues declined from SFY 1996 to SFY 1997 by \$250,000 and interest on investments is expected to decline almost as much, according to Joseph Auriemma, Township Administrator and Purchasing Agent. State aid dropped by over \$200,000 to \$8,725,353 in SFY 1997. Appropriations, however, have been increasing in almost every line. Worker's compensation, social security and payments to the Hackensack Meadowlands Development Corporation have increased significantly. Fire salary and wages have increased by 18.11% from SFY 1992 to SFY 1997 when they stood at \$6,900,000. Debt service increased by over 50%. The reserve for uncollected taxes has been increased from \$5,099,196 in SFY 1992 to \$5,462,700 in SFY 1997. The costs of the Public Safety Department,⁷ which includes the Fire Department, increased more than the cost of the other four departments combined.⁸ Appropriations have increased much faster than miscellaneous revenues since SFY 1992: \$9,230,717 v. \$1,200,466. The difference has been made up by raising taxes and using more surplus.

There were a number of extraordinary expenses in SFY 1997: \$554, 623 in State pensions, \$410,698 in payments to the Hackensack Meadowlands Development Commission, \$530,000 emergency appropriation for the 1996 snow season, the

⁷ This is one of five departments in this commission form of government.

⁸ Auriemma testified that the line items for fire salaries and wages in both the 1996 and 1997 budgets included 2.5% for salary increases.

retirement of five deputy fire chiefs which cost the Township \$480,000, the increase in debt service of \$1,223,505, primarily due to tax appeal refunds, and \$300,000 to pay back a loan from the State.

The amount to be raised through municipal taxes has increased by 32.49% from SFY 1992 to SFY 1997. The taxes on an average \$140,000 home increased by \$315 to \$4,691.

While the tax rates in North Bergen were increasing, they were decreasing in several other municipalities in the County. Hoboken and Guttenberg both cut municipal taxes.

The tax collection rate declined from 94.02% in SFY 1995 to 93.23% in SFY 1996. This caused the Township to increase its reserve for uncollected taxes and this, in turn, caused surplus to decrease. The declining tax collection rate indicates that taxpayers are having difficulty making their payments.

The Township notes that it has spent almost \$4 million on capital expenditures and other expenses to improve and maintain the quality of the Fire Department. This has included, in addition to the station wear and turnout gear, substantial improvements to the fire houses and the purchase of new trucks, engines and other vehicles and hoses.

Ratables in North Bergen have been declining which means that tax rates have to be increased just to generate the same amount of revenue. There was a drop in assessed valuation of \$142,092,626 between SFY 1993 and SFY 1997. The drop was over \$33,000,000 in the last year. Thirty dollars of an average homeowner's tax increase of \$97 was due to declining ratables. The greatest declines have been on commercial and industrial properties, meaning that there is a heavier burden on

residential taxpayers. Residential properties comprised 49.61% of the tax base in SFY 1993; that figure had increased to 52.40% by SFY 1996.

There is a lot of money tied up in delinquent tax accounts and tax appeals. Five taxpayers alone owe over \$1.25 million. This is in litigation but the Township does not expect to obtain payment and this would significantly impact on the budget. The Township owes over \$9 million in tax appeals. The only good news is that the Division of Local Government Services has permitted it to repay this money over eight years rather than the usual three years. Of course, this adds to the Township's debt service which will increase by over \$2 million to almost \$8 million from SFY 1996 to SFY 1998.

Based on this information, the Township asserts that its offer considers the financial impact on the governing unit and its residents and should be accepted as the responsible and reasonable position.

The next factor is the cost of living. Increases in the Consumer Price Index ("CPI"), which is used to measure changes in the cost of living, showed the lowest increases from 1992 to 1995 in many years. The CPI increased by only 2.5% in the twelve-month period ending April 1997.

In the ten years between 1985 and 1995, the Union received salary increases which were greater than CPI increases. If salaries had grown with the CPI during that period, the top salary, which was \$24,798 in 1985, would have been \$36,044.40. The actual salary was \$47,533, \$11,500 above increases in the CPI in that period. The ECI shows similar results.

The 2.5% salary increase proposed by the Township matches CPI increases of recent years and should be awarded.

The last criterion is continuity and stability of employment. The Township contends that its economic package should be awarded in order to best allow the

Township to maintain a steady level of employment in the Fire Department and throughout the municipality. The Union's package, on the other hand, would force further reductions in personnel and services, thereby undermining continuity and stability of employment in the Fire Department and throughout the municipality. Thus, again, the Township's package is said to be the more reasonable and should be awarded.

The Township also proposed five non-economic issues.⁹ First, it seeks to add the words "at the Chief's discretion" to Article X, Paragraph B. This deals with wearing tee shirts and sweat shirts. The Township asserts that the dress of a firefighter should be a management prerogative.

Second, the Township wants to change Article XIV, Paragraph B to reduce the number of firefighters who can be on vacation at a given time. Presently, no more than seven men can be off in the same vacation period. The Township wants this changed to four. The reduction in manpower caused by the hiring freeze which was imposed as a result of the NAACP lawsuit against the Township is the reason for the proposed change. The intent is to minimize staffing shortages.

Third, the Township wants to make clear what it contends is provided by N.J.S.A. 40A:9-7 regarding injury leave by limiting such leave to one year after which an employee would receive only worker's compensation payments. The Township also wants injuries to be reported within 24 hours in order for the employee to be eligible for injury leave. This is said to be consistent with insurance reporting requirements.

Fourth, the Township wants to add language to Article XVIII, Paragraph A which it claims will clarify the current practice regarding leaves of absence. The new

⁹ The Township agrees that the parties did agree that the meaning of grandparents and grandchildren in Article XVII means the grandparents and grandchildren of either the member or his or her spouse.

language makes it clear that such leaves are purely discretionary with the employer and that the employer does not establish a precedent by granting a request.

Fifth, the Township wants to add language to Article XXVIII, Paragraph C requiring employees to notify the Chief of outside employment activities, hours of work, and telephone number for recall purposes.

Overall, it is the contention of the Township that its proposals reflect the statutory criteria. They consider the public interest, the overall compensation received by the firefighters, comparative treatment of private and public employees, the Cap Law, the financial impact on the governing unit, the modest increases in the cost of living and continuity and stability of employment. It urges that the arbitrator issue an award supporting its proposals.

Arguments of the IAFF

The IAFF points out that the Legislature recognized the unique and essential duties performed by firefighters and police officers and the life-threatening dangers they face when it enacted the Police and Fire Public Interest Arbitration Reform Act. The purpose of that Act was to promote the well-being and benefit of the citizens along with the high morale of employees and the efficient operation of the fire and police departments. The IAFF argues that the evidence fully supports an award in favor of the IAFF exclusively and a rejection of the proposals of the Township.

