

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

NORTH HUDSON REGIONAL FIRE AND RESCUE

“Public Employer,”

- and -

NORTH HUDSON FIRE FIGHTERS ASSOCIATION

“Union.”

**OPINION
AND
AWARD**

Docket No. IA-2000-53

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Employer:

Robert E. Murray, Esq.
Murray & Murray

For the Union:

Bruce D. Leder, Esq.
Cohen, Leder, Montalbano & Grossman

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I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission ["PERC"] in accordance with P.L. 1995, c. 425, in this impasse between the North Hudson Regional Fire and Rescue [the "Employer" or "Regional"] and the North Hudson Fire Fighters Association [the "Union"]. This is the first labor agreement between the Regional and the Union after the creation of a regional body to replace the paid fire departments in the municipalities of Weehawken, Union City, North Bergen, West New York and Guttenberg. The terms and conditions for firefighters employed in these municipalities set by their previous labor agreements have remained in effect pursuant to statute but shall, as a result of this Award, be replaced by a single labor agreement setting new terms and conditions of employment. This Award governs the rank and file firefighters. On this same date a separate award has issued governing fire officers.

Pursuant to my statutory authority, several pre-interest arbitration mediation sessions were held. Although these sessions produced agreements on limited issues, they failed to achieve resolution of most of the issues in dispute. Because the impasse was not resolved, formal interest arbitration hearings were held on September 12, 2000, October 6, 2000; October 11, 2000; November 6, 2000; November 29, 2000; December 5, 2000; December 13, 2000; January 22, 2001; February 7, 2000; and February 12, 2001. The mandatory terminal procedure of conventional arbitration was used to decide all issues in

dispute. Under this procedure the arbitrator has the authority to fashion an award which he believes represents the most reasonable determination of the issues in dispute.

At the arbitration hearing, the Regional presented testimony from Jeffrey Welz - Co-Executive Director for Administration, Michael DeOrio - Co-Executive Director and Christopher Pianese - Chief Financial Officer for the Regional. The Union presented testimony from Dominick Marino - Vice President of North Hudson Firefighters Association and previously the President of the union representing North Bergen Firefighters, Glen Michelin - President of North Hudson Firefighters Association and formerly the union representative for the Union City Firefighters, Bill Willard - Vice President of North Hudson Firefighters Association and previously the President of the union representing West New York Firefighters and Vincent Foti - Financial Consultant. In addition, each party submitted extensive documentary evidence into the record. Each party filed comprehensive post-hearing briefs.

I have thoroughly considered the testimony, the documentary evidence and the arguments set forth in the post-hearing briefs filed by both parties. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant, satisfactorily explain why

the others are not relevant, and provide an analysis of the evidence on each relevant factor. These factors, commonly called the statutory criteria, are as follows:

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

- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
 - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

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

 - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.
- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

BACKGROUND

The Regional is a unique public employer. The history of the formation and operation of the Regional was placed in evidence. The Regional was formed as a Joint Meeting pursuant to the Consolidated Municipal Service Act, N.J.S.A. 40:48-B-1, *et seq.* It covers five (5) Hudson County municipalities; Weehawken, Union City, North Bergen, West New York and Guttenberg.

A Joint Meeting is a public body corporate and politic constituting a political subdivision of the State exercising public and essential governmental functions to provide for the public health and welfare. N.J.S.A. 40:48B-2.1a.

The “Consolidated Municipal Service Act” of 1952 provides in pertinent part:

The governing bodies of any two municipalities or counties or combination of municipality or municipalities and county or counties may enter into a joint contract for a period not to exceed 40 years to provide for the formation of a joint meeting for the joint operation of any public services, public improvements, works, facilities or undertakings which any such local unit is empowered to operate ...

N.J.S.A. 40:48B-2a.

A joint contract may provide for joint services in any service which any contracting local unit on whose behalf such services are to be performed is legally authorized to provide for itself. Such services shall include but not be limited to general government administration, health, police and fire protection, code enforcement, assessment and collection of taxes, financial administration, environmental protection, joint municipal courts, youth, senior citizens and social welfare programs.

N.J.S.A. 40:48B-2b.

The joint contract: provide[s] for the operation of the public services, public improvements, works, facilities or undertakings of the joint meeting, for the apportionment of the costs and expenses of operation required thereof among the contracting local units as members of the joint meeting . . . The apportionment of costs and expenses may be based upon assessed valuations, population, and such other factor or factors ...

N.J.S.A. 40:48B-4.

The regionalization was intended to consolidate the delivery of fire and rescue services for the participating municipalities with the goal of realizing cost savings while improving response time, and promoting life and property preservation. All personnel engaged in administration or direct firefighting services are experienced professionals in the fire service. By pooling resources, the Regional provides a faster response and a broader level of manpower, both of which benefit the public and the firefighters. The goal was described by Weehawken Mayor Richard Turner who stated:

The Regionalization approach is solid. If we can deliver a better service, it doesn't matter if the savings is 10¢ or 10 million dollars. If we save anything, we have helped the taxpayer.

Before the regionalization, West New York, Weehawken, Union City, North Bergen and Guttenberg each had their own departments, collective negotiations agreements and memorandum of agreements with their respective firefighter and fire officer unions. The memoranda served as bridges from

contract expiration of prior agreements through the commencement of regionalization. Prior to regionalization, Guttenberg negotiated a transition contract adopting the terms of the West New York agreement. On or about September 30, 1998, each of these five (5) municipalities adopted resolutions authorizing the establishment and maintenance of a joint fire, rescue and coordinated communications entity and also authorized ordinances for the sale, lease, transfer, conveyance or other disposition and improvement of real and personal property related to this merger of fire services.

On January 11, 1999, the Regional commenced operations. It began to respond to fires on a first alarm basis in North Bergen, Weehawken, West New York, Union City and Guttenberg.

At the time the Regional was formed, there were 222 firefighters and 108 fire officers representing a combined total workforce of 330. Upon regionalization, 59 firefighters and fire officers retired under an early retirement incentive program providing \$1,700,000 from the State of New Jersey for this purpose. At the time of hearing, there were 35 fewer firefighting personnel.

Upon its formation, the Regional has recognized the four (4) collective bargaining agreements and, as required by law, has implemented them. In doing so, the Regional was required to comply with a statutory status quo obligation in applying those Agreements. N.J.S.A. 40:48B-4.2 states:

Terms and conditions of existing contracts of merging bargaining units. Where bargaining units are merged which have contracts negotiated in accordance with the provisions of the "New Jersey Employer-Employee Relations Act," P.L. 1941, c.100 (C.34:13A-1 et seq.) in existence, the terms and conditions of the existing contracts shall apply to the rights of the members of the respective bargaining units until a new contract is negotiated, reduced to writing and signed by the parties as provided pursuant to law and regulation promulgated thereunder.

Prior to the merger of fire services, the firefighters were each represented by four separate unions. On March 8, 1999 a secret ballot election was also held in which PERC certified the North Hudson Firefighters Association as the certified bargaining representative for all employees holding the title of Firefighter within the Regional.

There are eighteen (18) fire companies in the Regional. Firefighters are permanently assigned to each of the eighteen (18) fire companies except for those assigned to staff duty. Both before and since the regionalization, all firefighters and fire officers work a twenty-four (24) hour shift followed by seventy-two (72) hours off. The preservation of the status quo has resulted in firefighters having varied terms and conditions of employment including, but not limited to, salary, longevity, vacation, holiday pay, health insurance, and service differentials. Employees hired after regionalization have been working under terms set by the Regional.

The Regional is a new entity and thus, a new employer. It does not have the lawful authority to raise revenue by directly taxing the residents. Rather, the annual costs and expenses of operating the Regional are allocated among the five (5) individual participating municipalities. Of the total amount contributed by the participating municipalities, North Bergen contributes 26.2%, Union City contributes 33.45%, Weehawken contributes 14.83%, and West New York contributes 25.52%. In addition, Guttenberg contributes a flat annual rate of \$1.5 million.

The general financial underpinnings of the Regional have been fully laid out in relevant documents submitted into the record.

For the nine (9) months that the Regional operated in the year 1999, North Bergen contributed \$4,412,169, Union City contributed \$5,633,100, Weehawken contributed \$2,497,428, West New York contributed \$4,297,653, and Guttenberg contributed \$1,375,000. For the year 2000, North Bergen contributed \$5,588,747, Union City contributed \$7,135,260, Weehawken contributed \$3,163,409, West New York contributed \$5,443,694, and Guttenberg contributed \$1,500,000. For the year 2001, North Bergen will contribute \$5,882,892, Union City will contribute \$7,510,800, Weehawken will contribute \$3,329,904, West New York will contribute \$5,730,204, and Guttenberg will contribute \$1,500,000.

The joint contract contemplated the conveyance by sale, lease, or otherwise of real property and improvements thereon, vehicle and apparatus and all other assets used by the individual municipalities in the furnishing of fire protection, rescue and emergency services. The Hudson County Improvement Authority (hereinafter referred to as "Authority") is a "public body politic and corporate constituting a political subdivision of the State of New Jersey, established as an instrumentality exercising public and essential governmental functions to provide for the public convenience, benefit and welfare of the citizens of the County."

The Authority issued and sold \$22,080,000 of "Lease Revenue Bonds, Series 1999 (North Hudson Regional Fire and Rescue Project)", consisting of \$7,010,000 principal amount of Lease Revenue Bonds, Series 1999A (North Hudson Fire and Rescue Project-Original Parties' Guaranteed Tax-Exempt Series (the "Series 1999A Bonds") and \$15,070,000 principal amount of Lease Revenue Bonds, Series 1999B (North Hudson Regional Fire and Rescue Project-Original Parties' Guaranteed Taxable Series) (the "Series 1999B Bonds" and together with the Series 1999A Bonds, the "Series 1999 Bonds"). The Series 1999 Bonds were issued to finance, among other things, the:

- (a) the acquisition of an ownership or leasehold interest in and the construction, renovation, improvement, installation, equipping and furnishing of various public Facilities (as defined herein), including real property, improvements, vehicles, equipment and other categories of personal property used by the Municipalities (as hereinafter defined) in the furnishing of fire protection, rescue and

emergency services and other interrelated governmental services ... (b) funding of capitalized interest on the Series 1999 Bonds through March 1, 2001, and (c) payment of the costs and expenses of issuing the Series 1999 Bonds.

Once the Authority acquired the interest in the equipment and facilities, it agreed to lease all of the equipment and facilities to the Regional. Pursuant to the terms of the lease and agreement, the Regional agreed to make rental payments to the Authority. Payments under the lease revenue bonds continue through March 1, 2024.

The municipalities received substantial sums of money from sale of assets. Disbursements amounted to \$996,000 for Guttenberg, \$4,458,000 for North Bergen, \$1,642,200 for Weehawken, \$3,369,000 for West New York and \$4,613,000 for Union City.

The first semi-annual payment under the Series 1999A Lease Revenue Bonds was due on September 1, 2001, which amounted to \$187,910.63. The first semi-annual payment under the Series 1999B Lease Revenue Bonds was also due on September 1, 2001, which amounted to an additional \$579,044.75. Over the next twelve (12) months alone, payments made under these bond issues will total \$1,533,916.76.

The Regional's first budget was a transitional nine (9) month budget from April 1, 1999 through December 31, 1999. In 1999, the Regional had total

revenues of \$20,126,223.36. The Regional had no cash surplus, but received \$7,500.00 from interest on investments, received \$18,215,350.00 from municipal contributions, and received \$1,903,373.36 from the State of New Jersey. In 1999, the Regional appropriated \$20,126,223.36 in the following manner: \$342,000.00 for general administration, \$22,000.00 for committee members, \$85,000.00 for financial services, \$535,000.00 for legal services, \$426,000.00 for liability insurance, \$30,000.00 for workers compensation, \$916,373.36 for employee group insurance, \$16,828,850.00 for salaries and equipment, \$350,000.00 for vehicle maintenance, \$76,000.00 for buildings and grounds, \$20,000.00 for electricity, \$5,000.00 for water, \$5,000.00 for gas, \$35,000.00 for fuel oil, \$210,000.00 for telecommunications, \$120,000.00 for social security, and \$20,000.00 for judgments and claims.

The Regional's second budget was for the Year 2000. In 2000, the Regional had total revenues of \$23,977,000.00. The Regional received \$25,000.00 from interest on investments, received \$22,831,110.00 from municipal contributions, and received \$396,625.00 from the State of New Jersey. In 2000, the Regional appropriated \$23,977,000.00 in the following manner: \$325,000.00 for general administration, \$25,000.00 for committee members, \$45,000.00 for financial services, \$460,000.00 for legal services, \$536,000.00 for liability insurance, \$100,000.00 for workers compensation, \$21,531,000.00 for salaries and equipment, \$370,000.00 for vehicle maintenance, \$205,000.00 for buildings and grounds, \$75,000.00 for electricity, \$25,000.00 for water,

\$25,000.00 for gas, \$10,000.00 for fuel oil, \$35,000.00 for telecommunications, \$10,000 for the Public Employees Retirement System, \$150,000.00 for social security, and \$50,000.00 for judgments and claims.

The Regional's third budget was for the Year 2001. For 2001, the Regional expects to have revenues of \$24,773,890.00. The Regional received \$20,000.00 from interest on investments, and received \$23,953,890.00 from municipal contributions. For 2001, the Regional appropriated \$24,773.890.00 in the following manner: \$328,500.00 for general administration, \$25,000.00 for committee members, \$40,000.00 for financial services, \$425,000.00 for legal services, \$540,000.00 for liability insurance, \$125,000.00 for workers compensation, \$22,297,890.00 for salaries and equipment, \$375,000.00 for vehicle maintenance, \$187,500.00 for buildings and grounds, \$50,000.00 for electricity, \$25,000.00 for water, \$50,000.00 for gas, \$50,000.00 for fuel oil, \$35,000.00 for telecommunications, \$10,000 for the Public Employees Retirement System, \$160,000.00 for social security, and \$50,000.00 for judgments and claims. For the year 2001, the entire budget was funded by the municipal contributions.

The five (5) municipalities that make up the Regional have a combined population of 165,369. Individually, West New York has a population of 38,020 and land area slightly more than one square mile; Weehawken has a population of 12,715 and a land area of 0.85 square miles; North Bergen has a population of

48,639 and a land area of 5.19 square miles; Union City has a population of 57,621 and a land area of 1.27 square miles; Guttenberg has a population of 8,374 and a land area of 0.19 square miles.

The population of the Regional makes it the third (3rd) most populous political subdivision to be served by a single paid fire department placing it behind only Newark, which has a population of 267,823, and Jersey City, which has a population of 232,429.

The Regional covers a combined area of 8.52 square miles. Thus, the Regional has approximately 18,374 people per mile and is the most densely populated subdivision to be served by a single fire department. In comparison, Atlantic City has 3,347 people per mile; Bayonne has 10,927 people per mile; Elizabeth has 8,929 people per mile; Jersey City has 15,362 people per mile; Newark has 11,558 people per mile; Paterson has 16,695 people per mile; and Trenton has 11,591 people per mile.

By all indications, the Regional is serving its purpose of providing effective and efficient fire services through serving the public from geographic locations which cross municipal lines.

THE ISSUES IN DISPUTE AND THE LAST OFFERS AND POSITIONS OF THE PARTIES

The issues in this proceeding are complex and vast in number and scope. All of the prior agreements in the individual municipalities have been the result of decades of negotiations. The terms and conditions of employment of the firefighters in these municipalities differed in many key respects from one another. The Regional has hired new employees who had never been employed by any of the individual municipalities. This Award will represent the first agreement of the parties covering all firefighters. The task of accomplishing this goal is a daunting one and has led to dozens of issues, major and minor, remaining open despite genuine and sincere efforts toward voluntary resolution. This arbitrator respectfully commends all participants in this proceeding for their professionalism, competence, cooperation and courtesy.

It is a challenge to lay out each issue in dispute and to set forth the respective positions and arguments of the Regional and the Union on each issue along with the supporting evidence each party has submitted into the record. The sheer volume of issues and the complexity of so many of them makes it virtually impossible to summarize each issue in as broad and comprehensive a manner as might be done in a more typical impasse involving a single municipality involving mere adjustments to a pre-existing contract. Other complicating factors are present. In their efforts to argue on behalf of a proposal, each party has pointed to the provisions in several different prior agreements

which govern the subject matter of that single particular issue. Also, each party has submitted certain proposals containing different nomenclature in subject matter headings. Another consideration is that each party has, on certain issues, accepted, rejected, and/or modified only individual sections of each party's total proposals on individual topics. In other instances, each party may have made a proposal which the other party has simply rejected rather than offering a substantive counter-proposal. Wherever possible, I have provided cross-referencing on individual subjects. In the event that either party has not offered specific argument in support of the rejection of a proposal, I will treat such silence as an intent to totally reject the other party's proposal.

For the sake of clarity and self-containment, I have laid out each party's proposal on each individual topic and have accompanied each proposal with a concise summary of argument and evidence presented on that proposal. The compensation issues which involve substantial costs have been laid out last along with a summary of the evidence and argument each party has provided referencing the relevant statutory criteria. At the end of each individual topic I have set forth what I have awarded on that issue as well as a self-contained award covering all of the issues at the end of the decision.

PREAMBLE

The **Regional** proposes the following contractual language:

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as "Employer" or "Regional") and the North Hudson Firefighters Association (also referred to as "Association") represents the complete and final understanding of all bargainable issues between the parties.

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants it is mutually agreed as follows:

The **Union** proposes the following contractual language:

This agreement is entered into this _____ day of _____ by and between the North Hudson Regional Fire and Rescue Department in the County of Hudson, New Jersey, an entity of the State of New Jersey, hereafter called the "Employer," and the North Hudson Fire Fighters Association of the FMBA/IAFF/PFANJ, AFL-CIO-CLC, hereafter called the "Association."

The Employer and the Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, the service to the community to be continuous and efficient, and have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement.

The Regional points out that its proposal is similar to the preamble provision included in the Union City contract. Relying upon Mr. Marino's

testimony, the Regional notes that the Union's proposal is based upon the language from three of the existing contracts; Weehawken, Union City, and North Bergen. The Regional notes that the collective bargaining agreements covering West New York and Guttenberg did not contain a preamble.

Asserting that the two proposals are relatively similar, the Regional asserts that its proposal more clearly sets forth the relationship between the Regional and the Union, and therefore, urges its adoption.

Recognizing that the intent of the preamble provision is to correctly identify the parties, the Union notes that the North Hudson Regional Fire & Rescue appears to be the proper name of the Employer as set forth in their proposal. The Union notes that its proper name is the North Hudson Firefighters Association affiliated with FMBA/IAFF/PFANJ/AFL-CIO-CLC. According to the Union, the remaining language in its proposal sets forth the mutual aim of harmonious labor relations.

The Preamble proposed by both parties are similar, with the only significant difference being the addition in the Regional's proposal of a notation that this agreement "represents the complete and final understanding of all bargainable issues between the parties." A similar provision is included in the Regional's Maintenance of Standards proposal and need not be included in a provision primarily designed to identify the parties and their mutual goals.

For these reasons, the Preamble shall provide as follows:

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as “Employer” or “Regional”) and the North Hudson Fire Fighters Association of the FMBA/IAFF/PFANJ, AFL-CIO-CLC (also referred to as “Association”)

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants, it is mutually agreed as follows:

DEFINITIONS

The **Union** proposes the following contractual language:

The North Hudson Regional Fire and Rescue is the same as NHRF&R, Fire Department and/or Employer.

The North Hudson Fire Fighters Association is also the NHFFA, the Association and/or bargaining agent.

The Association representative means all elected officer and/or designated agents of the North Hudson Fire Fighters Association.

Department head refers to the Director of the North Hudson Regional Fire and Rescue.

Chief means the Fire Chief of the North Hudson Regional Fire and Rescue.

Immediate supervisor means the company officer.

The Union notes that its definitions provision is similar to the language in the Union City contract. According to the Union, the language is not controversial and the only reason for the Regional to refuse to agree to this language is to frustrate the aim of harmonious labor relations, a claim which the Regional denies.

The Regional points out that only the Union City contract includes a provision setting forth definitions, beyond that of an "employee," which is also included in the Weehawken and West New York contracts. In contrast, the Regional emphasizes Mr. Marino's testimony that North Bergen firefighters were not disadvantaged by the lack of a definition section in their agreement. Accordingly, the Regional asserts that a section including definitions is unnecessary and the absence of such a section would not place its firefighters at any disadvantage.

Neither party has identified a significant need or harm that would arise from the inclusion of a Definitions section in the agreement. If the parties wish to do so in the succeeding agreement, a Definitions section would be a proper

subject for negotiations at that time. Accordingly, no such provision is included in the agreement.

ASSOCIATION RECOGNITION CLAUSE

The **Regional** proposes the following contractual language:

Section 1.0: North Hudson Regional Fire & Rescue, pursuant to the recognition granted by the Public Employees Relations Commission, recognizes North Hudson Firefighters Association as the exclusive representative of employees in classifications covered by the contract. This contract shall apply to all permanent employees working in the classification[s] listed below, and to any other classification which may be established within the scope of the duties now included within these classifications:

Firefighter

The **Union** proposes the following contractual language:

- A. The Employer hereby recognizes the Association as the exclusive and sole representative(s) for collective negotiations concerning salary, hours of work, fringe benefits, working conditions, safety of equipment, procedures for adjustment of disputes and grievances, all terms and conditions of employment within the limits fixed by State Law and all other related matter for all Firefighters within the Fire Department of the North Hudson Regional Fire and Rescue, but excluding all other employees.
- B. The employees covered by this agreement shall be construed to mean all members of the North Hudson Regional Fire and Rescue Department with the permanent New Jersey State Department of Personnel (DOP) Classification of Firefighter.
- C. In the event of a conflict between the terms of this Agreement and the Rules and Regulations of the Department, then and in that event, the terms of this Agreement shall govern.

- D. All conditions of employment relating to wages, hours of work and general working conditions presently in effect for employees shall be maintained at no less than the standards now in effect, and the conditions of employment shall be improved wherever specific provisions for improvements are made in this Agreement.
- E. This Agreement shall be binding on the parties hereto, their heirs, successors, administrators, executors and/or assigns.

The Regional cites Mr. Marino's testimony that Paragraph A is intended to provide a general synopsis of the Union's responsibilities during the negotiation process and that Paragraph B provides a description of who is covered by the proposed agreement. However, the Regional points out that Mr. Marino acknowledged that a provision similar to Paragraph B is included only in the North Bergen contract. According to the Regional, the West New York and North Bergen agreements do not include provisions similar to Paragraph C, which would provide that if there is a conflict between the Agreement and rules/regulations, the Agreement would govern. The Regional notes that only the Union City agreement includes a provision similar to Paragraph D, and that Paragraph E is not found in any of the municipal contracts.

In contrast, the Regional asserts that its proposal is more succinct and is substantially similar to recognition clauses included in other firefighters' contracts. The Regional emphasizes that the provisions included in Paragraph's C, D, and E are not included in the previous municipal agreements. Specifically, the Regional urges the rejection of Paragraph (D) of the Union's proposal because it would limit the managerial prerogatives and flexibility of the Regional

by requiring it to maintain and continue what it terms “antiquated provisions and practices” which arose in the five individual municipalities. The Regional stresses that such a provision would run contrary to the purposes for which the Regional was formed. The Regional emphasizes that it is an entirely new entity and employer and must be recognized as such. According to the Regional, the five municipal fire departments do not exist any more and thus, a maintenance of benefits provisions is inappropriate.

The Regional asserts that it cannot be restricted by clauses or practices from each of the municipal contracts because they were negotiated between each municipality and the respective firefighter union and specifically address issues and situations particular to that municipality and union only. The Regional maintains that the collective negotiations agreement that will be created as a result of the interest arbitration process must address the unique characteristics of the Regional which it believes to be quite different from the characteristics and qualities of the individual municipalities and their respective firefighter unions. The Regional notes that the municipal fire departments and the bargaining units were dissolved when the Regional was formed.

Furthermore, the Regional points out that the Union failed to provide any testimony explaining the rationale for including its proposal in the new contract. For these reasons, the Regional urges adoption of its Recognition clause and denial of the Union’s.

The Union notes that both parties set forth common recognition language, but adds that the remainder of its proposal would clarify the relationship between the parties. The Union's proposal identifies the classification of firefighter as those covered by the Agreement and ensures that there is no dispute that the provisions of the Agreement supersede any provision in the rules and regulations of the Department. The Union points out that it also would include a provision similar to its maintenance of standards language. The Union asserts that these proposals have merit and should be awarded.

Both parties would identify the Union as the exclusive representative of employees within the classification of firefighter. The Union would also include a provision adopting the New Jersey State Department of Personal (DOP) classification of Firefighter, as is included in the previous Weehawken agreement, while the Regional's proposal would cover the classification of firefighter without reference to the DOP classification. Reference to the DOP firefighter classification was included only in the previous West New York agreement and no specific rationale for its inclusion in an agreement with the new Regional employer has been proffered. The term "firefighter," without further amplification, is accurate, appropriate and is awarded.

The Union's proposal also includes a provision governing conflict between the terms of the Agreement and Department rules and regulations, a

maintenance of standards provision, and a successorship provision. The Union's proposal regarding the governance of the contract provisions in the event of a conflict with a Department rule or regulation originated in the Union City agreement, but is not included in the North Bergen or West New York agreements. A similar provision is included in the Weehawken agreement. Such a proposal would clarify the relationship between the Agreement and departmental rules and regulations and I include it in the recognition clause. Clarification would be enhanced by adding the word "specific" in front of "terms of this Agreement and "Rules and Regulations of this Department."

The maintenance of standards provision is addressed in a separate proposal by the Union regarding that subject and is not a proper subject for consideration in the recognition clause.

None of the previous agreements included a successorship provision and one shall not be added here.

For these reasons, the Recognition Clause shall provide as follows:

- A. The Employer hereby recognizes the Association as the exclusive and sole representative(s) for collective negotiations concerning salary, hours of work, fringe benefits, working conditions, safety of equipment, procedures for adjustment of disputes and grievances, all terms and conditions of employment within the limits fixed by State Law and all other related matter for all Firefighters within the Fire Department of the North Hudson Regional Fire and Rescue, but excluding all other employees.

- B. In the event of a conflict between the specific terms of this Agreement and the specific Rules and Regulations of the Department, then, and in that event, the terms of this Agreement shall govern.

EMPLOYEE BASIC RIGHTS

The **Regional** proposes the following contractual language:

Section 19.0: In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

The **Union** proposes the following contractual language:

1. The employer and the Association agree that every employee shall have the right to organize, join and support the Association for the purpose of engaging in collective negotiations or to refrain from same. The Employer and the Association undertake and agree that they shall not directly or indirectly discourage or deprive or coerce an employee in the enjoyment of any right conferred by (Employer/Employee) NJSA 34:13A-1, et. seq.
2. The Employer and the Association further agree that they shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership or non-membership in the Association, his participation or non-participation in any activities of the Association with respect to collective negotiations or his institution or failure to institute any grievance, complaint or proceeding under this Agreement.
3. In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:
 - a. The interrogation of a member of the Department shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise.

- b. The interrogation shall take place at a location designated by the Fire Chief. Usually it will be at Fire Headquarters or the location where the incident allegedly occurred.
- c. The member of the Department shall be informed of the nature of the investigation before any interrogation commences. Sufficient information to reasonably apprise the members of the allegation should be provided. If it is known that the member of the Department is being interrogated as witness only, he/she should be so informed at the initial contact.
- d. The questioning shall be reasonable in length. Time shall be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
- e. The member of the Department shall not be subject to any offensive language, nor shall he/she be threatened with reassignment or transfer, dismissal or other disciplinary punishment. No promise of reward shall be made an inducement to answering questions. Nothing herein shall be construed as preventing the investigating officer from informing the employee of the possible consequences of his acts.
- f. The Department shall permit the member the opportunity to consult with an attorney and/or an Association representative at anytime.
- g. In cases other than departmental investigations, if a member of the Department is under arrest or if he/she is a suspect or the target of a criminal investigation, he/she shall be given his/her rights pursuant to the current decisions of the United States Supreme Court.
- h. Nothing herein shall be construed to deprive the employer or its employees of the ability to conduct routine and daily operations of the Department.
- i. Nothing herein shall be construed to deny or restrict either the Department or the employee such rights as they may have under the New Jersey statutes or other applicable laws and/or regulations.

4. NON-DISCRIMINATION

The Department and the Association agree that there shall be no discrimination against any employee because of race, creed, color, religion, sex, national origin or political affiliation.

Emphasizing that the Regional does not have an Employee Rights proposal, the Union points out that its proposal is based upon the Union City and Weehawken contracts. According to the Union, the first provision is recognition of the right of firefighters to support or refrain from supporting the Union. Although this concept is an existing statutory right, the Union asserts that this basic principle should be incorporated into the agreement. Similarly, the Union notes that the second paragraph provides a statement of the law which indicates that the Regional will not discriminate against firefighters based upon membership or non-membership in the Union, and asks that this concept also be included in the collective bargaining agreement. According to the Union, Paragraph C, which concerns departmental investigations, simply provides a recitation of elementary due process rights in the event that one of its members is interrogated. According to the Union, these basic human rights are necessary to protect firefighters against unwarranted intrusions by the Regional.

The Regional begins by pointing to Mr. Marino's testimony that the purpose of the Union's proposed provision was to provide clear and unambiguous language regarding the firefighters' protection. The Regional notes that the first paragraph of the Union's proposal is based primarily upon the

Weehawken contract, but none of the remaining municipal contracts contain a similar provision. Similarly, the Regional notes that Paragraph 2 of the Union's proposal is based upon the Weehawken contract, but, neither the North Bergen contract nor the Union City contract include a similar provision. Likewise, the Regional notes that Paragraph (3) is based primarily upon the Union City and Weehawken contracts, and the North Bergen and West New York contracts do not include similar provisions. Finally, the Regional points out that both Section 19.0 of its proposal and Paragraph (4) of the Union's proposal are based on language set forth in the Union City and West New York contracts.

According to the Regional, the Union's proposal regarding employee basic rights includes non-negotiable subject matter. Specifically, the Regional maintains that subparagraphs (a) through (i) each restrict the Regional's ability to investigate disciplinary infractions or criminal charges. The Regional asserts that it is well established that the government's managerial prerogative to determine such policy is non-negotiable and non-arbitrable. Board of Educ. of the Township of N. Bergen v. North Bergen Fed'n of Teachers, 141 N.J. Super. 97, 103-04 (App. Div. 1976). Accordingly, the Regional urges rejection of the Union's proposal because it is non-negotiable.

To the extent that the Employee Basic Rights provision proposed by the Union affirms rights provided by the New Jersey Employer-Employee Relations Act, it is awarded. The non-discrimination provision has been agreed to by both

parties but has been included in a section titled "Non-Discrimination" and is not included here.

The Union seeks to include a section covering employee rights in departmental hearings. That proposal mirrors similar provisions included in the previous agreements in Weehawken and Union City. The previous agreements in North Bergen and West New York did not include such provisions. Some of the procedural protections that the Union seeks to include in the agreement are long established legal protections, others may exceed legal requirements, while others, though procedural in nature, might impede the department's investigation. To the extent that the Union proposes procedural protections addressing the time and place of the interrogation, or protections that reiterate legal requirements, they are included in this Award.

The Regional asserts that this provision infringes upon its managerial prerogative to set policy and is non-negotiable and should not be included in the agreement. The Regional has filed a scope of negotiations petition with PERC over several proposals in this case and in the companion case covering the fire officers, but has not included this provision in its petition. In the absence of direction from PERC on this issue, the Employee Basic Rights provision is awarded as follows:

1. The Employer and the Association agree that every employee shall have the right to organize, join and support

the Association for the purpose of engaging in collective negotiations or to refrain from same. The Employer and the Association undertake and agree that they shall not directly or indirectly discourage or deprive or coerce an employee in the enjoyment of any right conferred by The Employer/Employee Relations Act. NJSA 34:13A-1, et. seq.

2. The Employer and the Association further agree that they shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership or non-membership in the Association, his participation or non-participation in any activities of the Association with respect to collective negotiations or his institution or failure to institute any grievance, complaint or proceeding under this Agreement.
3. In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:
 - a. The interrogation of a member of the Department shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise.
 - b. The interrogation shall take place at a location designated by the Fire Chief. Usually it will be at Fire Headquarters or the location where the incident allegedly occurred.
 - c. The questioning shall be reasonable in length. Time shall be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
 - d. The Department shall permit the member the opportunity to consult with an Association representative at any stage during a proceeding in which the employee reasonably believes may result in disciplinary or criminal charges against that employee upon the request of the employee .
 - e. Nothing herein shall be construed to deprive the employer or its employees of the ability to conduct routine and daily operations of the Department.

- f. Nothing herein shall be construed to deny or restrict either the Department or the employee such rights as they may have under the New Jersey statutes or other applicable laws and/or regulations.

RULES AND REGULATIONS

The **Regional** proposes the following contractual language:

Section ____: Proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the majority representative before they are established pursuant to the New Jersey Employer Employee Relations Act.

The **Union** proposes the following contractual language:

Proposed new rules or modification of the existing rules governing working conditions shall be negotiated with the majority representative before they are established. (N.J. Employer-Employee Relations Act-Chapter 303 Laws of 1968, 34:13A:5.3). The Department shall serve a copy of the proposed new rules or modifications upon the Association no less than thirty (30) days prior to implementation. The Department shall not implement such working conditions change if the Association advises the Department of its desire to negotiate concerning such change.

The Regional cites the testimony of Director DeOrio that in order to further the operations of a fire department, it is necessary at times to issue general orders that may constitute new rules or modifications of existing rules. The Regional points out that if the rule affected working conditions, Director DeOrio testified that he would often seek input from the executive board and/or union before implementing the rule. According to Director DeOrio, if the union continued to object to a new rule or modification, they would have the ability to file a grievance or an unfair labor charge.

Acknowledging that N.J.S.A. 34:13A-5.3 requires an employer to negotiate over proposed new rules, or modifications of existing rules, governing working conditions, the Regional points out that it has the right to establish rules governing subjects that are not mandatorily negotiable. South Orange Village Township, P.E.R.C. NO. 90-57, 16 NJPER 37 (¶ 21017 1989).

The Regional contends that the Union did not offer any explanation of why its proposal should be adopted. In contrast, the Regional cites the testimony of Director DeOrio where he explained that in operating a fire department, it is necessary to issue general orders which may constitute new rules or modifications of existing rules.

The Regional also argues that the second sentence of the Union's proposal is not mandatorily negotiable because it significantly interferes with the Regional's right to implement rules. See North Hudson Regional Fire and Rescue, P.E.R.C. NO. 2000-78, 27 NJPER 184 (¶ 31075 2000). Accordingly, the Regional asserts that its proposal should be adopted and the Union's proposal should be denied. The Union points out that its proposal supplements N.J.S.A. 34:13A-5.3, by providing a notice requirement of thirty days, and requires the Regional not to implement such changes without negotiating with the Union. According to the Union, the Regional has only provided a bare bones proposal

on rules and regulations which, while similar to the Union's proposal, lacks the specificity contained in that proposal.

The parties agree to incorporate the language of 34:13A:5.3 into the agreement. While a notice provision could reasonably accompany this language, any such provision specifying a number of days could unduly restrict the adoption of a rule which is proposed by the Regional in response to an exigency. I also believe that the parties should have concrete experience under more general language to allow for a time period which they may find acceptable and manageable. After such experience, one or both parties can seek to negotiate a notice provision containing a specific number of days. Until such time, I award a time period which is "reasonable."