The first criterion is the interests and welfare of the public. Clearly the least expensive proposals are not automatically the ones which best serve the interests and welfare of the public because if that were the intent, then there would be no need for the statutory criteria. The Legislature simply would have instructed arbitrators to award the least expensive proposals.

The Union argues that a fair and competitive compensation package is the aim. This will insure against labor unrest, promote good morale and provide fulfilled employees who give a superior work performance. The Union emphasizes that people who elect to join the Fire Department have chosen to devote and risk their lives to serving and protecting the community.

This is a municipality of about 50,000 people who occupy 5.19 square miles and 36% of the area is industrial and commercial properties. As noted in a 1992 study which the Township commissioned, the members of the bargaining unit face a range of hazard and fire protection difficulties: high-rise buildings, industrial complexes, railroads, hazardous materials, population density, steep terrain and heavy traffic conditions.

The dangers of being a firefighter were documented in a 1994 study conducted by the IAFF. The report concluded that fire fighting is the most dangerous occupation in the United States. It reported that firefighters are 4.5 times more likely to be injured on the job than employees in the private sector. A number of firefighters lose their lives every year fighting fires. The dangers of this occupation were confirmed by the Township's occupational health and safety expert, Dr. Carnow, who noted the extreme mental and emotional job-related stresses faced by firefighters. There is both physical and emotional stress. The firefighter faces not only personal danger but also responsibility for the safety of colleagues and the public. Dr. Carnow recognized that excellent mental and physical health were necessary as is the ability to maintain composure to make life and death decisions under severe stress. Firefighters carry 50 or 60 pounds in uniforms and have to haul heavy equipment, drag hoses and carry citizens to safety. They risk exposure to communicable diseases which also makes

their families vulnerable. They are repeatedly exposed to chemicals and biochemical materials.

The job is inherently dangerous and difficult but it is made more so in North Bergen because of a shortage of manpower. There were between 110 and 118 firefighters and officers between 1987 and 1993 but that has dropped steadily since the 1993 peak to 114 in 1994, 110 in 1995, 104 in 1996 and 97 as of September 1, 1996. This led to the closing of a truck company in September 1996, thereby reducing the equipment available for fighting fires. Minimum manning levels have been reduced to what the IAFF regards as dangerous levels. IAFF Local 1387 President Dominick Marino has expressed the Union's concerns in this area in letters to the Chief and has pointed out that effectiveness of operations declines drastically as the number of personnel on trucks and engines is decreased, as has occurred in North Bergen.

The community derives tremendous benefits from the efforts of these firefighters as they are usually the first to arrive at the scene of emergencies in all kinds of weather and conditions. A firefighter faces tremendous uncertainty and goes from peace to manic bursts of activity as they respond instantly. Their work calls for fair rewards and, it is asserted, the proposals of the Township send a very negative message to the firefighters and, if awarded, would undermine morale and the interests and welfare of the public.

The removal of the catastrophic provision from the major medical plan is said to make no sense in view of the dangers inherent in fire fighting and the Township's proposal must be rejected as contrary to the public's interest.

Similarly, the Township has proposed the elimination and reduction of benefits such as longevity and service differential without justification. The Union notes that the Township extended the service differential to the Fire Officers in the 1993 to 1995

agreement, yet it now seeks to remove this benefit for new hires and reduce it for current employees. The Union recognizes that only one other municipality has a service differential but asserts that, when the overall economic package is considered, the service differential in North Bergen is justified. Furthermore, firefighters in other municipalities enjoy other benefits which augment their base salaries. The Township's proposal would reduce overall compensation and this is unwarranted. The Township also is seeking to water down the acting pay benefit which is common in many contracts and is asking unit members to take on additional responsibilities without additional compensation for the first 90 days.

The Township has proposed a 50% reduction in the clothing allowance. The clothing allowance now received by the firefighters is said to be below average already. Any savings from the Township's proposed reduction in the education incentive would be minimal.

No change is justified in the hospitalization and medical insurance package. The current language is completely clear and it needs no changes. The Township is seeking to pass the burden of increases in premiums to the employees and this is said to be unreasonable, especially since the Township has the right to select the insurance carrier. The proposal also would remove the incentive for the Township to obtain the best coverage at the lowest cost.

The IAFF asserts that the continuation of the current retirement incentive for those who retire with between 25 and 26 years of service would simply maintain the status quo. The Union is seeking a modest increase in the \$7,000 figure. The incentive serves an important purpose to both parties by encouraging employees to retire when they are eligible, thereby permitting their replacement with younger firefighters who earn less money.

For these reasons, the IAFF contends that an award in its favor and against the Township would advance the interests and welfare of the public.

The Union next addressed comparisons and overall compensation. In order to properly understand this analysis, the IAFF contends that it is essential to have a full understanding of the work performed by these firefighters and the duties that they perform along with the hazards and responsibilities they face. Sixty-six firefighters are now performing the work which 81 firefighters performed in 1987.

For comparative purposes, the Union provided data from Hoboken, West New York, Weeakawken, Union City and Jersey City. The rationale for the selection of these communities was that they are the one with which North Bergen has mutual aid agreements.

The Union recognizes that the firefighters in North Bergen had above average starting salaries in 1995. When top base pay plus longevity plus service differential plus holiday pay plus miscellaneous items are considered, the average total in the selected communities was \$58,669.98 in 1995 whereas in North Bergen it was \$56,088.94 for employees hired before April 1, 1994 and \$55,138.28 for those hired after that date.

With a 4.5% increase in 1996 and a starting salary of \$25,000, as proposed by the IAFF, the starting salary would be close to the average, the top base salary would be about \$1,000 above the average and the total compensation would be \$2,000 or \$3,000 below the average, depending upon the date of hire in North Bergen. The reduction in the starting salary would save the Township some \$75,000 if it were to return to 1987 staffing levels. On the other hand, the 2.5% increase proposed by the Township would result in a top base salary which was below the average and the comparative position would fall further when total compensation is considered and

much further than that if the Township's longevity and service differential proposals were to be adopted.

A 5% increase in 1997 would essentially maintain North Bergen's position whereas the 2.5% increase proposed by the Township would result in a top base pay which was almost \$2,000 below the average.

Similarly, a 6% increase in 1998 would only serve to maintain North Bergen's relative position. It would not catapult the firefighters into the ranks of the best paid. The top salary, including the above-listed additions, would be over \$1,300 or \$2,500 below the average, again depending on the date of hire. In contrast, top salary alone would be over \$3,000 less than the average under the Township's proposal by 1998.

As computed by the Union, the total cost of its wage proposal over the three years, including the cost of step movement, adding the clothing allowance to base, longevity and service differentials, is \$149,729.30 for 69 firefighters in 1996, \$165,953.70 for 66 firefighters in 1997 and \$209,782.88 for 66 firefighters in 1998 or a total of \$524,782.88.