Accordingly, I award the following Article:

Proposed new rules or modification of the existing rules governing working conditions shall be negotiated with the majority representative before they are established. (N.J. Employer-Employee Relations Act-Chapter 303 Laws of 1968, 34:13A:5.3). The Association shall receive notice of any such rule within a reasonable period of time prior to the establishment of such rule.

MANAGEMENT RIGHTS

The **Regional** proposes the following contractual language:

Section 2.0: North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it

prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:

Section 2.1: The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.

Section 2.3: To make rules of procedure and conduct, to use improved methods and equipment, as well as duties to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.

Section 2.4: To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.

Section 2.5: To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.

Section 2.6: To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive.

Section 2.7: The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited only by the specific and express terms of this Agreement and then only to the extent such specific and express terms are in conformance with the Constitutions and laws of New Jersey and of the United States.

The **Union** proposes the following contractual language concerning Management Rights:

1. North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited to the following:

2. The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.

The Regional does not contend that the Union's proposal contains an illegal restriction on the right to manage the department. See Town of Kearny, P.E.R.C. NO. 82-12, 7 NJPER 456 (¶ 12202 1981). Rather, it asserts that its proposal should be adopted instead of the Union's proposal because the Regional's provision more comprehensively sets forth its managerial rights, including the right to make rules of procedure and conduct; hire, promote, transfer, assign, suspend, demote, discharge, and lay off employees; among other managerial rights.

Noting that the parties agree to the Regional's proposals regarding Section 2.0 and 2.1, the Union asserts that the remaining provisions of the Regional's proposal concern rules and regulations, hiring employees, disciplining employees and laying off employees. According to the Union, all of these matters have been addressed in other Articles of the contract and their inclusion in the Management Rights clause is superfluous and unnecessary. The Union expresses great concern about the Regional's proposed Section 2.7. The Union maintains that in this proposal the Regional seeks to avoid its responsibility to negotiate concerning those terms and conditions of employment which have not been specifically or expressly addressed in this Agreement. Emphasizing that

this first agreement has been an onerous task, the Union asserts that in the event that both parties inadvertently fail to address an issue, the Regional could attempt to use Section 2.7 to avoid its obligation and negotiate with respect to that issue. The Union maintains that to permit such action would conflict with the statutory goal of harmonious labor relations. Accordingly, the Union urges rejection of the Regional's Management Rights proposal asserting that the two paragraphs agreed to by the parties sufficiently set forth the Regional's powers, rights, and duties.

The parties agree upon the broad language of a management rights provision. The Regional, however, would spell out specific management rights in proposed sections 2.3, 2.4 and 2.5. The Union does not assert that these are not management rights, but does maintain the level of detail is unnecessary since these rights are covered in other provisions. As acknowledged by both parties, the management rights specified in sections 2.3, 2.4 and 2.5 of the Regional's proposal are similar to those included in the North Bergen and there is no evidence that it has led to an abuse of managerial authority or interfered with the negotiation or administration of terms and conditions of employment. These sections shall be included here.

Section 2.6 clarifies the managerial prerogative with respect to layoffs and is also awarded with the modification that any such action be consistent with civil service law.

Section 2.7 of the Regional's proposal is new language not included in the Management Rights provisions of any of the predecessor agreements. A provision such as this recognizes that the exercise of management rights be limited by and consistent with the terms of the collective negotiations agreement. Because it is well established that implied limitations may exist on the exercise of managerial authority, I do not include reference to "specific and express" with respect to the terms of the Agreement. The remainder of 2.7 is a restatement that the terms of the Agreement are subject to law. This reference is an appropriate inclusion in the management rights provision.

For the reasons stated above, the management rights clause shall provide as follows:

Section 2.0: North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:

Section 2.1: The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.

Section 2.3: To make rules of procedure and conduct, subject to N.J.S.A. 13A:5-1 et. sec., to use improved methods and equipment, as well as duties, to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.

Section 2.4: To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.

Section 2.5: To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.

Section 2.6: To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive consistent with the provisions of civil service law.

Section 2.7: The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited by the terms of this Agreement and then only to the extent that such terms are in conformance with the Constitutions and laws of New Jersey and of the United States.

The exercise of any management rights set forth herein shall be consistent with the terms of this Agreement.

ASSOCIATION RIGHTS & OFFICE SPACE

The **Regional** proposes the following contractual language regarding

Association rights:

Section 3.1: Association Leave

North Hudson Regional Fire & Rescue agrees to release designated Association representatives, not to exceed two (2) at one time, for a total of forty-eight hour hours per year for the exclusive purpose of ascertaining whether or not this agreement is being violated. This release time shall not include the time specifically provided for below, which time shall be in addition to the above.

Section 3.2:

The Regional shall grant time, if on duty, to the Association President to attend monthly meetings of the North Hudson Firefighters Association for the period of time such meetings shall last.

Section 3.3: IAFF & FMBA Conventions

A total of two bargaining unit members may have time off, if on duty, to attend the annual convention of either the IAFF or FMBA. The Association is permitted to send one member to each convention or two members to one convention for the period of the convention. The Association will designate in writing who will attend the convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

Section 3.4: Names of Association Representatives

A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the Employer, and the Association shall notify the Employer of any change.

Section 3.5: Requests for Association Leave.

All requests for Association leave shall be submitted in writing by the Association through the chain of command to the Executive Director no later than 14 calendar days prior to the requested date. This advance notice period may be waived under extenuating circumstances.

In the event of negotiations or for purposes of grievance meetings, reasonable leave will be granted. No more than (1) regular member of the bargaining unit may attend these meetings while on duty without loss of compensation. The member will remain available for emergency call during this time period.

The **Regional** proposes the following contractual language regarding

Office Space:

The Employer agrees to provide office space for the purpose of conducting Association business in the Regional, provided that this shall not interfere with or interrupt normal fire operations.

The **Union** proposes the following contractual language:

1. The Employer will permit up to four (4) firefighters time off with pay to attend to any local, state and/or international meetings, conventions, conferences, seminars or an awards dinner.
 - a. In the event that attendance is to attend an event outside the State of New Jersey, the time off shall be equal to the length of the event plus one calendar day before and one calendar day after.
 - b. In addition, the Employer will permit authorized Association representatives time off with pay to attend Association business.
2. In the event a Firefighter or Fire Officer is killed in the line of duty, the Employer will permit at least eight (8) association officers time off if they are scheduled to work to participate in the funeral services.
 - a. Subject to the availability of same the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.
3. Authorized representatives of the Association shall be permitted to visit Fire Headquarters, Firehouses or the office of the Fire Director for the purposes of ascertaining whether or not this agreement is being observed.
4. The Employer recognizes the right of the Association to designate representatives and alternates for the enforcement of this Agreement.
5. The designated Association representatives shall be granted reasonable time with pay during working hours to investigate

and seek to settle grievances and to attend all meetings and conferences on collective negotiations with Department officials provided the Association gives reasonable notice to the Department in advance.

6. Nothing contained herein shall be construed to deny or restrict to any Association member or the Department such rights as he may have under New Jersey Statutes or other applicable laws or regulations. The rights granted to Association members hereunder shall in all cases be deemed to be in addition to those provided elsewhere.
7. Upon request the President of the Union and his designee will be assigned to special duty, day, tour, and, except in emergencies, will be entitled to administer the provisions of this Agreement. When the President or designee is on vacation or extended sick leave, the President shall have the right to designate an alternative Firefighter to assist him during said vacation periods.
8. North Hudson Fire Fighters Association will be permitted to maintain offices at the 16th Street and New York Avenue firehouse.

The Union notes that both parties recognize the importance of permitting Union representatives time off with pay for the purposes of implementing the contract and attending conventions. The Union finds the Regional's proposal regarding contract enforcement to be too limiting because it limits time off to four 12-hour tours. The Union points out that investigating and processing grievances does not normally take 12 hours at any one time. The Union asserts that its approach is more reasonable because it permits Union representatives to be granted reasonable time off with pay to investigate grievances and to attend meetings and conferences and collective negotiations with Department officials. The Union notes that it would provide reasonable notice to the Department in advance under its proposal. The Union also takes issue with the Regional's

proposal for convention leave, because the Regional's proposal would place an artificial limit on the number of representatives who can attend conventions. The Union contrasts the Regional's proposed limit of two representatives with its proposal for time off with pay for four firefighters out of a membership of almost 200 firefighters to attend meetings, conventions, conferences, seminars and award dinners.

The Union also proposes to permit the President and his designee to be assigned a special day tour. According to the Union, the large membership requires that firefighters have access to a full time Union representative. The Union notes that this benefit is currently enjoyed in Jersey City, Newark and Camden, cities with comparably sized fire departments. The Union notes that the Union representatives will be required to perform firefighting duties in the event of an emergency.

The final Union proposal requests that the firefighters continue to be able to use an office that they currently occupy.

The Regional reviews the benefit provided under the municipal agreements. It points out that the North Bergen contract provided firefighters with time off, not to exceed seven calendar days, for no more than three designated firefighters to attend the IAFF State and International conventions. The Regional notes that the North Bergen contract also provided time off with no

loss of pay for up to two designated firefighters to attend central labor council meetings; up to three designated firefighters to attend State IAFF meetings; up to three designated firefighters to attend local IAFF meetings; one designated firefighter to attend the Hudson County Joint Council meeting; and four firefighters to attend the Relief Convention.

According to the Regional, the Union City contract granted leave to a maximum of six duly elected officers and convention delegates designated by the Union to attend State Conventions. The contract also granted leave for a maximum of three firefighters to attend other official business, provided the Union gave the City at least two weeks notice prior to the event.

The Regional notes that the Weehawken contract granted time off without loss of pay to any employee officially designated by the FMBA to attend local or state meetings, conventions or to serve in any capacity or other FMBA business, provided the Union gave at least 24 hours notice.

Relying upon the testimony of Mr. Marino, the Regional points out that there are approximately ten annual normal local meetings of the Union and additional special meetings may be called. The Regional also noted that Mr. Marino testified that the Union is affiliated with the F.M.B.A., which holds ten meetings per year and Union representatives have attended those meetings. The Regional notes that typically, between one and four firefighters attend those

meetings. Again relying upon Mr. Marino's testimony, the Regional notes that the Union is also affiliated with the Professional Firefighters Association of New Jersey, which holds approximately ten annual meetings and between one and four firefighters usually attend those meetings. Noting that Mr. Marino also testified that the Union is affiliated with the International Association of Firefighters, who hold various seminars and conventions during the year, the Regional points to the statement of the Union's attorney that:

The intent on behalf of the association if there is a four-day convention, that there be four firefighters released for the length of the convention and not four firefighters per day, and so that if four are given off for the first day of the convention, that would be the sum total, unless there happens to be another workday that's involved, it would carry over to two workdays, but we're not looking for four different people for each day of a four-day convention.

Noting that the Union's proposal also would grant time off with pay to four firefighters to attend seminars, the Regional pointed out that the Union did not specifically identify what seminars would be included in the Union's proposal, except to say that "[i]f the union felt that [a] seminar was pertinent to our ability to best suit our firefighters, then we would request that time."

The Regional points to the Union's proposal that in the event a firefighter or fire officer is killed in the line of duty, the Regional would be required to permit at least eight Union members time off if they are scheduled to work so that they can participate in the funeral services. The Regional cites Mr. Marino testimony that firefighters should be permitted time off to go to other firefighters' funerals

because firefighters are a family. The Regional asserts that the Union's proposal greatly expands upon what was provided to some firefighters under the individual municipal contracts. According to the Regional, only the contracts in West New York and North Bergen permitted for such leave, and both contracts provided that up to two members would be provided time off to participate in the funeral services. Again citing Mr. Marino's testimony, the Regional asserts that while the provision did not provide a geographical limit, Mr. Marino testified that he did not believe that firefighters attended funerals out of state.

The Regional also points to Mr. Marino's testimony that the purpose of Paragraph 3 of the Union's proposal is to allow it to visit the individuals who govern their membership for the time they are working. Mr. Marino further stated that:

If we think there's a problem or if we foresee something, we're able to have these discussions, hopefully, to correct any infractions of a contract that might be happening or if there's something that – maybe there's something wrong that, with mutual talks, we might be able to come to an agreement.

The Regional acknowledges that Mr. Marino testified that this practice has occurred since it was established.

The Regional notes that the Union attempts to justify its proposed Paragraph 7, which would have the President of the Association or his designee to be relieved from his assigned duty day to attend Union business because it is

included in the Camden Firefighters' contract. The Regional emphasizes that Mr. Marino acknowledged that the two firefighters released under the Union's proposed Paragraph 7 would be different from the four firefighters released under its proposed Paragraph 1. With regard to Paragraph 8, the Regional notes that according to Mr. Marino the Union has maintained offices at 16th and New York Avenue for approximately one year, and seeks to continue to maintain that office.

Additionally, the Regional notes that Mr. Marino conceded that those released under the Union's proposed Paragraph 5 could be other firefighters and the proposal does not set forth a specific number of firefighters. Accordingly, the Regional concludes that on any given day, ten people can be off from work with pay, a result which could interfere with its staffing needs, a result which it believes would interfere with its staffing needs.

The Regional notes that office space for union purposes is a non-economic mandatorily negotiable subject, unless providing office space would require spending capital funds. Somerset County, P.E.R.C. NO. 91-119, 17 NJPER 344 (¶ 22154 1991), citing Garfield Br. of Ed., P.E.R.C. NO. 90-48, 16 NJPER 6 (¶ 21004 1989). However, the Union's proposal infringes on the Regional's managerial prerogative because it would require the retention of Union offices in a specific location even though the Regional may have a different need for the offices at 16th Street.

With respect to the Union's proposal that it continue to maintain its present offices at 16th and New York Avenue, the Regional asserts that this proposal infringes upon its managerial prerogative. According to the Regional, its proposal permits greater flexibility, by offering office space to the Union, but not guaranteeing the exact location of that space. According to the Regional, throughout the duration of the contract, it might not always be possible or practicable for the Union to maintain their offices at the 16th Street and New York Avenue firehouse. Because the Regional's proposal provides both parties with more flexibility, the Regional urges its adoption.

The parties agree as to the need for Union leave for the purposes of contract administration, as well as to attend Union meetings and conventions. Their disagreement concerns the number of firefighters to be permitted such leave and the amount of time allotted for it. The Union would combine the terms of the leave programs included in the predecessor agreements to permit those who attended Union meetings and conventions prior to the regionalization to continue to do so. The Regional would impose limits on such leave greater than that imposed under the municipal agreements.

Any award on this issue must balance the Union's need for adequate time and manpower to administer the Agreement in this newly created department, as well as the need for its representatives to attend Union meetings and conventions with the Regional's need to insure its staffing and coverage

requirements without incurring excessive overtime costs. I have attempted to do so and accordingly, award the following:

Employees, not to exceed four (4) who are elected officers, delegates, trustees and/or alternates of the Union or who have been elected to State or international office, shall be granted time off from normal duties to attend the following designated conventions:

- AFL-CIO State Convention
- AFL-CIO International Convention
- IAFF or FMBA International Convention
- IAFF or FMBA State Convention
- IAFF or FMBA District Convention

The time off granted shall not be more than the length of the convention plus, in the event that the event is outside the State of New Jersey, one calendar day before and one calendar day after, in any event, not to exceed one (1) 24-hour tour per employee. The Association will designate in writing who will attend each convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

The Employer will permit up to three (3) authorized Association representatives reasonable time off with pay to attend to Association business, including to investigate and seek to settle grievances and to attend all meetings and conferences on collective negotiations with departmental officials provided the Association gives reasonable notice to the department in advance.

In the event a Firefighter or Fire Officer is killed in the line of duty, the Employer will permit at least four (4) association officers time off if they are scheduled to work to participate in the funeral services.

- a. Subject to the availability of same, the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.

Authorized representatives of the Association shall be permitted to visit Fire Headquarters, Firehouses or the office of the Fire Director for the purposes of ascertaining whether or not this agreement is being observed.

A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the Employer, and the Association shall notify the Employer of any change.

The Regional agrees to provide office space for the purpose of conducting Union business in the Regional. At present, that office is provided at the 16th Street and New York Avenue firehouse. The Regional seeks a provision that would provide the Union with an office, but would not limit it to its present location or interfere with normal fire operations. The following provision balances the Union's need for reasonable office space with the Regional's need to ensure that the location will not interrupt to normal fire operations.

The Employer shall provide an office for the sole and exclusive use by the Association. This office shall be of reasonable size and condition and shall be located in a Fire Department building in a location that shall not interfere with or interrupt normal fire operations.

DEDUCTION FROM SALARY

The **Regional** proposes the following contractual language:

Section : North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deductions shall be made in compliance with *N.J.S.A. 52:14.9e*, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.

Section 3.7: Any permanent employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new permanent employee who does not join within thirty (30) days of initial employment within the unit, and any permanent employee previously employed within the unit who does not join within ten (10) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction. The representation fee shall be in an amount equal to eighty-five (85%) percent of the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this Agreement, so long as the Association remains the majority representative of the employees in the unit, provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with *N.J.S.A. 34:13A-5.5*.

Section 3.8: The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson Regional Fire & Rescue.

The **Union** proposes the following contractual language:

1. The Employer agrees to deduct from the salaries of its employees subject to this Agreement dues for the Association. All such deductions shall be remitted to the proper official of the Association before the expiration of each calendar month provided that each employee has filed an application for membership with the Association. Such deductions shall be made in compliance with Chapter 310, Public Laws of 1967, *N.J.S.A. 52:14-15,9(e)*, as amended.

2. If the employee does not become a member of the Association during any membership year (i.e., from January 1 to December 31) which is covered in whole or in part by this Agreement, said employee will be required to pay a representation fee to the Association for that membership year. The purpose of this fee will be to offset the member's per capita cost of services rendered by the Association as majority representative.

Amount of Fee

- a. Notification: The Association will notify the Employer in writing of the amount of regular membership dues, initiation fees and assessments charged by the Association to its own members for that membership year. The representation fee to be paid by non-members will be equal to 85% of that amount.
 - b. Legal Maximum: In order to adequately offset the per capita cost of services rendered by the Association as majority representative, the representation fee should be equal in amount to the regular membership dues, initiation fees and assessments charged by the Association to its own members, and the representation fee has been set at 85% of that amount solely because that is the maximum presently allowed by law. If the law is changed in this regard, the amount of the representation fee automatically will be increased to the maximum allowed, said increase to become effective as of the beginning of the Association membership year immediately following the effective date of the change.
3. Termination of Employment: If an employee who is required to pay a representation fee terminates his or her employment with the Employer before the Association has received the full amount of the representation fee to which it is entitled under this Article, the employer will deduct the unpaid portion of the fee from the last paycheck paid to said employee during the membership year in question.
 4. Changes: The Association will notify the employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than 10 days after the Employer received said notice.

5. New Employees: On or about the last day of each month, beginning the month this Agreement becomes effective, the Employer will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list shall include name, dates of employment, their addresses, birth date, classification, rate of pay, and social security number. The Department will similarly notify the Association of all Employees who are terminated from the Employer's payroll.
6. The Association shall indemnify, defend and save the Department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Department in reliance upon salary deduction authorization cards and submitted by the Association to the Department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.
7. The Association shall establish and maintain a procedure whereby any employee can challenge the assessment as computed by the Association. This appeal procedure shall in no way involve the Department or require the Department to take any action other than to hold the fee in escrow pending resolution of the appeal.

The parties have stipulated to the following provision covering dues deduction and this stipulation has been incorporated into the Award:

1. North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deduction shall be made in compliance with N.J.S.A. 52:14.9e, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.
2. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new employee who does not join within thirty (30) days of initial employment within the unit, and any employee previously employed within the unit

who does not join with ten (1) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction.

The representation fee shall be in an amount equal to eighty-five (85%) percent or whatever is permitted by law, of the regular Association membership dues, fees and assessments as certified to the employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this agreement, so long as the association remains the majority representative of the employees in the unit, provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with N.J.S.A. 34:13A-5.5.

3. The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson regional Fire & Rescue.
4. Changes:
The Association will notify the employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than twenty-one (21) days after the Employer received said notice.
5. New Employees:
On or about the last day of each month, beginning with the month this Agreement becomes effective, the Employer will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list shall include name, dates of employment, their address, birth date, classification, and

rate of pay. The Department will similarly notify the Association of all Employees who are terminated from the Employer's payroll.

6. The Association shall indemnify, defend and save the Department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Department in reliance upon salary deduction authorization cards and submitted by the Association to the Department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.
7. The Association shall establish and maintain a procedure whereby any employee can challenge the assessment as computed by the Association. This appeal procedure shall in no way involve the Department or require the Department to take any action other than to hold the fee in escrow pending resolution of the appeal.

BULLETIN BOARDS

The **Regional** proposes the following contractual language:

Section 3.9: The Regional shall furnish space for bulletin boards for the purpose of Association notices in a conspicuous location at each firehouse and at the Dispatcher's Office. Notices shall not contain anything reflecting adversely on the Regional or any of its officers and no material, notices or announcements which violate the provisions of this Agreement shall be posted. Material posted shall be subject to review by the Executive Director or his designee. Notices posted must be dated and bear the signature of the Association President or his authorized representative.

The **Union** proposes the following contractual language:

- A. The Employer will supply one (1) bulletin board for the use of the Association to be placed in a conspicuous location at each firehouse.
- B. The bulletin board shall be for the use of the Association and for posting notes and bulletins pertaining to the Association's

business activities or matters dealing with the welfare of the employee.

The parties have stipulated to the following provision covering bulletin boards and this stipulation has been incorporated into the Award:

- A. The Employer will supply one (1) bulletin board for the use of the Association to be placed in a conspicuous location at each firehouse.
- B. The bulletin board shall be for the use of the Association and for posting notes and bulletins pertaining to the Association's business activities or matters dealing with the welfare of the employee.

GRIEVANCE PROCEDURE

The **Regional** proposes the following contractual language:

Section 4.0: The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of Firefighters and to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale. The parties agree that this procedure shall be kept as informal as may be appropriate.

Section 4.1: Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department. The Union will explore voluntary resolution where appointed at the lowest level.

Section 4.2: A grievance is defined as a complaint arising out of a claimed violation, misinterpretation or inequitable application of the provisions of this contract.

Section 4.3: The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

Section 4.4: The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

Section 4.5: The aggrieved or the Association shall institute action under this provision within eight (8) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and the Battalion Chief or Line Deputy Chief for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step One

Section 4.6: If no agreement can be reached orally within five (5) calendar days of the initial discussion with the Battalion Chief or the Line Deputy Chief, the employee or the Association may present the grievance in writing within twenty-three (23) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of this contract violated, and the remedy request by the grievant.

Section 4.7: The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Two

Section 4.8: If the Association or the grievant wishes to appeal the decision of the Executive Director, such appeal shall be presented in writing to the Executive Director within five (5) calendar days or be deemed waived. This presentation shall include copies of all

previous correspondence relating to the matter in dispute. The Executive Director shall respond, in writing, to the grievance within fifteen (15) calendar days of the submission. With respect to a disciplinary action imposed on an employee of less than forty-eight hours (48) pay affecting one employee, the Executive Director's decision shall be final and not subject to step four.

Step Three

Section 4.9: If the grievance is not settled through Steps One or Two either party shall have the right to submit the dispute to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. Grievances concerning the imposition of discipline of less than forty-eight hours (48) pay affecting one employee shall not be arbitrable. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association.

Section 4.10: Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

Section 4.11: The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. No more than one (1) issue may be submitted to the arbitrator at one (1) time unless arising out of the same facts or agreed in writing by both parties. Multiple grievants regarding the same issue and/or multiple instances of the same issue shall be regarded for the purposes of this section as one (1) issue. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding upon the parties subject to the applicable legal review.

The **Union** proposes the following contractual language:

A. PURPOSE

The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the

problems which may arise affecting the terms and conditions of firefighters and to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale. The parties agree that this procedure shall be kept as informal as may be appropriate.

B. DEFINITION

1. "Grievance"- A grievance is a complaint concerning the interpretation, application, or violation of this Agreement, policies, rules and regulations, or administrative decision affecting an employee, or the Association. Grievances include, but are not limited to, working conditions, lighting, heat, sanitary facilities, personal safety, type of work assignments, and their location, workload, and the attitude of supervisors.
2. "Aggrieved Person"- The aggrieved person is a person or persons making the complaints.

C. The grievance procedure referred to in this Article shall be in addition to and not in derogation of the Civil Service Act or remedies available to the Association or its members by virtue of any statutes of the State of New Jersey or other rules and regulations.

D. The President of the Association or his duly designated representative shall be recognized by the Chief of the Fire Department for the purpose of presenting the grievance. The grievance may be so presented with or without the presence or permission of the aggrieved person.

E. STEPS OF THE GRIEVANCE PROCEDURE

Step 1:

The grievance shall be instituted in writing, signed and delivered to the Chief of the Department within Forty-five (45) calendar days from the time of the occurrence. Failure to act within the forty-five (45) calendar days shall constitute an abandonment of the grievance. A decision on the grievance shall be rendered by the

Chief of the Department within fourteen (14) days. A written grievance may be submitted by the affected employee or an authorized representative of the Association.

Step 2:

If the Association is not satisfied with the disposition of the grievance in Step 1, then the Association may present it to the Director of the Department within fourteen (14) business days of the date of the Chief of the Department rendered his decision. The Director shall render a written decision within fourteen (14) days.

Step 3:

If the grievance is not settled in Steps 1 or 2, the Association shall have the right to submit the dispute to arbitration pursuant to the Rules and Regulations of the Public Employment Relations Commission. The costs for the services of the Arbitrator shall be borne equally by the Department and the Association. Any other expenses, including but not limited to the presentation of witnesses, shall be paid by the parties incurring same.

- (a) The parties may direct the arbitrator to decide as a preliminary question, whether he has jurisdiction to hear and decide the matter in dispute.
- (b) The Arbitrator shall be bound by the provisions of this agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involving the grievance. The arbitrator shall not have the authority to add to, modify or detract from or alter in any way the provisions of this agreement or any amendment or supplement thereto. The decision of the Arbitrator shall be final and binding.

The Regional notes that Section 4.0 of its proposal and Paragraph (B) of the Union's proposal are similar except that the Union's definition of "grievance" is significantly broader; and the Union would define an "aggrieved person." The Regional points out that neither the North Bergen contract nor the Weehawken contract provides definitions similar to those proposed by the Union.

Addressing the Union's proposal to eliminate the first line supervisor step, Director Welz testified that as a Weehawken fire captain, grievances were brought to him for possible resolution. Director Welz explained that:

Historically most of these which wind up grievances are misunderstandings between the line people. It could be a misinterpretation of general policy or procedure, and many of these times the issues can be resolved by communication from the line officers and the alleged aggrieved party, even with the informal phone call to the office for clarification. And many of these issues can be resolved orally with communications between the parties involved before any formal written procedures take place.

Director Welz also testified that some grievances could be characterized as "gripes":

Yeah, it could be a gripe. It could even be a personality clash which happens from time to time. That including line battalion or line deputy in oral discussions it takes any area of personality out of dispute and, hopefully, when the battalion or deputy says to the captain, you know, cap, that's not what was meant by that, the issue's resolved and we save a lot of grief for everybody.

Director Welz also explained that as a director, before he would discuss the merits of a grievance with a union representative, he would routinely ask whether the issue had been discussed with anyone at the company level first.

The Regional argues that its definition of a grievance should be adopted because it more clearly sets forth what a grievance is. It is not over broad, as is the Union's. With regard to contractual language requiring the aggrieved or the

Union to institute an action under this provision within a certain amount of days, the Regional argues that its proposal for eight days is reasonable and should be adopted. According to the Regional, eight calendar days after an event giving rise to the grievance has occurred is a more than sufficient amount of time for the aggrieved firefighter to file a grievance. With regard to the steps to be followed once a grievance is filed, the Regional maintains that its proposal sets forth a fair and reasonable procedure and should be adopted.

The Union notes that its proposal attempts to streamline the grievance process without any unnecessary steps. Accordingly, the Union's proposed steps are the Chief, the Executive Director and binding arbitration, which contrasts with the Regional's proposal, which adds an informal Battalion Chief step. According to the Union, the addition of an informal step will slow the process and frustrate the intent to resolve labor disputes expeditiously.

Additionally, the Union asserts that its definition of a grievance is meant to be broader than that proposed by the Regional. Noting that the morale of employees and their faith in this process is directly related to the grievance procedure's reliability, and that employees are often frustrated by the delays in grievance processing, the Union asserts that its proposal represents a better approach to the definition of a grievance as well as to the number of steps in the grievance procedure.

The parties have agreed to the language now included in the Regional's proposal at Section 4.0, Section 4.1, Section 4.3, Section 4.4, and Section 4.5, with the exception of the number of days. These sections include language (1) setting forth the purpose of the grievance procedure; (2) permitting any employee to discuss the matter informally with any appropriate member of the Department; (3) stating that the agreed upon procedure constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent; (4) stating that the time limits expressed herein shall be strictly adhered to; and (5) requiring the aggrieved or the Union shall institute action under this provision within a certain number of days.

The definition of "grievance," the exact number of days that an action has to be instituted, and the steps to be followed once a grievance is filed remain in dispute.

Turning first to the definition of a grievance, the Union's proposal mirrors the definition used in the West New York agreement. The Regional's definition of a grievance is similar to the definition provided in the North Bergen agreement. Additionally, the Regional's proposal would prohibit arbitration over grievances concerning the imposition of discipline of less than forty-eight hours (48) pay affecting one employee. While the Union's proposed definition is all

encompassing, the Regional's proposal limits the scope of the grievance procedure as well as the right to take disputes to binding arbitration.

The North Bergen grievance procedure provided for four (4) steps. Step 1 provided that the aggrieved employee was required to file his or her grievance within seven days of its occurrence and the Chief was required to make a determination within seven days after receipt of the grievance. Step 2 provided that the aggrieved parties were required to meet with the Commissioner. If the grievance was not settled through the first two steps, Step 3 required the aggrieved employee to file his grievance with the Director of Public Safety within seven days. Step 4 required the Union to file an appeal with the State Board of Mediation for binding arbitration.

The Union City grievance procedure provided for five steps. Step 1 required the aggrieved employee to deliver his grievance to his immediate supervisor within eight days of the occurrence. Step 2 required the aggrieved employee to present his grievance to the Deputy Chief within eight days after it was presented to the immediate supervisor. Step 3 required the aggrieved employee to present his grievance to the Chief of the fire department within seven business days of the decision by the Deputy Chief or within seven business days upon the expiration of the allotted time in Step 2 if no decision is rendered. Step 4 required the aggrieved employee to present his grievance to the Director of Public Safety or his designated representative within 14 business

days of the decision by the Chief. If the grievance was not settled in Steps 1 through 5, the parties had the right to submit the matter to arbitration.

The Weehawken grievance procedure provided for four steps. Step 1 required the aggrieved employee to present his grievance to an immediate supervisor within 15 days of its occurrence. Step 2 required the aggrieved employee to present his grievance to the Public Safety Director within ten days after submission to the immediate supervisor. Step 3 required the aggrieved employee to present his grievance to the Township Manager within five (5) days after the Public Safety Director's determination. If the grievance was not settled through one of the first three steps, the parties were entitled to submit the dispute to arbitration within 15 days after the Township Manager's determination.

The West New York grievance procedure provided for four steps. Step 1 required the aggrieved employee to present his grievance informally. If the grievance was not settled informally at Step 1, at Step 2, the aggrieved employee had the right to submit the grievance to the Chief of the Fire Department. At Step 3, the aggrieved employee had the right to submit the grievance to the Director of Public Safety. Finally, pursuant to Step 4, the aggrieved employee could submit the matter to arbitration.

After consideration of the parties' concerns regarding both the definition and the timing of the steps of the grievance procedure, this Award, like the

previous West New York and Weehawken agreements, defines a grievance more broadly than that proposed by the Regional. This broader definition is more likely to achieve the purposes of the grievance procedure as stipulated by the parties to “secure, ... an equitable solution to the problems which may arise affecting the terms and conditions of firefighters”. I have also provided for an ability to grieve administrative decisions affecting employees through Step 2 (two) of the procedure. Similarly, the time limits set forth in this Award are designed to flow from the parties’ stipulation that a purpose of the grievance procedure is “to resolve grievances as soon as possible so as to assure efficiency and promote employees’ morale.”

Accordingly, the Grievance Procedure, including the parties’ stipulations shall provide as follows:

Section 4.0: The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of Firefighters and to resolve grievances as soon as possible so as to assure efficiency and promote employees’ morale. The parties agree that this procedure shall be kept as informal as may be appropriate.

Section 4.1: Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department. The Union will explore voluntary resolution where appointed at the lowest level.

Section 4.2: A grievance is defined as any disagreement between the firefighter and the Employer, or between the Union and the Employer, involving the interpretation, application or violation of the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting

employees may be filed through Step 2 (two) of the grievance procedure.

The grievance procedure referred to in this Article shall be in addition to and not in derogation of the Civil Service Act or remedies available to the Association or its members by virtue of any statutes of the state of New Jersey or other rules and regulations.

The President of the Association or his duly designated representative shall be recognized by the Chief of the Fire Department for the purpose of presenting the grievance. The grievance may be so presented with or without the presence or permission of the aggrieved person.

The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

Step One

The aggrieved or the Association shall institute action under this provision within ten (10) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and the Battalion Chief or Line Deputy Chief for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step Two

If no agreement can be reached orally within five (5) calendar days of the initial discussion with the Battalion Chief or the Line Deputy Chief, the employee or the Association may present the grievance in writing within twenty-three (23) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of this contract violated, and the remedy requested.

The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Three

If the grievance is not settled through Steps One or Two either party shall have the right to submit a dispute involving the interpretation, application or violation of the terms of this agreement to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association.

Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding upon the parties.

DISCIPLINARY ACTION

The **Regional** proposes the following contractual language:

Section : No permanent member within the bargaining unit shall be removed, dismissed, discharged, suspended, fined or reduced in rank, except for just cause. If any member is so disciplined and in the judgment of the Union the action taken by the Regional is without just cause, the Union may process this matter through the Grievance Procedure provided in Article 4, subject to that article's provision that grievances concerning the imposition of discipline of less than forty-eight hours (48) pay affecting one employee shall not be arbitrable. An employee, after disciplinary proceedings have been concluded may appeal such decision to the New Jersey Department of Personnel as provided by Civil Service law.

The **Union** proposes the following contractual language:

- A. A complaint threatening disciplinary action of an employee shall be filed no later than the forty-fifth (45th) calendar day after the date on which the person filing the complaint obtained sufficient information to file the matter upon which the complaint is based. The forty-five (45) day limit shall not apply if a concurrent investigation of that firefighter for a violation of the criminal laws of the State is being conducted. The forty-five day limit shall begin on the day after the disposition of the criminal investigation.
- B. Any employee served with a notice of charges, either written or verbal, by which he could be reprimanded, suspended or discharged, shall have the right to be accompanied or represented by any authorized representative(s) of the Association at said hearing, not limited to, nor excluding legal counsel. It is understood and agreed that the Department will serve upon the Association all notices of charges presented to employees in the same time period in which such charges are served to an employee.
- C. Appeal
 - a. After disciplinary proceedings have been concluded, if the Association or the employee concludes that an employee has been unjustly punished or dismissed, it may appeal such judgment to the New Jersey Department of Personnel, as provided by law or to binding arbitration pursuant to Article 9.
 - b. The Department shall not require an employee to take a Polygraph test.