The Union asserts that the Township submitted no evidence to support its proposed elimination of longevity for new hires. Longevity is a well-established benefit which recognizes years of dedicated service by loyal employees. Similarly, the Township failed to justify its proposal to reduce longevity for existing employees. If implemented, that proposal would result in a reduction in pay of \$1,000 for some employees. A multi-tier schedule has the added disadvantage of causing employees who are working together and side-by-side doing the same job to receive different compensation. This would deflate morale and cause unrest within the bargaining unit. The Union notes that longevity was reduced from a maximum of 12% to a maximum of

10% for new hires under the parties' last agreement and it takes those employees longer to reach the top step. This is said to be enough.

The Township's proposal to eliminate compensation for the first 90 days of service in an acting capacity is not appropriate. With the shortage of manpower, significantly greater responsibility has been placed on unit members and they frequently serve as acting captains. Also, the present payment is said to be very low in relation to the frequency of service in an acting capacity. The cost to the Township would be well over four times as high as the current stipends if officers were paid on an hourly basis, based on the captain's hourly rate, for serving as acting captains. The Union is seeking an increase in acting pay to \$575 in 1996, \$675 in 1997 and \$775 in 1998 to more nearly reflect the value of this service to the Township.

The Union has proposed that the \$590 uniform allowance be added to base salary. The uniform allowance in North Bergen is just the average of the comparable communities. Union City has agreed to fold its \$650 uniform allowance into base pay. The Union disputes the Township's projected costs of dry cleaning and laundering uniforms.

The current education incentive provides an initial payment of 1% to employees who have earned 30 college credits in fire science. The Union asks that this payment be moved to 24 credits because that is the number of credits required to earn an Associates degree. That payment, like the others, should be linked to degrees or milestones toward degrees. No officer would receive the benefit who does not already receive it so the cost impact at this time is zero. On the other hand, the Township is seeking to convert the current benefit from one based on percentages to flat dollars and to eliminate payment for 90 credits. This would make a Bachelors degree worth

\$1,200 less than it is presently worth. Only five unit members receive this benefit and it clearly benefits the community to have firefighters who are well educated.

The Union acknowledges that its vacation benefits are favorable but they are said not to be too far out of line with only four more vacation days than average.

The Township did not demonstrate that there had been operational problems associated with the number of firefighters on vacation at a given time and urges a rejection of the Township's proposal to reduce the number to four who can be off during a vacation period. The manpower shortage is the Township's problem and the IAFF would love to have the Township increase the number of firefighters. That would eliminate any problem which the Township now experiences.

The Union is seeking what it regards as a modest increase in retirement compensation from the current 75% to 86% in 1996, 90% in 1997 and 95% in 1998. There are several reasons for this. One is that the Township realizes considerable savings when a firefighter retires and is replaced - sometimes after a delay which results in even greater savings - with a new hire. It is noted that only one firefighter is eligible to retire during the three years of the proposed agreement so the cost impact is negligible. Another reason is that the Township greatly increased the pay-out to captains. In 1992, captains and firefighters both received \$36,215. By 1995, because of changes for the superior officers, captains received \$52,242 whereas a firefighter received only \$42,324. Thus, the Union believes that an increase is justified to match that which the Township gave to the superior officers.

The Union cited the testimony of Dr. Camow that firefighters can be compared to environmental engineers, military aviators and astronauts in that these occupations face similar stresses and uncertainty in their work. The retirement pay proposed by the Union is said to reflect a recognition of these factors.

Sick leave use has declined, according to the Union. This means that the incentive program has been successful. An increase in the bonus payment, as urged by the Union, will continue to provide an incentive for the firefighters not to use sick leave.

The Township's proposed major changes in the hospitalization program are said to be extreme and totally unjustified. They were not supported by comparisons with other firefighters or even with other Township employees. Firefighters more than other employees can be expected to require medical services and a reduction in their benefits is inappropriate.

Comparisons of firefighters with employees in the private sector are said not to be fair nor are those of firefighters with other public employees in general. The Union cited Dr. Carnow's testimony regarding the dangers and stresses faced by firefighters.

To summarize the overall compensation factor, the Union asserts that the give-backs and reductions proposed by the Township cannot be justified not only on a comparative basis but they would result in sub-par total compensation. This cannot be justified and the arbitrator must reject the Township's proposals.

The Union's expert witness, Vincent Foti, following a review of the last several budgets, audits, annual financial statements and official statements, testified that the Township has the lawful authority to pay the wage increases sought by the IAFF. This is another of the statutory factors which an arbitrator is required to consider.

Reviewing the results of operations over the last four years, Foti noted that the figure ranged between \$2 million and \$4 million with a 1996 figure with \$4,327,047 going into surplus. The fund balance stood at \$6,664,414 at the end of SFY 1996, \$1.3 million higher than in SFY 1995. The fund balance has exceeded \$5 million each of the last four years.

The Township has been able to control taxes in part by using surplus and the ability to regenerate surplus is said to be a sign of economic strength. It is noted that the municipal tax rate did not increase from 1996 to 1997.¹⁰

It is true, as the Township Administrator pointed out, that the Township used \$895,000 more of its surplus in its SFY 1997 budget than it used the previous year. According to the Union, this is a reflection of the Township's confidence that it will continue to be able to regenerate surplus.

As further evidence of the absence of a Cap problem or legal constraints on the Township's ability to meet the IAFF's wage proposal, Foti noted that the Township had a Cap bank of \$1.2 million in 1995. The Cap bank in 1996 was almost \$700,000. Thus, the Township could use those amounts in its 1997 budget. The Township was allowed to bank \$942,000 in 1997. What this means is that the Township planned to spend less than it could have spent and this, in turn, means that there is no Cap problem.

The lawful authority of the Township is not threatened in any way by the proposal of the IAFF.

The Union also considered the financial impact on the governing unit, its residents and taxpayers. The median value of a single home is \$169,300. This was the fourth highest figure in the County and is slightly above the figures for Bayonne, Kearny and West New York. Median family income is reported as \$40,205, fifth in the County. The 1996 tax collection rate was 93.2% and, according to Foti, this was an impressive rate for an urban community and indicates the ability of the taxpayers to meet their tax burden.

¹⁰ The 1997 tax rate had not yet been certified so was not a final number.

Foti also pointed out that North Bergen enjoys an AAA credit rating from Moody's and that is the highest rating. This rating results in lower borrowing costs to the Township. Foti acknowledged that this rating was based on the Township's membership in a State-backed qualified bond fund and also that the Township buys insurance from this fund.

While the budget anticipates the receipt of over \$200,000 less in interest income in 1997 than it received in 1996, the Union points out that the 1996 budget also anticipated less in interest income than was earned. The Township's figures are said not to be realistic.

One tax point equals \$227,956 so the raises proposed by the Union for the three years are less than 2½ tax points. On a house assessed at \$140,00, that increase would cost \$33.88 over three years or \$.94 a month. On a per capita basis, the cost is only \$3.62 per year. Thus, it is said to be clear that the increases can be afforded. The cost of the Fire Department is only \$525 per year for the person who owns a home valued at \$140,000.