The Regional relies upon the testimony of Director Welz that its proposal distinguishes between major and minor discipline and that all major discipline is subject to appeal to the Department of Personnel. The Regional notes that under its proposal, an aggrieved firefighter would be permitted to have a formal hearing at the departmental level, but would not be permitted to go to arbitration in cases of minor discipline. In contrast, the Regional points to Mr. Marino's testimony that the Union's proposal is the same as the provision included in the Union City agreement. The Regional notes that a similar provision can not be found in the Weehawken agreement and the North Bergen and West New York agreements provide that no member or employee can be disciplined except for "just cause." The Weehawken contract also states that charges can be presented within 72 hours or a within a reasonable time period from the discovery of the offense. The Regional notes that the West New York contract did not include a provision similar to Paragraph A of the Union's proposal.

The Regional also notes Mr. Marino's testimony that Paragraph B of the Union's proposal is the identical to that included in the West New York contract, but points out that the other three municipal contracts did not contain a clause similar to the Union's proposed Paragraph B. Likewise, the Regional points to Mr. Marino's testimony that Paragraph C of the Union's proposal is the identical to the language included in the Union City contract. The North Bergen contract provided that if the Union believed that discipline was administered without just cause, the Union could process the matter through the grievance procedure.

However, neither the West New York contract nor the Weehawken contract contained a provision that was similar to Paragraph C of the Union's proposal.

The Regional argues that the Union's proposal must be denied because there is no requirement that a complaint alleging disciplinary charges be filed within 45 days and the Union's proposal would restrict the Regional's ability to investigate disciplinary infractions or criminal charges. The Regional asserts that the limitations period included in the Union's proposal is absolute and does not permit the Regional to show good cause for a delay in bringing charges. See Township of Weehawken, P.E.R.C. NO 86-81, 12 NJPER 94 (¶ 17035 1985). The Regional asserts that the Union did not produce any evidence demonstrating the need for its proposed provision and that its proposal must be deemed to be non negotiable, and must be rejected.

The Union notes that both parties have proposed that the Regional will not discipline except for just cause and that certain discipline may be appealed to the Department of Personnel.

However, the Union also addresses the areas where the parties disagree. With regard to procedural issues, the Union refers to the current statute pertaining to police officers to support its proposal that any discipline must be imposed within 45 days of the alleged improper conduct. Even absent the statute, the Union asserts that due process and fairness require that an

employee be promptly notified in the event that the Regional imposes discipline. The Union maintains that the passage of time sometimes impairs the employee's ability to prepare an adequate defense because memories fade and the ability to investigate also diminishes over time. The Union argues that requiring that a disciplinary notice issue within forty-five (45) days of the alleged violation cannot be viewed as detrimental to the Regional. In addition, the Union notes that it proposes that a copy of the charge be served on the employee and the Union.

The Union notes that it proposes that discipline for five days or less be subject to the grievance and arbitration provisions of this contract, while the Regional proposes that only discipline in excess of 48 hours is arbitrable. The Union argues that it is implausible that an employer may suspend an employee for 48 hours and then refuse to prove its case in a neutral forum. The Union maintains that it is more equitable to provide all employees who suffer the loss of pay an impartial hearing. The Union asserts that its proposal regarding minor discipline should be adopted based solely on considerations of justice and simple due process.

As with the Grievance Procedure, the parties disagree both as to definitions and time limits in their Disciplinary Action proposals. The Union seeks to require the Regional to institute discipline within 45 days of the incident leading to discipline. However, such a restriction is not always feasible or practical and could unduly restrict the employer. Likewise, the Regional's proposal to limit

arbitration of minor discipline to suspensions of greater than 48 hours for a single employee provides an undue restriction on the Union's use of the grievance procedure and no evidence is offered to support such unilateral action without any review.

For these reasons, and upon consideration of the need to recognize the Regional's right to discipline and the Union's right to have reasonable review of such decisions, the Disciplinary Action section of the parties' agreement shall provide as follows:

No permanent member within the bargaining unit shall be removed, dismissed, discharged, suspended, fined or reduced in rank, except for just cause. If any member is so disciplined and in the judgment of the Union the action taken by the Regional is without just cause, the Union may process this matter through the Grievance Procedure provided in Article __. In the event of major discipline, an employee, after disciplinary proceedings have been concluded, may appeal such decision to the New Jersey Department of Personnel as provided by Civil Service law. Major disciplinary actions which are under the jurisdiction of the Department of Personnel shall not be arbitrable.

RIOTS AND POLICE DUTIES

The parties have stipulated to the following contractual language concerning riots and police duties and that stipulation has been incorporated into the Award:

- A. The Department shall provide police protection to firefighters whenever required.

- B. Employees under this agreement shall not be required to perform any duties exclusively considered a police function.
- C. Employees shall not be required to use hose streams on, or take any other active part in the quelling of a riot and/or mob.

SENIORITY

The **Regional** proposes the following contractual language:

Section 5.0: Seniority is defined to mean the accumulated length of service with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

Section 5.1: Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by the Department of Personnel's rules and regulations in this area.

The **Union** proposes the following contractual language to be included in a "Rights of Members" section:

- A. Where applicable, the general principles of seniority shall apply.
- B. Any transfers shall be discussed with the Association representative and the designee and, where possible, seniority and ability to do the job will be a deciding factor considered.
- C. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

- D. The seniority list shall be supplied to the Association in January of each year.
- E. In the event of a position opening due to the promotion, transfer, demotion, retirement or demise of an employee, which will be filled by a lateral transfer, such transfer shall be made in accordance with the following provisions.
 - a. All positions to be filled by lateral transfer shall be announced by bulletin which shall be posted in convenient locations accessible to all firefighters for a period of at least ten (10) days. Such position shall be considered open for written bid for this ten (10) day period.
 - b. In the event more than one (1) employee submits a written bid to the Department. The firefighter with the greatest seniority shall receive first consideration.
 - c. In the event no bid is received for a posted position, the Department has the right to offer the position to any employee.
 - d. This Article does not restrict the Chief of the Fire Department from making any transfers he/she deems necessary for the efficient operation of the Fire Department.

The parties have stipulated to the following provision governing seniority and that stipulation has been incorporated into the Award:

Seniority is defined to mean the accumulated length of service with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by the Department of Personnel's rules and regulations in this area.

The seniority list shall be supplied to the Union in January of each year.

PROBATIONARY PERIOD

The **Regional** proposes the following contractual language:

Section 5.3: All employees hired or promoted during the term of the Agreement shall serve a probationary period pursuant to Department of Personnel rules and regulations. During this probationary period, the Regional reserves the right to terminate a probationary employee for any reason. An employee, if terminated, shall not have recourse through the grievance procedure set forth in this Agreement.

The **Union** proposes the following contractual language:

- A. All new members shall serve a probationary period in accordance with Civil Service law, and shall have no seniority rights during this period of time, but shall be subject to all other terms of this agreement.
- B. Upon the completion of a member's probationary period, his seniority shall be measured from the beginning of his appointment, provided that this method shall not be in conflict with Title 11, or any other New Jersey Statute.

The parties have stipulated to the Regional's proposal concerning the Probationary Period and that stipulation has been incorporated into the Award.

HOURS OF WORK

The **Regional** proposes the following contractual language:

Section 6.0: The average workweek for Firefighters will be fifty-six (56) hours. The workday shall consist of twenty-four (24) consecutive duty shift followed by forty-eight (48) consecutive hours off. The change of shift shall commence at 8:00 a.m.

Section 6.1: For employees assigned to staff functions, the work week shall consist of a five (5) day week - each work day consisting of the hours from 8:00 a.m. to 4:30 p.m. Management reserves the right to change the work schedules of staff positions to accommodate the needs of the department. Any modified work schedule shall not be considered a vested right or benefit and the Regional has no obligation to "meet and confer" prior to revocation.

The **Union** proposes the following contractual language:

A. Work Day

1. The workday shall consist of twenty-four (24) consecutive duty hours.
2. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again followed by twenty-four (24) hours on duty, and so on.

B. Line Firefighter Starting and Leaving Times

1. Employees shall start the work day at 7:30 a.m. and shall leave at 7:30 a.m. the following day.
2. Any employee covered herein may be properly relieved and leave at 6:30 a.m.

C. Meals

It shall be required of each firefighter that the firefighter contribute such sum as may be required to the organized mess (meals) which are prepared during the normal 24 hour shift.

D. Staff Firefighter Starting and Leave Times

1. The work week for firefighters assigned to a staff position shall consist of a five (5) day week each work day consisting of the hours from 8:00 a.m. to 4:00 p.m.
2. Prior to assigning a line firefighter to a staff position against his desire, the department shall seek volunteers to fill the position.
3. No firefighter shall be assigned to a staff position where a DOP job classification exists for such position such as Fire Inspector/UFD, Fire Official/UFD, Fire Instructor/UFD, etc. until such time as a salary has been established for the position.

E. Newly Appointed Firefighters

The work schedule for newly appointed firefighters during their academy training shall be at the discretion of the department not to exceed 42 hours per week. Upon completion of said training, firefighters shall be assigned to the work schedule set forth in paragraph A above.

- F. If an employee is required to report to a station other than their regularly assigned station the employee shall report to his normal work station at normal starting time to retrieve his gear before traveling to the changed work station. Said firefighter shall be released one hour early for transporting the employees gear back to the employee's regularly assigned station for proper storage and retrieval for the next work day.

The Regional notes that under each of the previous agreements, firefighters worked a 24-hour shift followed by 72 hours off, but that each department had a different starting time. Director DeOrio testified that it is essential that there be a unified reporting time for firefighters. According to Director DeOrio, it is a:

manning issue of individuals reporting to work in the morning and on any one given day we have 18 different companies in the Regional depending on sick leave, injury, vacation, some houses there could be no employees showing up, in other house there could be a maximum of four employees and one of those individuals would have to be transferred to that house that's vacant. And that's where we run into a manning problem by 20 minutes to 45 minutes of travel time, sometimes a little bit more of getting those houses manned properly in the morning. So that's why it's essential to have one unified starting time.

The Regional also cites the testimony of Director Welz where he opined that the lack of a unified starting time also causes an unnecessary overtime burden:

In those cases that Director DeOrio proposed if the guy that is held over is [from] North Bergen . . . because no one came into that house due to sick, vacation or whatever, he's automatically entitled to overtime after 7:30, even though his relief doesn't have to report to eight o'clock in the morning. So it artificially incurs close to an automatic overtime because of the difference in starting times.

The Regional reviews the work schedules of firefighters throughout New Jersey and points out that Atlantic City firefighters work two ten hour days of duty, immediately followed by two 14 hour nights of duty, immediately followed by four consecutive days off. According to the Regional, Elizabeth firefighters work two ten hour day tours, followed by 48 hours off, followed by two 14 hour night tours followed by 72 hours off. The Regional notes that Hoboken and Jersey City firefighters both work 24 hours on duty immediately followed by 72 hours off. Newark firefighters work two days of ten hours each, followed by 48 hours off, followed by two nights of 14 hours each, followed by 72 hours off. Paterson

firefighters work 24 hours on duty immediately followed by 72 hours off. Trenton firefighters work two days of ten hours each, followed by 24 hours off, followed by two nights of 14 hours each, followed by 72 hours off.

Looking nationally, the Regional notes that San Diego and Phoenix firefighters work a 56-hour week consisting of 24 hour shifts.

Pursuant to its proposed Section 6.1, the Regional proposes that for firefighters assigned to staff functions, their work week shall consist of a five (5) day week with each work day consisting of the hours from 8:00 a.m. to 4:30 p.m. In contrast, the Regional notes that under its proposed Paragraph D(1), the Union seeks a work week for firefighters assigned to staff positions that consist of a five day week, with each work day consisting of the hours from 8:00 a.m. to 4:00 p.m. Director DeOrio explained the rationale for the Regional's proposal as follows:

I believe this proposal came on the table where we felt an employee, if we're giving lunchtime, should put in somewhere of an eight hour workday, less half an hour or hour lunch which we've been flexible. I guess where it came from looking at each town some towns had a staff, some towns didn't admit they had a staff, some towns may not have had a staff. I can only concur in North Bergen that we did have a staff prior . . . And although most policies, contracts, don't spell out a lot of vagueness of when start times were, I'll give North Bergen, it was unwritten that our start time was eight o'clock, most other towns although they may have been lenient, it was an eight hour 40 hour week that was intact. There may have been situations in some towns where an individual was granted less hours during the day, maybe start at nine to four. And maybe he had to compensate back and be on call or worked with or did a situation to make up for it or depending on how the

office operated . . . We tried to find a happy ground into a new contract for regional fire to exist.

The Regional points out that its proposal is inclusive of a lunch period, but leave the length of that lunch period for the arbitrator to decide. The Regional also proposes that it may change the work schedule to accommodate the needs of the Department. In support of this proposal, the Regional points to Director DeOrio's testimony as to whether he could envision requiring someone to work on what would be considered a second or third shift, Director DeOrio stated:

[p]robably if I thought there was a need and if it was better[] for the Regional. I would say it's an outside shot but if I think it was needed, I may do it as far as even for a start, although I would try and be receptive as possible in having a cooperating with individuals . . . If there was a need for Regional to have things accomplished that was cost effective and having the department manned properly, more efficiently, easily to get it accomplished, I would always consider to do those things.

Director Welz added that:

We do almost 8000 fire runs, responses in a regional. What I've noticed is the tremendous need for copies of our fire reports from the general public. And many times it's very hard for the general public who have a need for insurance purposes or if they're in some kind of litigation with tenant landlord for them to come down during their business hours would mean necessitating residents taking time off of work. So if we had someone staying to five o'clock, it would facilitate greatly serving the public so we would have someone available for people that have requested official documentation from the Regional to pick them up . . .

Further, Director Welz explained that staff personnel are responsible for training compliance, property maintenance, maintaining training records, and maintaining personnel records.

The Regional contends that the evidence in this proceeding establishes without contradiction that the 24-hour work schedule was originally created with the one or two off cycle, or a 56-hour work week schedule. Noting that the establishment of a 24-hour work schedule on a “one on-three off” schedule is 42 hours per week, the Regional stresses the significance of the fact that under this schedule, a fire employee reports to work only 91 calendar days per year less vacation days, sick days, personal days or any other days off. The Regional calculates that subtraction of vacation days reduces this number to just about 75 calendar days. When actual sick leave use is considered, the true number of workdays on the one day on, three days off is barely 70 calendar days, a number it believes is too few.

The Regional submits that the 24-hour schedule, as created in the Western United States was part of the 56-hour week of one day on, two days off. This was the schedule for Guttenberg before regionalization. Therefore, the Regional contends when the frequency of the actual calendar work day, combined with the current significant salaries and outstanding benefits are considered, the proposed work schedule as submitted by the Regional is most reasonable. The Regional asserts that it is reasonable at the high current

salaries to require a full time work load greater than 70 calendar work days per year.

The Union asserts that its proposal is consistent with the current practice or 24 hours on duty followed by 72 hours off duty enjoyed by all firefighters. The Union notes that its proposal also provides for a 7:30 a.m. start and the ability to be dismissed at 6:30 p.m. if properly relieved. According to the Union, this practice was found in all contracts except for the starting time. The Union acknowledges that the current starting time is 8:00 a.m., except for North Bergen firefighters. In contrast, the Union notes that the Regional proposes 24 hours on and 48 hours off duty. The Union emphasizes that the Regional has provided no rationale for this proposal except for a vague reference to the western United States. The Union calculates that under the current work schedule, firefighters work 91 days per year, 24-hours per day or 2,184 hours per year. Under the Regional's proposal, firefighters would work 122 days at 24-hours per day or 2,928 hours per year. In essence, the Regional's proposal increases annual hours by approximately 33-1/3% and the Union urges its rejection.

With respect to meals, the Union has proposed that the language of the North Bergen contract be incorporated into the agreement. That language provides that each firefighter shall be required to contribute to organized mess or meals.

Relying upon the West New York contract, the Union seeks a staff schedule of 8:00 a.m. to 4:00 p.m., five (5) days per week.

The Union objects to the Regional's additional provision that it has the right to change the work schedule at any time. According to the Union, such a proposal is obviously a major change in the current practice, and hours of work is a term and condition of employment that must be negotiated prior to the implementation. The Union contends that to permit the Regional to change the work schedule of those assigned to the staff without negotiations would likely create havoc and labor unrest. The Union urges that the existing practice as established by the West New York contract be maintained.

The Union's proposal also would require the Regional to seek volunteers to work a staff position and would require that firefighters not be assigned to a staff position where a Department of Personnel classification exists. Acknowledging that neither of these provisions are contained in any contract, the Union maintains that these sections would provide stability for employees who are assigned line positions prior to their transfer into the staff work schedule.

Finally, the Union asserts that its proposal for assignment of newly appointed firefighters would give the Regional flexibility to establish their work schedule during their Academy training to ensure that firefighters are properly trained.

Under the North Bergen contract, firefighters were scheduled to work 24 consecutive hours followed by 72 consecutive hours off. Each 24-hour shift would begin at 7:30 a.m. and end at 7:30 a.m. the following day. Pursuant to the Union City contract, firefighters were scheduled to work 24 consecutive hours followed by 72 consecutive hours off. There, each 24-hour shift would begin at 8:00 a.m. and end at 8:00 a.m. the following day. Under the Weehawken contract, firefighters were scheduled to work 24 consecutive hours followed by 72 consecutive hours off. Finally, pursuant to the West New York contract, firefighters were scheduled to work 24 consecutive hours followed by 72 consecutive hours off. There each 24-hour shift would begin at 8:00 a.m. and end at 8:00 a.m. the following day.

Director DeOrio testified that at present, Regional firefighters continue to adhere to the starting times that they followed when they were employed by the individual municipalities. However, if a firefighter transfers, he would abide by the starting time of that particular firehouse.

Mr. Marino stated that the Union's proposal in Paragraph B(2) that employees may be properly relieved and quit at 6:30 a.m. is consistent with past practice of the Regional, North Bergen, West New York, and Union City. However, the Union City contract provides that a firefighter may be properly relieved and quit at 7:00 a.m., provided it presents no problem(s) to the Deputy

Chief or Tour Commander. The contracts with the other municipalities do not provide such a clause.

According to Mr. Marino, Paragraph C of the Union's proposal is intended to provide that all members are to contribute to the meals, either with money or by bring in food themselves, as a way to claim some of the meals for tax purposes. Mr. Marino acknowledged that this provision is only in the North Bergen contract and not in any of the other three (3) municipal contracts.

With regard to Paragraph E, Mr. Marino explained that it provides the Regional with flexibility as to when a newly-appointed firefighter can work. The Union City contract provides that the work schedule of newly appointed firefighters shall be their training schedule and that upon completion of said schedule, firefighters shall be placed in their regular rotational schedule. However, a provision similar to the Union's proposal is not included in any of the other municipal contracts.

Both parties argue strenuously for their proposed work schedules. The Union's work schedule proposal would continue the schedule followed under each of the predecessor agreements of 24 hours on duty followed by 72 hours off duty. The Regional's proposal would change the schedule to provide for 24 hours on duty followed by 48 hours off duty. Although an important intent of regionalization was to achieve efficiencies in service and costs, I am not

persuaded that this goal encompassed the major changes in work schedule and hours of work proposed by the Regional. The Regional's proposed work schedule would effect such a change by increasing the total number of hours worked annually by one third from 2,184 hours to 2,928 hours per year. Although Regional firefighters working 24 hour shifts work fewer days per year than do individuals employed in occupations working eight hour shifts or firefighters working a 10/14 schedule, its firefighters do work 2,184 hours annually. No credible evidence is offered to reflect that the work schedule the Regional proposes is one commonly accepted or adopted in New Jersey and instead reflects the old Guttenberg schedule which was abandoned in favor of West New York's schedule prior to regionalization. There would also be a substantial cost impact attached to the Regional's proposal to increase annual work hours by one-third. Under these circumstances, there is insufficient evidence of the need to modify the current work schedule.

However, the testimony of Directors DeOrio and Welz as to the need for a uniform shift change without early release is persuasive. The Union urges a 7:30 a.m. shift change time to avoid the increased level of traffic at 8:00 a.m. Director DeOrio acknowledged the traffic problem in his testimony regarding the 20-45 minute travel time delay at the beginning of the shift that sometimes results when it is necessary to move firefighters from one house to another to cover sick leave or injury. Director DeOrio also acknowledged that it "would not make much of a

difference” whether the shift started at 7:30 a.m. or 8:00 a.m. Accordingly, the shift change shall take place at 7:30 a.m.

The Union proposes to include a requirement that firefighters contribute to an organized mess, as was included in the previous agreement in North Bergen. The Regional opposes such a provision, but did not provide a rationale for its opposition. Mr. Marino testified that the organized mess can provide some firefighters with a tax benefit. The benefit provided by an organized mess is likely to contribute to firefighter morale and is awarded.

Both parties propose a work schedule for firefighters assigned to staff positions. The Regional proposes work hours of 8:00 a.m. to 4:30 p.m. inclusive of lunch while the Union proposes work hours of 8:00 a.m. to 4:00 p.m., as provided in the previous West New York agreement. Additionally, there is testimony that the work schedule for staff firefighters in North Bergen was from 8:00 a.m. to 4:00 p.m. There is no evidence that the 8:00 a.m. to 4:00 p.m. work schedule for firefighters assigned to staff functions has not yielded the coverage or productivity desired in those communities who employed them. I award this work schedule herein with the inclusion of a one-half hour paid lunch.

The parties disagree as to the remaining procedures concerning the assigning and scheduling of staff firefighter positions. The Union would initially seek volunteers to fill staff positions and would require that a salary be

established for positions with Department of Personnel classifications, such as Fire Instructor, prior to assignment. The Regional would reserve the right to unilaterally change staff work schedules to accommodate the needs of the department. Directors Welz and DeOrio testified that the regionalization created the fourth largest fire department in the State, and increased the need for staff functions. Some departments, such as North Bergen and West New York, had staff functions prior to regionalization. The hours for North Bergen's staff firefighters were not detailed in the agreement, but the West New York agreement provided an 8:00 a.m. to 4:00 p.m. work schedule for its fire prevention personnel. As a result, none of the previous agreements addressed issues beyond hours of work for staff firefighters. Director Welz testified that, due to the ongoing transition period resulting from the regionalization, there was significant uncertainty as to the full responsibilities that would ultimately fall to staff firefighters. Accordingly, further definition of the work schedule and the procedures for assigning and scheduling of staff firefighters should be addressed as needed once the transition period is completed and the needs of the department and of the staff firefighters are known. Thus, I do not award the process proposed by the Union during this contract term.

The Union also proposes work hours for newly appointed firefighters during their academy training. That provision appeared only in the previous Union City agreement, where the work schedule was their training schedule. There is insufficient evidence of the need to include that provision here. Finally,

the Union proposes an hour release time when a firefighter is assigned to a station other than their regularly assigned station in order to retrieve their gear. That provision is not included in any of the previous agreements and is not included here.

Accordingly, the agreement shall provide the following regarding the hours of work:

A. Work Day

1. The workday shall consist of twenty-four (24) consecutive duty hours.
2. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again followed by twenty-four (24) hours on duty, and so on.

B. Line Firefighter Starting and Leaving Times

Employees shall start the workday at 7:30 a.m. and shall leave at 7:30 a.m. the following day.

C. Meals

It shall be required of each firefighter, irrespective of whether the fire officer leaves his assigned duty station during his shift, that the fire officer contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

D. Staff Firefighter Starting and Leave Times

The workweek for firefighters assigned to a staff position shall consist of a five (5) day week each work day consisting of the hours from 8:00 a.m. to 4:00 p.m. including a one half hour paid lunch.

EXCHANGE OF TOUR DUTY

The **Regional** proposes the following contractual language:

Section 6.2: The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the disruption to the operation of the fire department, no employee may take more than five (5) mutual swaps during a calendar year without the express permission of the Executive Director or his designee. Each use will be considered one time for each employee.
- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either firefighter involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twenty-four (24) hour periods only, during the normal tour of duty. There will be no partial exchanges of tours.
- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will

owe the Employer two tours of duty for each tour taken but not covered.

Section 6.3: The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits or other forms of liability, that arise out of or by reason of any action taken or permitted by the Regional with respect to Section 6.2.

The **Union** proposes the following contractual language:

- A. Leaves shall be granted to an Association member who obtains the services of another Association member who shall be capable of serving instead of the first member and working his tour of duty. Notification should be submitted on previous tour except in case of emergency.
- B. Mutual substitutions, i.e., two (2) employees working for each other, shall be permitted with the approval of the chief or his designee.

The Regional urges adoption of its proposal covering exchanges in tours of duty, noting that the predecessor agreement in North Bergen provided that requests for mutual changes were to be submitted at least 48 hours in advance and were not permitted if the change would entitle either officer to receive overtime, unless the exchange had the specific approval of the Chief.

The Regional notes that Union City firefighters were permitted to make mutual exchanges, but no more than one working day was permitted except in cases of emergency.

The previous agreement in Weehawken required that requests for mutual exchanges be submitted 72 hours in advance and that the exchange would not

entitle any officer to receive overtime. However, firefighters were not permitted to exchange tours of duty if the switch would have entitled either firefighter to receive overtime, provided no firefighter had to work two (2) consecutive shifts.

Pursuant to the West New York contract, firefighters were permitted to exchange tours of duty. However, if the substitute failed to report to duty, the firefighter originally scheduled for the shift was held responsible and would lose the time.

The Regional stresses Director DeOrio's testimony that it is extremely important that the Regional's proposal designate that the exchange of tours must be for a tour of twenty-four (24) hours because "prior to regionalization and during regionalization with the contracts there'd be variations of different tours that were given time off for different hours." The Regional asserts that utter confusion and tremendous staffing problems would result if there was not a uniform requirement for mutuals. According to Director DeOrio, allowing mutuals for one hour, four hours, and six hours:

. . . just adds to the confusion of paperwork and having it completed knowing from your daily assignment you got three hours, that four hour mutual, seven hours, that 12 hour mutual, I got two guys taking 24, where mistakes take place on an ongoing basis when those things take place and it also causes problems. I'm late, I hit traffic.

There's different variables. By having standardized reporting time, you eliminate most of that stuff. It still could happen. At least we know when an individual is coming to work each day, instead of the

battalion, the deputy, having a log when people are responding in each day.

In addition, Director Welz was asked to explain the approach to mutuals that was taken by North Bergen:

Obviously a mutual exchange of duty as a privilege permitted a member to swap with an individual and get additional time off, cognizance of the 24 and 72 hour work, one exchange of duty would permit that individuals to have seven days continuous off. We limited to the 24 hours tours simply that we didn't want to have the mutual to be used in a 12 hour or less so that members, since most of our training occurred during Monday through Friday, eight to four time period, basically, other than special times, all the inspections, the training, the real nuts and bolts of the operation of the department took place Monday through Friday between eight and four and the rest of the time was basically response to emergencies. So by forcing the men to take a 24, you couldn't use a 12 to take a series of tours off, which would make it hard as a manager to get all the people trained and do all necessary functions that we require members to do.

With regard the proposal for twenty-four (24) hour mutuals, Director Welz added that:

With a 300 man department compared to a 50 man department its even considerably harder to do this on a larger scale. And, you know, the continuity of the shift and getting the people on that shift to be a cohesive unit depends on them all working together on a regular basis. The reason we limit the amount of mutual swaps is to reduce management exposure to not having regularly assigned people on duty.

The Regional again relies upon the testimony of Director DeOrio regarding the importance of ensuring that both individuals can perform the assignments of the mutual exchange. Additionally, the Regional cites the example provided by

Director Welz to illustrate the importance of ensuring that both individuals can perform the assignments of the mutual exchange. In that example, a firefighter swapped tours but was actually unqualified to be a tiller. This firefighter, without any experience as a tiller, took the fire truck out on an alarm and slammed into three (3) parked cars. Indeed, "it's a lot different when you're driving an apparatus that you haven't even driven or driven at a small interval many, many times ago."

The Regional also relies upon Director DeOrio's testimony of the importance of the firefighters participating in the mutuals actually showing up for work. According to Director DeOrio, if a firefighter does not show up for a mutual, it would cause a monetary hardship on the Regional because it could necessitate the calling in another firefighter on overtime. Moreover, Director DeOrio stressed that the Regional's proposed language that "[a]ny member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered," must be incorporated into the new contract because someone has to be held responsible if a shift is not covered, and it is equitable that this responsibility rest with firefighter who was originally scheduled to work the shift. According to the Regional, a mutual exchange is viewed as a "privilege."

The Regional cites examples of punishment that had been administered to firefighters for failing to show up for duty on a mutual. According to Director

DeOrio, in one (1) instance, Union City Chief Jones took away a firefighter's bank time that he was using for retirement; in another instance, one of the municipalities took away vacation days; and in another instance, one of the municipalities had a firefighter work an extra day.

Explaining why the Regional proposes a limit of five mutuals, Director Welz stated that:

I think it's been obvious that the majority of people in the Regional by direct testimony usually don't use more than five swaps. So we're not negatively impacting the majority of employees . . .

...
We're basically a new department. It is impossible at this early stage for every chief officer and every company supervisor to know the expertise or limitations of 300 plus employees. Maybe five years from now, ten years from now, that will be a nonissue. . .

...
We look at the concept of firefighting as a team evolution, where it's a team of a company of three or four men, and a platoon that has same 70, 68 men that work as a cohesive unit. Every time you bring a member from another platoon you lose some of that efficiency, you lose that cohesiveness within the company level and you lose it a little more on the platoon level . . .

The Union also discussed the issue of "nonmutuals," where one firefighter works for another firefighter, but unlike a mutual, there is no payback by the firefighter whose shift was covered. Relying upon the testimony of Mr. Michelin, the Regional points out that the Union is not seeking the use of non-mutuals in this contract.

The Regional acknowledges that proposals permitting voluntary shift exchanges conditioned on the Regional's prior approval are mandatorily negotiable, but points out that the Regional can deny shift exchanges if an officer's special skills are required on a particular shift. Accordingly, the Regional urges the adoption of its proposal and the rejection of the Union's proposal.

The Union notes that both parties have proposed provisions with regard to two firefighters voluntarily exchanging tours of duty, and that both proposals would require the approval of the Chief prior to any such exchange. The Union has indicated that paragraphs a, b, c, e, and f of the Regional's proposal are acceptable to it.

However, the Union strongly objects to the Regional's proposal at Section 6.2d, which would limit the number of mutual swaps to 5 per year. The Union maintains that such limitation is unwarranted. According to the Union, the only limitation in any of the municipal contracts is in West New York, where firefighters were permitted non-mutual substitutions, in which a firefighter would have to pay back another firefighter with a swap tour. The Union has abandoned that provision and does not seek to include it in this agreement.

Currently, each of the municipalities has a different period of time over which tours can be exchanged. The Union points out that current practice under regionalization is 6, 12 or 24 hours and therefore, the Regional's attempt to limit

exchanges to periods of 24 hours is unacceptable. Instead, the Union proposes that exchanges may be for four, eight, twelve or twenty-four hours. According to the Union, this flexibility is necessary due to the firefighters schedule, seven days a week, because there are times that events occur which conflict with the firefighter's unusual schedule. According to the Union, by permitting the firefighter to exchange less than the full 24 hour tours, an employee could attend functions that conflict with the work schedule without losing the entire day of work. The Union argues strongly that there is no reason to limit the employee to twenty-four hours only.

The Union also asserts that the Regional's proposed section (h) is also unacceptable. It is the position of the Union that once the swap is made, each firefighter is responsible for the tour which he has agreed to work. In addition, the Union asserts that the penalties proposed by the Regional are unacceptable. The Union contends that the penalties, assuming that any is warranted, should conform to traditional notions of progressive discipline. For example, according to the Union, a firefighter who fails to show for a tour which he has agreed to fill should be orally warned, receive a written notice for a second infraction, and so on.

Likewise, the Union contends that Section 6.3, indemnification, is unnecessary. According to the Union, not many current municipal contracts

contain this superfluous language and the Regional has failed to identify how it could be subject to a claim or other form of liability.

Mr. Marino testified that the Union's proposal in Paragraph A is based on page 6 of the Union City contract. Mr. Marino also testified that mutuals were permitted in North Bergen. Indeed, North Bergen firefighters required approval of the chief and written documentation. Mr. Marino explained that there was an agreement between North Bergen and the Union that there would be a limit of five (5) mutuals per firefighter per year.

Mr. Willard testified that mutuals also occurred in West New York. He explained that there was no limit on mutuals; however, the Town of West New York required approval of the chief and written documentation.

Mr. Michelin testified that mutuals were also permitted in Union City. According to Mr. Michelin, there was no limit on mutual; however, the City of Union City required approval by the chief in addition to written documentation

The parties are in agreement as to many of the procedures for exchanging tours of duty, however they disagree as to: (1) whether the number of mutual swaps per year should be limited; (2) whether partial tours of duty are permitted; (3) whether an employee may be penalized if the employee with whom he has

swapped tours of duty does not come to work; and (4) whether the Union must indemnify the Regional for any harm that may result from a mutual exchange.

With respect to the number of tours of duty that may be exchanged each year, only the previous West New York agreement places a limitation on the number of tours that may be exchanged, and that limitation is only on non-mutual substitutions which the Union does not seek here. However, the previous agreement in North Bergen included a limitation of five mutual exchanges per year. Given that firefighters work 91 tours annually, the limitation of six mutual exchanges over the course of a year is reasonable and is awarded.

The previous agreements all provided for mutual exchanges in increments of less than a tour of duty. The Union maintains that the need for flexibility to exchange tours for four, eight, twelve or 24 hours is due to events that conflict with firefighters' unusual work schedule. Director DeOrio's testimony as to the confusion that results from exchanges of tours or duty for varying periods covered the current situation during the transition period where the time periods for mutual exchanges vary from fire station to fire station. Director DeOrio's testimony points not to the need to restrict the mutual exchange of tours of duty to a full 24 hour tour, but to restrict the options for mutual exchange of tours of duty. In other words, the Union's proposal to permit mutual exchanges of four, eight, twelve or 24 hours provides great flexibility to firefighters to the detriment of the Regional's ability to schedule firefighters efficiently. Instead, a more limited

approach that would permit mutual exchanges of tours of duty for 12 or 24 hours will permit firefighters to maintain their scheduling flexibility and will permit the Regional to address its scheduling needs efficiently.

Regarding the Regional's proposal to charge the originally scheduled employee when another employee does not come to work a mutual exchange, some of the predecessor departments had penalized employees in that situation. The proposed penalty is too severe and shall be limited to one tour for a tour not covered. The Regional has not demonstrated a need for the Union to provide indemnification for any harm arising out of the use or application of the exchange of tour of duties provision and it is not awarded. In sum, I award the following:

The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the potential for disruption to the operation of the fire department, no employee may take more than six (6) mutual swaps during a calendar year without the express

permission of the Executive Director or his designee. Each use will be considered one time for each employee.

- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either firefighter involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twelve (12) or twenty-four (24) hour periods, during the normal tour of duty.
- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will owe the Employer one tour of duty for each tour taken but not covered.

MILITARY LEAVE

The **Regional** proposes the following contractual language:

Section 7.21: Leave of absence for field training in Reserve Corps of United States

Section 7.22: All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.

Section 7.23: No employee shall suffer a loss in pay when required to serve his country.