One reason that the Township has received less State aid is that it does not have as great a need for aid as do many communities. Thus, aid based on economic need is decreasing but this also indicates the strength of the Township. The Township, to its credit, has done some creative things to drive expenses down. It has been very aggressive with its insurance accounts and has been active in initiating some joint funds which have reduced costs.

The Township cited an 18% increase in the Fire Department budget from 1992 to 1997 but this represents only 3.6% per year and that included the new OSHA gear and equipment.

A large increase in the Fire Department line item in the last two years has been due to one-time expenditures for terminal leave payments. These are not recurring and the Township can use that same money in future years to fund the IAFF's proposals.

The Township has seen a decline in ratables in the last four years but this has not been unusual and there is strong evidence that the Township is starting to add ratables. Indeed, the future is very good in light of numerous planned developments and new jobs which will be created. Millions of dollars will be added to the tax base and there will be no significant impact on municipal services. New transportation projects, including the light rail system, will make North Bergen more attractive to businesses and investors. Residential construction also is planned and this, too, will add to the tax base. The waterfront is experiencing revitalization and the construction will add considerably to tax revenues.

As an urban enterprise zone, North Bergen is able to charge a reduced sales tax and this lures customers to the Township's businesses. Some of the sales tax revenue is returned to the Township so the Township benefits two ways.

Among the developments are a new Pathmark 2000 Superstore (60,000 square feet, 130 jobs), the County's largest movie complex with 14 screens, a Daffy's store, and many others.

There is nothing to suggest in this record that the IAFF's proposals would in any way jeopardize the Township's services which have been expanding: recreation center, community-based events, recycling center, etc.

The evidence is that the proposals of the Union would not have a negative impact on the governing unit or its residents and taxpayers. The money and flexibility is present to meet these proposals.

Under cost of living, the Union noted that unemployment nationally has dropped to 5.1%, its lowest level in seven years. New Jersey has its lowest level in five years. The CPI has been increasing consistently over the years. The Township's proposal would result in a net decrease in purchasing power. Salary increases since 1985 have always exceeded increases in the cost of living and they should continue to do so.

Finally, continuity and stability of employment are said to favor the position of the Union. There is no evidence that the Union's position would be contrary to stability and continuity of employment. In light of the danger faced by the firefighters and their commitment to the service and safety of the community, the wages and benefits of these employees must be sufficient to attract and retain qualified and competent firefighters and to prevent them from being lured into higher paying and safer jobs.

The two tiers proposed by the Township for wages, longevity and service differential also would be detrimental to the stability and continuity of employment and should be rejected. The Township has proposed a net reduction in compensation and this is not necessary economically and would lead to a defection of firefighters to other jurisdictions and jobs. This can and must be avoided.

The Union notes that the reduction in manpower - two captains, six deputy chiefs and seven firefighters - in the Fire Department has resulted in substantial savings which can be used to fund the Union's proposals. Fewer firefighters are doing more work and they deserve to be compensated by this community which is enjoying economic development and clearly has the ability to pay its firefighters.

Discussion and Analysis

The arbitrator is required to decide the dispute by making a reasonable determination of the issues by giving due weight to the eight above-quoted statutory

factors which are judged relevant. Each criterion must be considered. Those deemed relevant must be explained and there also must be an explanation as to why any factor is deemed not to be relevant. In making this decision, the arbitrator must separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the statutory criteria.

I have carefully considered the evidence which has been presented as well as the arguments of the parties. I have considered the evidence in light of the statutory criteria, as set forth hereafter. I have considered each criterion and found each to be relevant. I have discussed the weight that I have accorded to each criterion. I also have determined the total net annual economic changes for each year of the agreement in order to conclude that these changes are reasonable under the criteria.

The parties' final offers, and especially that of the Township, included numerous items which, realistically, neither could have hoped or expected to achieve in this proceeding. The Township's final offer has a net negative value. Aside from the 24-hour schedule, there was little evidence, discussion or argument on many of the other non-wage issues presented. The impression left with me was that the Township was concerned with its overall costs and not that it had specific problems that it was seeking to redress through the negotiations process.

I shall describe the award at this point so that, in discussing and applying the statutory criteria, the terms of that award will be the reference point. The parties, in their briefs, necessarily focused on their own position and that of the other party. I shall not focus on those positions since, in this conventional arbitration proceeding, I shall not adopt either of those positions.

The term of the new agreement, Article XXXI, Duration, shall be three years, January 1, 1996 to December 31, 1998. Salaries, Article V, Wages, shall be increased

as follows: January 1, 1996 - 3.5%, January 1, 1997 - 3.5%, and January 1, 1998 - 3.5%. There shall be a starting salary of \$25,000 throughout the term of the agreement and the salary guide for firefighters hired after the date of this award shall have six steps with the same dollar difference between each step. There shall be no change in Article IV, Promotions and Vacancies. I have previously stated that there shall be no change in work schedule, Article VI. There shall be no change in Article VIII, Longevity, for new hires or current employees and payment will continue to be made on anniversary dates. Service differential shall be eliminated for employees hired after the date of this award but shall not be changed for current employees. There shall be no change in Article X, Clothing Allowance. There shall be no change in Article XI, Educational Incentive. There shall be no change in Article XII, Hospitalization. Article XV, Retirement, Paragraph B shall be continued for the term of the new agreement with no change in the compensation of \$7,000. There shall be no change in Article XVII, Sick Leave. There shall be no change in Article XXIX, Liability Insurance.

There also are several non-economic issues in dispute.¹¹ The Township's proposal to change Article X, Clothing Allowance, by adding "At the Chief's Discretion" to Paragraph B shall be denied. The Township's proposal to change Article XIV, Vacations, Paragraph B to reduce the number of men allowed off on vacation in the same vacation period shall be denied. The Township's proposal to change Article XVI, Injury Leave, shall be denied. The Township's proposal to add language to Article XVIII, Leaves of Absence, Paragraph A shall be denied. Finally, the Township's proposal to add language to Article XXVIII, Outside Employment and Activities, Paragraph C shall be denied.

¹¹ The parties agreed that in Article XVIII, grandparents and grandchildren means the grandparents and grandchildren of either the members or their spouses.

The total net annual economic change is limited to the cost of the salary increases for the three years of the new agreement. The elimination of the service differential is a significant change in terms of the Township's future costs and a newly hired firefighter's future earnings but will have no impact until six years after firefighters are hired after the date of this award. The continuation of the \$7,000 retirement compensation will have minimal impact during the term of this agreement since only one firefighter is eligible to retire during its term. Any financial impact, while uncertain, is likely to be positive from the Township's perspective because the benefit provides an incentive for firefighters to retire before the completion of 26 years of continuous service and this permits their replacement with younger employees at a much lower salary (for five years), no service differential and without longevity until the completion of five years of service.