Section 7.24: Any request for such leave must be made to the Executive Director and accompanied by a copy of a written order from the commander of the Armed Forces Reserve Unit involved, indicating report and return dates of training period. Employees, who, subsequent to their date of hire, desire to become active members of an Armed Forces Reserve Unit must secure written permission from the Executive Director. Employees called to duty are required to provide written verification regarding compensation received from the government for such duty.

The Union proposes the following contractual language:

- A. All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.
- B. No employee shall suffer a loss of pay when required to serve his country.

The Regional notes that its proposed sections 7.22 and 7.23 are identical to the Union's proposal and its proposed section 7.21 is contributive or in the nature of a title to the section and is not substantive. Accordingly, the Regional focuses on the terms of section 7.24 which would provide notice to the Regional when a firefighter is called or ordered to active duty so that the Regional can modify and adjust its schedule. According to the Regional, the parties also agreed to the language in section 7.24, except for the second sentence, which provides: "Employees, who, subsequent to their date of hire, desire to become active members of an Armed Forces Reserve Unit must secure written permission from the Executive Director." The Regional notes that while the statute governing military leave prohibits the reduction of salary, it does not provide for the increase of salary. Therefore, the Regional asserts that it must be made aware of the military compensation that the firefighter receives in order to prevent the firefighter from receiving greater compensation than he or she would be entitled to absent military leave.

The Union points out that its proposal is written in more general terms than the Regional's. It grants all rights and privileges with respect to military

leave pursuant to the provisions of State and Federal law. It also provides that no employee shall suffer loss of pay when required to serve his Country. According to the Union, the Regional's proposal is more limiting because it limits a leave of absence without loss of pay only when an employee is engaged in field training, though it provides no definition of what field training is. It also requires permission of the Chief to become an active member of the armed forces reserve unit, which is unacceptable. As a rule, employees should be encouraged to participate in the service of their Country.

Before the regionalization, the municipalities provided the following military leave benefits. North Bergen firefighters received military leave in accordance with State and Federal Statutes. Union City firefighters who entered military service pursuant to the Selective Service Act of 1948, were granted all rights and privileges therein. West New York firefighters who entered military service pursuant to the Selective Service Act of 1948, were granted all rights and privileges therein. In addition, West New York firefighters called to active duty were granted eight working days leave with pay, prior to induction. Finally, when the military compensation of a West New York firefighter was less than his salary, the Town was permitted to pay the difference to the firefighter in monthly installments.

The parties have now agreed upon the language as included in the Regional's proposal as Section 7.22 and 7.23 and it is included in this Award.

Section 7.22: All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.

Section 7.23: No employee shall suffer a loss in pay when required to serve his country.

FUNERAL LEAVE

The **Regional** proposes the following contractual language:

Section 7.24: Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) twenty-four (24) hour tours.

Section 7.25: Immediate family member shall be defined to include spouse, child, parents, brothers, sister, father-in-law, mother-in-law, grandparents and grandchildren of the employee. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle or other relative residing in the employee's immediate household, the member shall be entitled to the day of funeral only.

The **Union** proposes the following contractual language:

- A. Members shall be granted time off with no loss of pay in the event of a death occurring in the immediate family from date of death until funeral not to exceed two (2) twenty-four hour tours of duty.
- B. For the purpose of this Article, immediate family is defined as spouse, child, step-children, father, mother, brother, sister, father-in-law, mother-in-law, brother-in-law, sister-in-law, niece or nephew, aunt or uncle, grandparents, spouses grandparents, grandchildren, guardian, stepmother, stepfather, ward, foster child or other relative residing in the employee's immediate household.

- C. The above leave may be extended at the discretion of the Chief of the Department or the Director of the Chief of the Department or the Director of the North Hudson Regional Fire and Rescue Department.
- D. Reasonable verification of the event may be required by the Regional.

The Regional points out that the North Bergen contract provided for leave from the date of death of an immediate family member until funeral, and defines immediate family member as spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents, grandchildren of both members and their spouse. However, in the event of a death of a brother-in-law, sister-in-law, aunt, uncle or other relative residing in the employee's immediate household, the member was entitled to the day of funeral only. The Regional notes that Union City firefighters were granted time off without loss of pay in the event of a death in the immediate family from date of death until funeral. Immediate family was defined as wife, child, step-child, mother, father, sister, brother, step-mother, step-father, mother-in-law, father-in-law, grandparents and spouse's grandparents. The Regional cites the Weehawken contract which provided for leave from the date of death of an immediate family member up to and including the day of funeral, not to exceed two 24-hour tours and defined immediate family member as spouse, children, foster children, father, mother, father-in-law, mother-in-law, brother, sister, grandparents, aunts and uncles. However, in the event of a death of a close relative, the employee was granted his day tour off to attend the funeral only. According to the Regional, West New York firefighters were granted

emergency leave for death in the immediate family, which included one work day plus one additional day if necessary, subject to review.

The Regional explains that its proposal grants members of the bargaining unit up to two 24-hour tours for the death of a member of their immediate family, from the day of death to the day of the funeral. According to the Regional, if a member works two 24-hour tours during that period, he is entitled to two 24-hour tours with pay during that period. The Regional would define who constitutes a member of the firefighters' immediate family and provides that if a person is not considered part of the immediate family, the proposal would provide time off the day of the funeral only.

The Regional explained that its proposal grants members of the bargaining unit up to two 24-hour tours for the death of a member of their immediate family. The two tours are from the day of death to the day of the funeral. In other words, according to the Regional, if a firefighter works two 24-hour tours during that period, he is entitled to two 24-hour tours with pay during that period. The Regional would define a member of the firefighters' immediate family more narrowly than the Union. The Regional proposes that if a person is not considered part of the immediate family, then that employee would receive time off for the day of the funeral only. The Regional, relying upon the testimony of Director Welz, asserts that its proposal would provide members with the ability

to be off for the death of an immediate family member, and at the same time provide the ability for firefighters to attend the funeral of other relatives

Relying upon Mr. Marino's testimony, the Regional points out that the Union's proposal is a combination of all four contracts with a more expansive definition as to what constitutes immediate family. The Regional notes that paragraph C of the Union's proposal is based upon the West New York contract, even though none of the other three municipal contracts provide for such a provision.

The Regional argues that its proposal is more reasonable because its definition of what constitutes "immediate family" is more akin to the accepted definition in today's society. The Regional notes that it would also provide the firefighter with one paid tour off to attend the funeral of people such as brother-in-law; sister-in-law, aunt, uncle or other relative. The Regional points out that if the firefighter does need additional time off, he may utilize other mechanisms to get time off, such as a mutual swap and vacation time.

The Union notes that both parties have proposed that in the event of a death in the immediate family, a firefighter will be granted a maximum of two 24-hour tours off, but differ over the definition of immediate family member. According to the Union, both proposals include spouse, child, parents, brothers, sisters, father-in-law, mother-in-law, grandparents and grandchildren. The Union

also proposes the inclusion of stepchildren, brother-in-law, sister-in-law, niece, nephew and uncle, spouse's grandparents, guardian, stepmother, stepfather, foster child or other relative residing in an employee's immediate household. The Union notes that the Regional would provide time off for the day of the funeral only for some of these relatives.

By way of comparison, the Union notes that the Weehawken contract includes foster children, aunts and uncles and other relatives residing in the household, in addition to the undisputed family members, and North Bergen's contract provides for grandparents and grandchildren of both the member and his spouse. The Union points out that North Bergen's contract also provides for the day of the funeral only for a firefighter's brother-in-law, sister-in-law, aunt and uncle or other relative residing in the household. In the Union City contract, the immediate family includes stepchildren, stepmother, stepfather and spouse's grandparents. The West New York contract has the broadest definition of the immediate family. It includes step-child, ward, step-mother, step-father, guardian, aunt, uncle, nieces, nephews, brother-in-law and sister-in-law.

The Union argues strenuously that there should be no diminution in this benefit and the definition of the immediate family should encompass all those contained in current collective bargaining agreements.

The parties agree as to the amount of time off in the event of a death in the family, up to two (2) 24 hour tours of duty from the date of death through the funeral. The parties disagree as to the definition of immediate family, with the Regional limiting the definition and the Union proposing a more expansive definition. Given that firefighters have additional means of arranging time off in the event of the death of a family member, such as a mutual swap, the funeral leave provisions follow the Regional's framework of providing only the day of the funeral for more distant relatives, but expands the definition of immediate family beyond that proposed by the Regional.

Accordingly, the funeral leave provisions of the agreement shall be as follows:

Section 7.24: Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) consecutive twenty-four (24) hour tours.

Section 7.25: Immediate family member shall be defined to include spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren of the employee or other relative residing in the employee's immediate household. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle, niece or nephew, or step-parent, the member shall be entitled to the day of funeral only.

COURT TIME

The **Regional** proposes the following contractual language:

Section 9.3: Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Board¹ proceedings will not be paid except when the member's testimony is required by the Employer.

The **Union** proposes the following contractual language:

- A. Court time, as referred to in this Article, shall consist of all time, excluding regular tours of duty, during which an employee covered under this Agreement shall be required to attend a Municipal Court, County Court, Superior Court, Grand Jury Proceeding, or other courts or administrative bodies on departmental related matters.
- B. All such required court time shall be considered as overtime and shall be compensated at time and one-half (1 ½). Overtime will be paid for off-duty court time.
- C. When an employee covered under this Agreement shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled.
- D. The amount of overtime to which an employee may be entitled under this Article shall be the actual time required, including waiting time in the court or administrative body together with any applicable travel time; provided, however, that the employee's entitlement to overtime under this Article shall not be less than four (4) hours overtime pay.

The Regional cites Mr. Marino's testimony that in order to qualify for court time under the Union's proposal, an off-duty firefighter must be required to go to

¹ I note that the intent of Section 9.3 is to reference "Commission" rather than "Board".

court. Under the Union's proposal, the firefighter is then compensated for that time at the overtime rate, and at a minimum of four hours. The Regional notes that Mr. Marino testified that the Union's proposal is similar to language contained in the individual municipal contracts, but points out that Mr. Marino acknowledged that only the Weehawken contract contains a provision for court time. Additionally, the Regional cites Mr. Marino's testimony that travel time is calculated from fire headquarters to the court and that the Weehawken contract provides only for a minimum of two hours.

The Regional also cites Mr. Marino's testimony regarding the use of court time. According to Mr. Marino, five or six firefighters in North Bergen were required to go to court during the last two years of the department's operation. The Regional also noted that Mr. Willard stated that "a couple" of people were required to go to court during the last two years of operation in West New York. The Regional cited Mr. Michelin's testimony that he was not aware of any people that were required to go to court during the last two years of operation in Union City.

The Regional also notes that the Union has agreed to the inclusion of the following sentence from the Regional's proposal: "Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer."

The Union notes that both parties propose that a firefighter will be compensated at time and one half for a minimum of four hours for court appearances. According to the Union, its proposal is based upon the language in the Weehawken agreement.

The previous agreement in Weehawken included a provision for court time upon which both parties base their court time proposals. Both parties would provide for a four-hour minimum overtime allowance, although the Union would provide it for all court appearances and the Regional would provide it only when an employee's appearance is necessary during off-duty hours. The proposed four-hour overtime minimum is appropriate for those employees whose testimony is required in court during their off-duty hours and is awarded. Additionally, the Union's proposal that travel time be included in the calculation of off-duty overtime is also appropriate and is awarded. Also included in the Court Time provision is the parties' stipulation to the language, "Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer."

Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of

four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. If an employee is entitled to overtime shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer.

LEGAL REPRESENTATION

The **Regional** proposes the following contractual language:

Section 10.0: Whenever a member is a defendant in any criminal action arising out of or incidental to the performance of his duties, and is found not guilty, the Regional shall provide this member with counsel or reimburse the employee for reasonable expenses incidental to such representation for the defense of such action or proceeding. The Regional shall, in its sole and absolute discretion, determine if it will provide an attorney or permit the employee to select counsel. If an employee is permitted to retain counsel, such counsel must agree to the fee schedule provided by the Regional.

The **Union** proposes the following contractual language:

- A. The Department will defend and indemnify all employees covered by this Agreement in order to protect them from suits arising out of performance of their duties.
- B. The Department shall supply to all employees all necessary legal advice and counsel in the defense of charges files against them in the performance of duty, except in case of disciplinary proceedings instituted against them by the Department, but shall for the settlement of claims for personal injury, death or property damage arising out of or in the course of their employment, and the Department shall pay and satisfy all judgments against said employees from such claims.

- C. The Department agrees to provide insurance coverage for employees for each incident arising out of job related off-duty activities as well as incidents occurring while on duty. The Department will procure a \$1,000,000.00 liability policy for this coverage.

The Regional points out North Bergen provided insurance coverage for firefighters for each incident arising out of job related off-duty activities as well as incidents occurring while on duty. North Bergen also maintained a \$500,000.00 liability policy. According to the Regional, Union City agreed to supply all employees all necessary legal advice and counsel in the defense of charges filed against them in the performance of duty, except in case of disciplinary proceedings instituted against them by the Department of Public Safety. For the settlement of claims for personal injury, death, property damage arising out of or in the course of employment, Union City agreed to pay and satisfy all judgments against the employee, according to the Regional. The Regional notes that Weehawken agreed to defend and indemnify all employees in order to protect them from suits arising out of performance of their duties, provided the acts committed by the firefighter did not constitute fraud, malice, willful misconduct, or intentional wrongdoing.

The Regional cites Mr. Marino's testimony that Paragraph A of the Union's proposal is based upon the Weehawken contract. The Regional notes, however, that the Union's proposal omits the following language in the Weehawken contract: ". . . provided the acts committed by the employees upon which the damages are based did not constitute fraud, malice, willful misconduct or an

intentional wrongdoing.” The Regional emphasizes that Mr. Marino acknowledged that the West New York, Union City, and North Bergen contracts do not include the provision as proposed by the Union.

The Regional also points to Mr. Marino’s testimony that Paragraph B of the Union’s proposal is based on the Union City agreement, as well as Mr. Marino’s acknowledgement that such a provision is not included in the North Bergen contract. The Regional also notes that Weehawken’s contract sets forth a legal services plan whereby employees must contribute \$100.00.

The Regional notes that Paragraph C of the Union’s proposal is based on the North Bergen contract, except that the Union’s proposal doubles the required policy amount from \$500,000.00 to \$1,000,000.00

The Union asserts that the Regional’s proposal falls short because it is limited to defense of criminal actions. In contrast, the Union maintains that its proposal goes much further and is not limited to criminal actions but also includes civil actions and excludes disciplinary proceedings. According to the Union, under its proposal, the Department would defend and indemnify all firefighters for any claims arising out of performance of fire fighting duties. The Union asserts that the firefighter should not be exposed to legal liability without the backing of his employer. Accordingly the Union maintains that its proposal is fairer and

more reasonable because the Regional's proposal would abandon firefighters where civil liability is concerned.

Both parties propose to provide some form of legal representation to firefighters from claims against them arising out of or incidental to the performance of their duties. The Regional's proposal would limit such representation to criminal proceedings. The Union would provide more encompassing representation and would require the Regional to obtain a \$1,000,000 insurance policy to indemnify firefighters from all claims arising out of or incidental to the performance of their duties. The Regional's proposal more restrictive than any of the predecessor municipal agreements, while the Union's proposal is more generous than any of those agreements. Paragraph A of the Union's proposal is drawn from the previous agreement in Weehawken, but omits the limitation for acts that "constitute fraud, malice, willful misconduct or intentional wrongdoing." The language of the previous Weehawken agreement balances the employee's need to be indemnified against all suits arising from the performance of their duties with the Regional's need to limit its liability for illegal or wrongful acts. Since this provision indemnifies employees, there is no need to specify the amount of the indemnification insurance needed by the Regional. Accordingly, the Legal Representation provision is awarded as follows:

The Employer will defend and indemnify all employees covered by this Agreement in order to protect them from suits arising out of performance of their duties, provided the acts committed by the

employees upon which the damages are based did not constitute fraud, malice, willful misconduct or an intentional wrongdoing.

SAFETY AND FACILITIES

The **Regional** proposes the following contractual language:

Section 16.0: North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all firefighters, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

Section 16.1: All sanitary facilities in the firehouse, such as toilets, shower, wash basins, etc. shall be kept in good working order.

The **Union** proposes the following contractual language:

- A. All sanitary facilities and equipment in each firehouse including, but not limited to, toilets, showers, and washbasins shall be furnished and maintained in good working order by the Department.
- B. The existing firehouses are to be reconditioned so as to be liveable and the Department shall paint and plaster where and when necessary.
- C. The Department agrees to provide employees with a reasonable and safe place for their work efforts and further agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.
- D. The Department shall also furnish, maintain in good working order, and replace, when necessary, the following:
 - a. Lockers
 - b. Beds and bedding
 - c. Chairs
 - d. Tables
 - e. Lunch Facilities

- E. All department motor vehicles, equipment, and apparatus shall be maintained with State Inspection Standards and Specifications. The Department shall provide the Association within ten (10) business days a copy of all annual ladder tests, and pump tests, which shall be conducted by an independent 3rd party, pursuant to NFPA standards.

The Regional acknowledges that the maintenance of physical facilities is a mandatory subject of negotiations, but notes that portions of provision dealing with working conditions which propose how government services will be delivered have been held to be non-negotiable.

The Regional points out that its proposal is very similar to Paragraphs A and C of the Union's proposal and they both provide that the Regional will provide a clean and healthy working environment for its firefighters. Addressing the Union's proposal, the Regional notes that Mr. Marino testified that Paragraph A of the is based upon the Union City, Weehawken, and West New York contracts, but that there is no such provision in the North Bergen contract. Mr. Marino also testified that Paragraphs B and C of the Union's proposal are based upon the Weehawken contract, but acknowledged that such provisions are not included in the West New York, North Bergen, or Union City contracts.