The parties agree that the 1995 salary base was \$3,289,670 for 73 firefighters. In 1996, there were 69 firefighters and, based on a 3.5% increase, the cost that year will be \$3,310,273. This is an increase of \$20,603 over the 1995 base (exclusive of longevity, service differential and other salary-based costs). In 1997, there are 66 firefighters and, based on a 3.5% increase, the cost will be \$3,320,751. This is \$10,478 above the 1996 base, again excluding other salary-based costs. Finally, in 1998, with 66 firefighters and a 3.5% increase, the cost will be \$3,467,534. This is \$146,783 above the 1997 base excluding other salary-based costs. These figures, however, do all include the cost of step movement or increments. These figures assume that there will be no hiring and no retirements in the rest of 1997 or in 1998.

Having set forth the terms of the award and its total net annual economic changes for each year, I shall discuss the evidence and the parties' arguments in relation to the statutory criteria.

Interests and Welfare of the Public The Supreme Court made it clear in Hillsdale that a decision which failed to consider the interests and welfare was in danger of being deficient. The amended statute explicitly requires the arbitrator to consider the Cap Law in connection with the factor. As discussed in the section on **Lawful Authority**, the limits imposed by the Cap Law are not such as to have any bearing on this case. The costs of the 3.5% salary increases can be paid by the Township without exceeding its spending authority.

The Township's brief contains an articulate discussion of the need to balance employee satisfaction on the one hand and a stable level of governmental services on the other hand. The interests and welfare of the public require fairness to employees in order to avoid labor strife and to maintain the morale of the employees and encourage a productive and efficient work force. At the same time, those interests require a sufficient number of firefighters and other employees to meet the legitimate and essential service requirements of the community.

The number of firefighters in North Bergen has declined, apparently due to a hiring freeze associated with litigation. From a purely economic perspective, this has led to reduced costs, as reflected by the very modest net increases associated with the 3.5% salary increases in 1996 and 1997. The work of firefighters is undeniably and inherently dangerous and is associated with risks, both short-term and long-term. These employees deserve a reasonable level of compensation in recognition of the service which they provide to the community. The number of firefighters may be lower than it should be - that certainly is the view of the IAFF - and to the extent that this is true, the Township will have higher costs if it increases the number of firefighters when permitted to do so. From this perspective, the lower the compensation costs of a firefighter, the more firefighters the Township will be able to afford.

I believe that salary increases of 3.5% each year balance the needs of the firefighters and the Township and reflect the interests and welfare of the public.

Comparisons There are three sub-parts to this criterion: comparisons are to be made with other employees performing similar services and with other employees generally 1) in private employment in general, 2) in public employment in general and 3) in public employment in the same or similar comparable jurisdictions. I shall discuss these in order.

The first, which has two parts, requires a comparison of the wages, salaries, hours and conditions of employment of the firefighters with the same or similar employees in private employment. I agree with the Union, and the Township did not contend otherwise, that there are no employees in the private sector who are performing the same or similar services. Firefighting is overwhelmingly and almost inherently a governmental activity. Comparisons simply do not exist. Thus, I ascribe no weight to this part of this factor.

The second part calls for a comparison of firefighters with other employees generally in private employment. These comparisons, in my opinion, are extremely important. The private sector ultimately drives and supports the public sector. Unlike a governmental entity with taxing authority, which can raise money simply by raising taxes,¹² a private entity must make a profit to remain in business. It is subject to the discipline of the market. Economic considerations rather than political ones are controlling. Most taxpayers are employed in the private sector. They must pay their taxes from their private sector earnings. Thus, changes in the rate of those earnings are correlated to their ability to pay their taxes which, of course, are used to support governmental services including fire fighting. Employment levels, unemployment,

¹² In New Jersey, of course, the Cap Law limits this authority.

inflation, taxes, interest rates, productivity increases, union strength and other indicia of the national and local economies are all factored into determining private sector wage changes. Thus, this factor - particularly in the absence of internal comparisons, discussed below - because it serves in the aggregate as a proxy for many economic variables, is probably the single best indicator in judging public sector wage and overall compensation changes.

The evidence submitted by the Township establishes that collectively negotiated private sector wages increased by 3% in 1996 as they did in 1995. There are, of course, examples of employees who received less but the BNA figure is a comprehensive one which considers those that are below 3% as well as those that are above 3%. A similar figure is reported for the ECI which measures total employment costs. There is no reason to expect a sudden or large change in the magnitude of these increases. Thus, salary increases of 3.5% are slightly above the level being received by private employees in general.

A comparison with public employees in general leads to the same conclusion. The salary increase for 1995 reported by the BNA was 3.2% and the ECI for those workers rose 3% in that year. Again, of course, there are numerous examples of public employees who received less than that amount. There was a two-year freeze in New York City, a one-year freeze and only a delayed increase in the second year in Essex County, and there a two-year wage freeze for most employees of the State of New Jersey. Other public employees received increases greater than 3%. Overall, this indicates that salary increases of 3.5% are slightly above the average received by public employees in general.

The third comparison is to be with public employees in the same or similar comparable jurisdictions. There are two parts. One is comparisons in the same

jurisdiction. The parties reported no settlements for other employees in the Township and the record indicates that neither the police officers nor the fire superior officers have settled with the Township. There are no internal comparisons which can be considered. Thus, this factor, to which I would attribute great significance if there were internal comparisons, is of no significance in this case.

The other part calls for external comparisons with similar employees in comparable jurisdictions. While there is a certain logic to comparing North Bergen only with those surrounding communities with which North Bergen has a mutual aid pact, I believe that the county-wide comparison including all nine municipalities which have paid fire departments, as suggested by the Township, is a better gauge. The Township is correct that municipalities left out by the IAFF tend to be those with lower salaries and overall compensation and their exclusion tends to create a somewhat distorted picture. Thus, I shall use the Township's data from the County as a whole, supplemented, as necessary, with the Union's data.

Initially, it is worth noting that the 6% increase received by these firefighters in 1995 was the highest in the County and well above the average increase of 4.2%. In fact, the next highest increases were 4.5% received by firefighters in Kearny and West New York. Similarly, in 1994, North Bergen firefighters received 5%, tied for the second highest in the County, but this was .67% above the County average for that year. Thus, the firefighters in North Bergen are coming off a contract in which they obtained salary increases which improved their relative standing.

The top base salary plus longevity, service differential and uniform allowance in the County in 1995 was \$53,398. The figure in North Bergen was \$56,679. This is almost \$3,300 above the average. Base salary alone was \$1,100 above the average. It is the service differential which lifts the figure significantly in North Bergen.

Six settlements in the County for 1996 show an average top base salary of \$48,564. With a 3.5% increase, North Bergen's top rate will go to \$49,197 or \$633 above the average. When the service differential and other items are considered, the North Bergen figure goes to \$58,643 which is \$2,919 above the average.

The Township did not provide data beyond 1996. Looking at the 1997 data from Hoboken, West New York, Weehawken, Union City and Jersey City as provided by the IAFF, the average top base salary is \$51,832 in those municipalities. In North Bergen, it will be \$50,919. This is \$913 below the average of North Bergen's mutual aid communities but, as stated, the comparisons are not with the same group of communities as was used above. (This illustrates the importance of the municipalities selected for comparative purposes.)

Looking at the salary increases in the mutual aid communities as provided by the IAFF for 1996, 1997 and 1998, increases averaged 4.6% in Hoboken, 4.65% in West New York (two years only), 3.67% in Weehawken, 3.9% in Union City¹³ and 4% in Jersey City. Therefore, the 3.5% increases which I shall award are below these figures by between .17% and 1.15%.

In summary, the 3.5% increases which I have awarded exceed by moderate amounts the average increases received by private employees and public employees in general but they are below the average increases received by firefighters in Hudson County. They are, however, within the range established by the various comparisons which must be considered.

¹³ The figures for Union City are for the first three years of the June 1, 1995 to June 30, 1999 Union City-FMBA Memorandum of Agreement which the Union provided.

Overall Compensation While I have discussed more than salaries in the preceding section, this is an appropriate place to look at the non-wage components of the parties' offers, almost all of which I shall reject.

I shall award a three-year contract covering 1996, 1997 and 1998 because 1997 is only the second year of that contract. If both parties had asked for a four-year agreement, I would have been comfortable in awarding it but, given the opposition of one of the parties, I am not willing to impose a four-year agreement, especially when the new agreement still has one and one-quarter years to run. This will not be unduly disruptive and gives the parties another opportunity to come to a voluntary agreement for 1999 and beyond. At that time, they can address the issues which I have rejected on both sides if they believe that changes are required.

I am not prepared to change the acting pay provision as proposed by either party. The Township wants to eliminate the benefit for the first 90 days and consider such service as training. The current stipend system is easy to administer and, given the frequency of service in an acting capacity, it is reasonable to compensate such service. On the other hand, an increase in the stipend is not justified. While the nature of the benefit varies from municipality to municipality, it is not clear that North Bergen lags. There is no acting pay benefit in Bayonne. In Weehawken and Harrison, the benefit is not paid until after 30 days. It is not possible to compare the stipend in North Bergen with the amounts received in other municipalities because what the other firefighters receive is dependent upon the frequency of occurrences and whether the municipality calls in a captain on overtime or has a firefighter serve in an acting capacity. Neither party made a compelling case for a change.

The work schedule was discussed above. All but three municipalities in Hudson County work the same schedule as that worked in North Bergen.

The Township did not justify its proposal to eliminate longevity for new hires and to change it for most current employees, in some cases to such an extent as to reduce the present payment by \$1,000. The schedule for firefighters hired before April 1, 1994 is almost 2% less than the average at the top rate. Furthermore, the schedule has been modified for employees hired after April 1, 1994 so that the maximum rate for those employees, achieved after 24 years of service, is only 10%, almost 4% below the County average at the maximum rate. Also, all of the lower levels under the new schedule lag behind the County average. The Township changed its longevity schedule for new hires in the last contract and that change resulted in the lowest longevity schedule in the County. The elimination of the existing schedule for employees hired before April 1, 1994 has not been justified. The Township also provided no justification for changing the date for receipt of longevity beyond a claim that it would simplify bookkeeping. In fact, it would result in a reduction of benefits by delaying receipt of longevity but the Township did not consider these savings.

The Township also proposed changes in the service differential. This is a benefit which, viewed by itself, cannot be justified on a comparative basis. The only other municipality in the County which has this benefit is Hoboken and that benefit is expressed in flat dollars. One change proposed by the Township would convert this benefit for current employees from a percentage basis to flat dollars. I am unwilling to make this change because the service differential has come to be considered by the parties as a fundamental component of the compensation of a firefighter. The analysis in the previous section considered the service differential as part of the total compensation received along with base pay, longevity and uniform allowance. The total relative compensation of the firefighters would decline significantly if I were to change this benefit as proposed by the Township.

The other part of the Township's proposal is justified. It calls for the elimination of this benefit for newly hired employees. I shall adopt this proposal effective for employees hired after the date of this award. This prospective change will bring North Bergen into line with the rest of the County without hurting current employees. The benefit appears to be nothing more than another way of getting money to firefighters. It appears to be another form of longevity. Years of service already are recognized and compensated by the Township. The long-term savings associated with this change for the Township are significant but it will take a number of years before they are realized. When that time comes, the parties will have to recognize that the overall compensation of these employees will not include a service differential.

The Township wants to cut the clothing allowance in half and the Union wants to incorporate it into base wages. Neither proposal is justified. The \$590 currently paid by North Bergen is right in line with the county average and the only municipality where the benefit has been included in base pay is Union City. There is logic in making such a change because the clothing allowance has simply become a form of compensation and the employer is required by PEOSHA to provide uniforms but, at least until it is more common to include it in base pay, it seems preferable to treat it as a separate item, thereby facilitating comparisons with other municipalities. There would be at least a short-term cost associated with the change proposed by the IAFF because by increasing the base salary, all benefits which are linked to base pay, including percentage salary increases, also would be increased. Once incorporated, however, it would not be possible to increase the clothing allowance in the future.

Both parties also seek changes in the educational incentive. Again, the Township is proposing that this benefit be converted to flat dollars from the current percentages. The dollars proposed by the Township are well below the current levels.

The Township has not provided any real justification for this proposal, other than the fact that it would save money and that the current benefit is among the better ones in the County. I have considered this in crafting the award. The IAFF is proposing that the 1% payment commence after 24 credits in fire science on the theory that 24 credits results in an Associates degree. This change seems to be unnecessary in view of the fact that the current benefit provides for a 2% payment for employees who have achieved an Associates degree. Thus, if an employee gets 24 credits in fire science, the employee is compensated more than the 1% proposed by the Union. I shall not change this benefit which, as stated, is among the best in the county. At the same time, education should be encouraged as being in the interest of the Township as well as the individual firefighter.

The Township provided no justification for the major changes it proposed in hospitalization. Based on the scant information provided by the Township, it would be irresponsible for me to alter the parties' agreement in this area. Some of the changes, of course, are very large such as that the employees bear all increases in premiums over 1995 rates. Changes of the type proposed by the Township are best accomplished by direct negotiations with the other party so that there is comfort with and understanding of the changes and what they will mean to employees. That has not occurred in North Bergen. The Township did not show that it has made the changes proposed here with any of its other employees nor did it show that changes such as it proposed had been adopted by other municipalities. It is true, however, as the Township has demonstrated with numerous exhibits, that such changes have occurred in the private sector.

The Township wants Article XV, Retirement, removed from the contract and contends that it expired with the termination of this agreement. The Union wants to

continue the benefit and increase the payment from \$7,000 to \$8,000. I shall continue the benefit at the previous level. As stated above, only one employee will be eligible for this benefit during the term of this agreement so the present cost is negligible. As also stated, this benefit will save the Township money to the extent that its presence serves as an inducement, as intended, to officers to retire before their 26th year of service commences by permitting their replacement with a younger firefighter at a much lower salary who will not receive a service differential and who will not receive longevity for six years after being hired.

Both parties have proposed changes to Article XVII, Sick Leave. The Township wants to exclude longevity and service differential from the terminal payment and to change the current percentage payment to flat dollars as determined by the arbitrator. The Union wants to increase the percentage which can be earned from 75% to 86% in 1996, 90% in 1997 and 95% in 1998. The present benefit in North Bergen falls in the middle in the County. In Jersey City, the maximum is one year's salary. In Harrison, there appears to be no limit; the employee is paid for one-half of all accumulated sick leave. Kearny, however, limits payment to 45 days, Weehawken limits it to 90 days and West New York places a \$12,000 limit on the payment.

The main justification advanced by the Union for a change is that the Township improved this benefit for the captains and deputy chiefs. The improvement, however, was not to levels as great as already enjoyed by the firefighters. Thus, captains have a maximum of 70% of top captain's pay. Firefighters receive 75% of top firefighter pay. The dollars are different, of course, but until or unless the Township gives the superior officers a greater percentage of their pay than it gives the firefighters, there is no justification for a change.

The Union also wants to increase the payment for employees who do not use sick days. It describes the proposed increase as "modest" and asserts that sick leave use has gone down. This benefit exists in only two other municipalities in the County and the current amounts provide a reasonable incentive not to use sick leave. No change is warranted.

Finally, the Township has proposed the elimination of the liability insurance article. While claiming that this would conform the contract to the practice which has existed for some years, the Township did not really provide an underlying rationale or need for this change nor am I aware of its full implications and ramifications. Accordingly, I am not prepared to award it in this proceeding.

Before concluding this consideration of overall compensation, it should be noted that vacation benefits in North Bergen are well above the average in the County at all levels of service. This superior level of paid time off enhances the total compensation received by North Bergen's firefighters.

Stipulations of the Parties There were no substantive stipulations. The parties did agree that Vincent Foti is a financial expert and that Joseph Auriemma is a financial expert in municipal affairs. They also stipulated that in Article XVIII, Leaves of Absence, Paragraph B, Bereavement Leave, grandparents and grandchildren refer to the grandparents and grandchildren of the members and their spouses.

Lawful Authority In considering the employer's lawful authority, the statute requires the arbitrator, among other things, to assess the limitations imposed upon the employer by the Cap Law which, generally, limits the amount by which a municipality can increase its final appropriations from one year to the next as a means of controlling the cost of local government in order to protect homeowners. This limitation goes to total appropriations and not to any one line item.

The Township raised questions regarding its ability under the Cap Law to fund the proposals of the Union but it provided no evidence that an award of 3.5% each year would create any Cap difficulties. The evidence is to the contrary. As Auriemma testified, the Township's budgets included 2.5% for salary increases in both 1996 and 1997. The 3.5% awarded does not exceed 2.5% by a large amount. An additional 1% of the 1995 base salaries for firefighters is less than \$33,000, not a large amount in budgets with total appropriations of over \$50 million and with a surplus balance as of June 30, 1996 of \$5.7 million (after allowing for a \$340,000 receivable against surplus and a \$530,000 emergency appropriation). The Township has been able to regenerate surplus and to show strong results of operations. Furthermore, the Township had available almost \$2 million for banking under the Cap bank provisions of the law in 1997 and will have a Cap bank in 1998 of over \$900,000 because its 1997 budget was that much below the legal limit.

The net salary cost to the Township of a 3.5% increase in 1996 over the 1995 base will be \$20,603. The net salary cost to the Township of a 3.5% increase in 1997 over the 1996 base will be \$10,478. The net salary cost to the Township of a 3.5% increase in 1998 over the 1997 base will be \$146,783. The very low costs in 1996 and 1997 reflect the fact that the number of firefighters declined from 73 in 1995 to 69 in 1996 and to 66 in 1997.

Thus, it cannot be said that this award will create a Cap problem for the Township or that there are any legal impediments, including a consideration of the Cap constraints, to the funding of the amounts awarded.

Financial Impact The financial impact of this award on the governing unit, its residents and taxpayers will be minimal, both because of the relatively modest 3.5% wage increases awarded (compared to the prior three-year increases of 5%, 5% and

6%) and because of the decline in the number of firefighters from 73 in 1995 to 69 in 1996 and to 66 in 1997. As stated above, the net cost of the salary increase in 1996 will be \$21,000 and the corresponding figures for 1997 and 1998 will be \$11,000 and \$150,000, respectively. The total appropriations exceed \$50 million; the cash surplus at the end of SFY 1996 was \$5.7 million.

Even if salary increases similar to those awarded to the firefighters are later either agreed upon voluntarily or awarded by other arbitrators to the other public safety employees who are eligible for interest arbitration, the costs will be manageable. Auriemma testified that both the SFY 1996 and SFY 1997 budgets included 2.5% for salary increases. Thus, the Township has anticipated spending amounts which are within 1% of the amount awarded. A 1% increase over the 1995 salary base for this unit is only \$33,000.

North Bergen Township ranks comfortably in the upper middle of Hudson County in such measures as the median value of single family homes and median family income. Its prospects for the immediate future appear good. Many developments are underway and many others are planned. For example, the Bergen Ridge project is just about complete and this will add an \$8 million ratable. A new Super Pathmark is paying taxes. The Half Moon Harbour project is a \$50 million residential development that has been approved. North Bergen has been designated as an urban enterprise zone which means that the sales tax within that area is only 3% rather than the usual 6%. These are only a few examples. Furthermore, the Township is well managed. It has shown leadership and initiative in controlling costs, as illustrated by its purchasing and insurance arrangements.

This is an urban area with many of the usual pressures and needs. It has experienced a decline in ratables and its has received State approval to stretch out its

financing of tax appeals to eight years as opposed to the usual three years. Five delinquent taxpayers owe over \$1.2 million and it is not likely that these taxes will be collected. It has been using increasing amounts of its surplus in order to limit tax increases. Its miscellaneous revenues have decreased and its State aid has decreased, meaning that there is a greater reliance on property taxes as a revenue source. Appropriations have increased by much more than miscellaneous revenues and surplus utilized since SFY 1992, again indicating that property taxes must be raised to make up the difference. There are capital needs that have been delayed, although the Township has spent a large amount of money since 1985 on the Fire Department, including the construction of a new fire house and major improvements to others.

Thus, what emerges is a picture of a community which is successfully coping with the challenges. In this context, salary increases which are neither well above the norm nor well below the norm - 3% to 4.5%, as established in the Comparisons section - can be justified. In other words, the financial impact of an award must be sensitive to the pressures which are on this community and its taxpayers but at the same time, the community does not require extraordinary relief.

Salary increases of 3.5% annually are intended to recognize the financial impact on the community, not only at the present time - when that impact is minimal - but over the longer term. Salary increases add to the base and must be paid year after year. Also, the Township may hire additional firefighters when the NAACP litigation is resolved and the hiring freeze is lifted. This, of course, will increase its costs.

Cost of Living The evidence is that the cost of living, as measured by the Consumer Price Index, has been increasing at approximately 3% the last several years and the increase for the New York metropolitan area was only 2.5% for the twelve

months ending April 1997. There is no evidence that this figure will change significantly in the immediate future. Thus, salary increases of 3.5%, as awarded, will keep the firefighters slightly ahead of increases in the cost of living, although much less than during the preceding ten years when salary increases exceeded cost of living increases by an average of 2.5% per year. Such increases in relation to CPI changes cannot be justified on the basis of this statutory criterion. The increases awarded should protect the firefighters against the impact of inflation while also providing a modest increase in real wages.

Continuity and Stability of Employment While both parties assert that their packages, as proposed, will best promote continuity and stability of employment, I am not convinced. This factor, like that relating to the interests and welfare of the public, points in contradictory directions, depending upon the perspective.

The IAFF's proposal would be so costly that it could require the Township to reduce or not to increase the number of firefighters or, alternatively, it could have an adverse impact on the other services that the Township provides. On the other hand, a package such as proposed by the Township is so extreme that it would certainly cause firefighters to seek employment elsewhere to the extent that there were opportunities. At the least, the Township's proposal, if awarded, would seriously undermine morale and have a negative impact on productivity and the effectiveness of the Fire Department. I shall not award either package.

The award of 3.5% salary increases annually, while less than the Union believes is justified - and somewhat less than many of their firefighter colleagues have received - and more than the Township hoped to have to spend, will not jeopardize either employment levels or other governmental services nor will it cause firefighters to seek alternate employment or make them feel that there is no respect or appreciation for the

jobs which they perform and the dangers inherent in those jobs. The wage and benefit package will remain competitive with those in Hudson County so that the recruitment and retention of firefighters will not be a problem for the Township nor will it materially change the relative position of the firefighters. In short, the continuity and stability of employment will be preserved.

Non-Economic Issues

The Township proposed five non-economic issues. It provided insufficient justification for me to award any of the proposals. It seeks to add "At the Chief's discretion" to Article X, Clothing Allowance, Paragraph B and asserts that the uniform should be a managerial prerogative. Paragraph B deals with the wearing of blue tee and sweat shirts. This is not the sort of thing which goes to the core function of the Fire Department and there has been no demonstrated need for a change.

Next, the Township seeks to limit the number of men that can be off in the same vacation period. While asserting that the change is intended to minimize the effects of manning shortages caused by the hiring freeze, the Township did not establish that the current limits create operational or other problems.

Third, the Township seeks to modify Article XVI, Injury Leave, by specifying that the maximum payment is one year with employees thereafter to receive only worker's compensation payments. The Township contends that this change is in accordance with N.J.S.A. 40A:9-7. To the extent that the Township is correct and that the law permits no discretion, the law will prevail and a change in the contract language is not necessary. If the law permits discretion to the employer, then the Township failed to establish a need for a change. The Township also asks that injuries be reported within 24 hours in order for the employee to be eligible for injury leave. Again, in the absence

of evidence that the current provision has created difficulties and without a fuller understanding of the implications, I am not prepared to order a change.

Fourth, the Township seeks to add language to Article XVIII, Leaves of Absence, Paragraph A. While claiming that the new language would clarify the existing practice, there was not evidence that the existing practice has caused confusion or that it needs clarification.

Fifth, the Township wants to add to Article XXVIII, Outside Employment and Activities, a new Paragraph C which would require notification to the Chief of where employees are working, their hours of work and a telephone number for notification of recall purposes. It is claimed that this language would facilitate the recall of firefighters in the event of an emergency. Again, the Township did not prove that there has been a problem in recalling firefighters in the event of emergencies and the full impact of this change was not explored. Thus, I am unwilling to award it.

Summary

I have carefully considered the record in this case including the testimony of the parties' witnesses and the exhibits which were introduced. I also have carefully considered the arguments advanced by the parties to support their respective positions. I have considered the evidence and the arguments in relation to the statutory criteria which I am bound to consider and apply. The award, which is between the proposals of both parties, is slightly above private sector and other public sector salary increases and increases in the cost of living and slightly below other firefighter increases in Hudson County. In the absence of Cap constraints, these were the most important factors in my decision in part because they are the most nearly objective ones. Also, I believe that they capture the most important measures of fairness. The private sector

increases - which are the result of such economic realities as profit and loss, the ability to compete and remain in business - are the most significant because they reflect the overall performance of the national economy upon which, ultimately, depends the ability of the taxpayers to meet their tax payments. The public interest and continuity of employment are more subjective and speculative. The financial impact of this award clearly will be modest in view of the fact that the number of affected employees declined in each of the first two years. The prospective elimination of the service differential will not adversely affect current employees but it will, in time, bring North Bergen into line with the rest of the County and facilitate comparisons among firefighters.

Accordingly, I hereby issue the following:

AWARD

The term of the agreement shall be January 1, 1996 through December 31, 1998.

Salaries for current employees shall be increased by 3.5% across-the-board effective January 1, 1996, January 1, 1997 and January 1, 1998 .

The starting salary for employees hired after the date of this award shall be \$25,000 for the term of the new agreement. There shall be a six-step salary guide for employees hired after the date of this award with a \$25,000 starting salary, the same maximum salary as exists for current employees, and with equal dollar amounts between each step.


Employees hired after the effective date of this award shall not be eligible for a service differential.

Article XV, Retirement, shall be continued as written with only a change in the date of the sunset provision.

Article XVIII, Leaves of Absence, Paragraph B shall be changed to reflect the parties' agreement that grandparents and grandchildren means the grandparents and children both of members and their spouses.

All other provisions in the parties' January 1, 1993 to December 31, 1995 agreement shall continue unchanged except as mutually agreed by the parties.

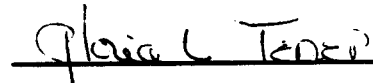
Dated: October 17, 1997
Princeton, NJ



Jeffrey B. Tener
Arbitrator

State of New Jersey)
County of Mercer) ss.:

On this 17th day of October, 1997, before me personally came and appeared JEFFREY B. TENER to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed the same.



GLORIA L. TENER
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES SEPTEMBER 1999