The Regional asserts that Paragraph B of the Union's proposal must be rejected because no there is no evidence supporting its inclusion in the new agreement. Although Paragraph B of the Union's proposal is based upon the

Weehawken contract, the Regional reiterates that it is not included in the other municipal agreements.

Likewise, the Regional seeks the rejection of the Paragraph D of the Union's proposal, which includes a linen service. The Regional proposes that the linen service provided in Weehawken be discontinued. The Regional relies upon the testimony of Director Welz testified that only Weehawken provided linen service. The Regional also points to Director Welz's testimony that lockers were not necessary. Addressing Mr. Marino's testimony that Paragraph D of the Union's proposal is based upon the Weehawken and Union City contracts, the Regional points out that the Union City contract does not specifically state that mattresses and frames would be replaced as their wear deems necessary. Additionally, the Regional highlights that neither the North Bergen contract nor the West New York contract provide for a provision similar to Paragraph D.

The Regional also seeks rejection of Paragraph E of the Union's proposal because it is covered by the language set forth in Section 16.0 of the Regional's proposal. Addressing the testing of equipment, Director Welz stated that ladders are tested every two years, and firefighting equipment is tested more frequently by a private testing company if the circumstances warrant such testing, such as when a ladder is exposed to high heat. Director Welz also testified that pumps on the fire trucks are tested by certified mechanics according to manufacturer guidelines. The Regional cites Mr. Marino's testimony that Paragraph E of the

Union's proposal is based upon the Union City contract, but notes that such a provision is not included in the West New York or North Bergen contracts.

Accordingly, the Regional seeks the adoption of its proposal and the denial of the Union's proposal.

The Union asserts that its proposal simply provides that the Regional will maintain existing houses in a livable condition. The Union asserts that this proposal is based upon the Union City and West New York contracts. In contrast, the Union asserts that the Regional's proposal is too general. According to the Union, it lacks the specificity necessary to insure that the firefighters will be provided a safe and hazard-free environment. The Union maintains that its proposal is necessary and appropriate given that firefighters are required to live where they work.

Both parties propose safety and facilities proposals that would require the safety and maintenance of fire facilities and equipment. The Regional's proposal is very general with specifics only regarding sanitary facilities. The Union's proposal is very specific as to each and every aspect of fire station facilities and equipment. Additionally, paragraph E of the Union's proposal would require safety reporting standards in excess of those required by New Jersey statutes and regulations. This Award enumerates, in greater detail than would the Regional, its responsibility to maintain a safe and clean work place as well as

safe equipment. However, this Award does not require the reporting of equipment maintenance records and results to the Union and does not specify standards for repainting of furniture and refurbishment of fire stations.

North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all firefighters, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

- A. All sanitary facilities and equipment in each firehouse including, but not limited to, toilets, showers, and washbasins shall be furnished and maintained in good working order by the Department.
- B. The Department agrees to provide employees with a reasonable and safe place for their work efforts and further agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.

MEALS

The **Regional** proposes the following contractual language:

Section 17.0: It has been agreed to by both the Regional and the Association that it should be required of each firefighter, irrespective of whether the firefighter leaves his assigned duty station during his shift, that the firefighter contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

This language is similar to that included in the hours of work provision and is awarded there.

DRUG & ALCOHOL TESTING

The **Regional** proposes the following contractual language:

Section 18.0: The Association agrees to the drug & alcohol testing policy and procedures as described in Appendix A.

The Regional urges adoption of the drug testing policy described in Appendix A, which is the “Attorney General’s Law Enforcement Drug Testing Policy” as revised. The Regional relies upon the testimony of Director DeOrio that this policy is currently in effect in municipal police departments. According to the Regional, this policy provides that current law enforcement employees should undergo screening whenever there is individualized reasonable suspicion that the officer is unlawfully using drugs. Additionally, the Regional points out that Director DeOrio testified that during the six or seven months prior to the hearing, four firefighters were either arrested or found to be in rehabilitation for substance abuse. The Regional maintains that it has a vital interest in assuring that its firefighters abstain from drug use, which can impair job performance and place the public at risk.

The Regional asserts that it has a managerial prerogative to conduct the drug and alcohol testing. See Borough of Hopatcong, P.E.R.C. NO. 91-60, 17 NJPER 62 (¶ 22028 1990), and reviews the constitutionality of drug testing of public employees. International Federation of Professional & Technical

Engineers, Local 194A v. Burlington County Bridge Commission, 240 N.J. Super. 9 (App. Div. 1990); Fraternal Order of Police, Newark Lodge No. 12 v. City of Newark, 216 N.J. Super. 461 (App. Div. 1987).

The Regional notes that the Union did not propose a drug and alcohol policy and did not offer evidence establishing why drug testing should not be included in the agreement.

The Union maintains that the Regional has failed to provide any evidence that a Drug Testing Policy is necessary. The Union asserts that such a drastic change must be negotiated between the parties. Additionally, the Union asserts that the Regional has the burden to prove the need for such a Policy, and has failed to meet that burden.

That four employees of the Regional's employees were found to have substance abuse problems is a six month period is justification for inclusion of some procedures for drug testing in the agreement. The enormous responsibilities of the fire service, the expensive nature of equipment and the need for safety of the citizens and firefighters are sufficient reason for testing. The policy requires "individualized reasonable suspicion" to be present. Although the decision to test employees for drugs is a managerial prerogative, the Regional seeks to include specific procedures for that drug testing in the agreement. Ensuring that employees are aware of the possibility of drug testing

and the procedures for it is likely to act as a deterrent to use of illegal substances and affords protection by having the procedures included in the Agreement. Firefighters who are impaired by the use of drugs or alcohol are more likely to endanger themselves, other firefighters and the public. Accordingly the Regional's drug testing proposal is in the public interest and is awarded although with minor language modification.

The Regional may administer drug and alcohol testing policy and procedures as described in Appendix A, which is incorporated herein by reference.

Appendix A, the Attorney General's Law Enforcement Drug Testing Policy" as revised, is not reproduced here and is incorporated by reference.

OUTSIDE EMPLOYMENT

The **Regional** proposes the following contractual language:

Section 18.2: Employees gainfully employed other than with the Regional must, as soon as reasonably practicable, advise the Regional of such employment in writing. Such employment should be compatible with the employee's work within the Regional and in no way detract from the efficiency of the employee's work with the Regional. Such employment shall not interfere with overtime required by the Regional. The Regional may, upon reasonable grounds, revoke permission to hold outside employment at any time based upon the criteria outlined above.

Section 18.3: An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

The Regional points out that the Union did not propose a provision regarding “outside employment” and did not offer any evidence as to why the Regional’s proposal should not become part of the new contract. On the other hand, the Regional cites Director Welz’s explanation that the Regional’s proposal is essentially a reporting system to ensure that the Regional has a proper record of outside employment. According to the Regional, its proposal requires that firefighters who hold second jobs on their days off from the Regional notify the Regional as to their employer and as to the type of work they are doing. The Regional notes Director Welz’s testimony that section 18.2 is designed to ensure the safety of the operation of the Regional and its employees by monitoring firefighters’ outside employment so that it does not adversely affect employees’ ability to perform firefighter duties.

Turning to Section 18.3, the Regional cites Director Welz’s explanation that it covers those employees who are receiving benefits from the Regional while on sick leave or a compensable work-related injury leave and states that said employees cannot participate in outside employment during that time. The Regional highlights Director Welz’s testimony that the purpose of this proposal “is to ensure that [the firefighter] spend his full time recuperating from either his injury or sick leave so that he can return and we wouldn’t want any of his activities to diminish his ability to return in a timely manner.” In other words, “if they are so ill that the Region[al] is paying their salary and benefits, then they

must be so ill to necessitate that they're not employed." Accordingly, the Regional urges adoption of its outside employment proposal.

The Union asserts that the Regional has failed to produce evidence that outside employment has resulted in problems in the workforce and urges that its outside employment proposal be denied. Additionally, the Union finds unacceptable the Regional's effort to impose restrictions on how a firefighter spends his off duty time.

The Regional seeks to regulate outside employment of its firefighters to ensure that their outside employment is compatible with their official duties and does not interfere with their performance as firefighters. The Union objects to any regulation of employees on their off-duty time. However, limitations on whether employees may work at other jobs while on compensable sick or injury leave from the Regional, as well as limitations that assure that the employment does not conflict or interfere with job duties for the Regional are reasonable limitations as previously recognized at the North Bergen Agreement. A provision similar to that included in the North Bergen agreement is awarded here:

- A. Employees shall be entitled to engage in any lawful activity and obtain any lawful work while off-duty.
- B. It is understood that full-time employees will consider their position with the Regional as their primary employment. Any outside employment or activity must not interfere with the employee's efficiency in his position with the Regional and must not constitute any conflict of interest.

- C. An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

PERSONNEL FILES

The **Regional** proposes the following contractual language:

Section 18.4: A separate personnel file shall be established and maintained for each employee covered by this Agreement. Personnel files are confidential records and shall be maintained by the Administration.

Section 18.5: Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.

Section 18.6 Whenever a written complaint concerning an employee or his actions is to be placed in his personnel file, a copy shall be given to said firefighter, and he shall be given the opportunity to rebut if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.

The **Union** proposes the following contractual language:

- A. A separate personal history file shall be established and maintained for each employee covered by this Agreement; personal history files are confidential records and shall be maintained by the Administration.
- B. Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.
- C. Whenever a written complaint covering an employee or his actions is to be placed in his personnel file, a copy shall be

given to said firefighter, and he shall be given the opportunity to rebut, if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.

- D. The parties at their discretion may mutually agree to withdraw an item from the personnel file. Any individual mutual decision to withdraw an item shall not be precedent setting.

The parties have agreed to the following contractual language covering personnel files and this language shall be incorporated into the Award.

- A. A separate personal history file shall be established and maintained for each employee covered by this Agreement; personal history files are confidential records and shall be maintained by the Administration.
- B. Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.
- C. Whenever a written complaint covering an employee or his actions is to be placed in his personnel file, a copy shall be given to said firefighter, and he shall be given the opportunity to rebut, if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.
- D. The parties at their discretion may mutually agree to withdraw an item from the personnel file. Any individual mutual decision to withdraw an item shall not be precedent setting.

LATERAL TRANSFER

The **Union** proposes the following contractual language:

In the event that the Employer shall exercise its right under a Department of Personnel procedure to hire a firefighter with experience (including but not limited to the Inter-Governmental Transfer Program) then the following shall apply:

1. Such transferring firefighter shall be entitled to credit for prior service with regard to time based benefits including but are not limited to steps on the salary guide and steps on the vacation schedule.
2. Such transferring firefighter shall receive no credit and shall be considered a new hire for seniority based benefits including but not limited to vacation selection, placement on the overtime rotation system, and seniority based bidding for assignments.
3. Such transferring firefighter shall be considered a new hire for purposes of layoff and eligibility for promotion if the Department of Personnel rules and regulations are not pre-emptive under the law.

The Union defines a lateral transfer as when a firefighter transfers from another fire department to this Department. Noting that the Regional has not made a proposal with respect to this issue, the Union points out that the Department of Personnel, through the Inter-Government Transfer Program, has permitted public employees to transfer between public employers. The Union explains that goal of this proposal is to ensure an orderly transition from another Department to this Employer. The Union asserts that this proposal will not disrupt the efficient operation of the Department, but simply identifies the benefits a transferring firefighter is entitled to under the agreement.

The Regional emphasizes that lateral transfers were not covered by the municipal agreements. The Regional points out that according to Mr. Marino's

testimony, the Union's proposal would allow a senior firefighter to transfer laterally to a different fire company, without change in salary, when an opening arises. The Regional also highlights Mr. Marino's explanation that if two or more firefighters seek the position, the most senior firefighter would have "first consideration." The Regional notes that Mr. Marino also testified that in North Bergen, lateral transfers were accomplished by informing the chief that a firefighter sought a transfer, and the chief would make the final decision after evaluating staffing considerations. The Regional also points to Mr. Willard's testimony that in Union City, firefighters seeking a lateral transfer informed the chief, who made the determination without regard to seniority. The Regional cites Mr. Michelin's testimony that lateral transfers in Weehawken were at the discretion of the Chief.

None of the municipal agreements covered lateral transfers and where procedures were used informally, the chief in that department retained discretion. The Union has not demonstrated a need for such a provision in the regionalized department. Accordingly, the proposed inclusion of a provision covering lateral transfers is not included in the initial agreement between the parties.

PARKING FEES

The **Union** proposes the following contractual language:

The Employer agrees that in the event it or any other governmental agency requires the payment of a fee for on-street parking then the Employer shall be responsible to pay such fee.

The Regional asserts that the Union has not provided justification this proposal and urges its rejection.

The Union asserts that its proposal simply requires the Regional to pay for any fee charged for on the street parking. The Union notes that presently firefighters park on the street at no cost and as long as that continues to be the case, this proposal would result in no cost to the Regional. According to the Union, in the municipalities or any other government agencies require a fee for on the street parking, then this proposal would require the Regional to reimburse firefighters for the cost of the parking permit.

At present there is no charge for parking on the street, and thus no cost to the Union or to the Regional for this proposal. However, the Union's proposal anticipates a future charge for parking on the street and seeks future reimbursement for that charge. However, such a clause could require the Regional to pay an uncertain amount for parking at some future date. As such, this proposal too speculative. Instead a provision requiring negotiations over payment for parking should the situation change will be included instead. Accordingly, the following provision covering parking is awarded:

The Regional and the Union agree that in the event the Regional or any other governmental agency requires the payment of a fee for on-street parking then the parties shall immediately negotiate over the payment of parking fees upon demand.

NON-DISCRIMINATION

The **Regional** proposes the following contractual language:

Section 19.0: In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

The **Union** proposes the following contractual language:

The Department and the Association agree that there shall be no discrimination against any employee because of race, creed, color, religion, sex, national origin or political affiliation.

As noted in the provision covering Employee Rights, the parties have stipulated to the following language covering non-discrimination:

In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

The parties stipulated to the Regional's proposed language covering non-discrimination and this stipulation has been incorporated into the Award.

MAINTENANCE OF STANDARDS

The **Union** proposes the following contractual language:

- A. All benefits and conditions which are in writing, or are of universal application within the Department, all terms and conditions of employment including general orders, rules and regulations, not specifically reserved to Management by this Agreement and not covered by this Agreement, which were in effect prior to the enactment of this Agreement will continue and shall not be changed to the detriment of employees within the Bargaining Unit until changed by negotiation with the Association.
- B. The Department shall not enter into any Agreement with any employee, or groups of employees which in any way conflicts with the terms of this Agreement.
- C. The Department agrees to make available to the Association a copy of all general orders issued by the Chief of the Department and/or the Director of the Department at the same time (or earlier if possible) that the general orders are issued to all firefighters.

The maintenance of standards provision proposed by the Union is similar to the language found in the Weehawken, North Bergen and West New York contracts. The asserted purpose for such a clause is to ensure that all terms and conditions, written and unwritten, which were in effect prior to the enactment of the Department will continue unchanged without diminution. Given the enormity of the task of consolidating four (4) separate agreements into one, the Union maintains that it is safe to say that there may be matters which may not have specifically addressed by either party. According to the Union, this maintenance of standards clause would preserve those terms and conditions of employment and not be lost through this lengthy interest arbitration proceeding.

The Regional urges rejection of the Union's proposal because it would limit the managerial prerogatives and flexibility by requiring the Regional as a new employer to maintain and continue provisions and practices which arose in the five (5) individual municipalities. The Regional asserts that inclusion of such a provision would run contrary to the very purposes for which it was formed. Reiterating that it is a new entity and employer, and that the five municipal fire departments no longer exist, the Regional maintains that it cannot be restricted by inheriting clauses or practices from each of the municipal contracts. The Regional points out that those contracts were negotiated between each municipality and the respective firefighter union and address specific issues and situations particular only to that municipality and that union and any practices were created only by local circumstances. According to the Regional, the new collective bargaining agreement that will be created as a result of this process must address the unique characteristics of the new employer which differ from the characteristics of the individual municipalities and their respective individual firefighter locals.

Under the current circumstances of the regionalization of fire services for the five municipalities, the Union's proposal, would require the Regional to maintain all terms and conditions of employment which were in effect under the prior agreements with the municipalities including all those unwritten and not covered by any prior contract. As such, this proposal is overly broad. It could

conflict with the basic thrust of this award which strives for consistent terms and conditions of employment for all firefighters employed by the Regional. There is merit to the Regional's contention that its managerial responsibilities, as a new and single employer, should not be encumbered by unstated, unwritten customs and practices arising from decades of previous administrations from individual municipalities who are no longer responsible for implementing fire services. Nevertheless, the Regional's position does not recognize that there is also merit to the Union's assertion that mutually recognized arrangements concerning terms and conditions of employment, not inconsistent with the terms of the new Agreement, should not be rescinded merely because the specific terms of this Award do not address them.

The failure to directly address practices may be traced to many reasons. The sheer volume and complexity of terms which have been specifically addressed may have caused omissions, or the parties may have recognized that certain day to day understandings, mutually honored, need not be reduced to writing. It is reasonable to conclude that any practice developed under an individual municipality need not be carried forward into this Agreement merely because it existed prior to regionalization. Regionalization has altered the underlying foundation of practices developed within individual municipalities who no longer are the employer. However, a distinction can be drawn between those practices and practices initiated after regionalization (along with those which may be established in the future), which I conclude should not cease by unilateral

actions. These terms must be considered a source of the parties' rights and duties as well as those reflected by the specific language of the Agreement.

Accordingly, I award the following:

- A. All terms and conditions of employment, not specifically set forth in this Agreement nor inconsistent with its terms, which have been mutually and consistently recognized after regionalization, irrespective of prior practice at an individual municipality, will continue and shall not be changed to the detriment of employees within the Bargaining Unit until changed by negotiation with the Association.
- B. The Department shall not enter into any Agreement with any employee, or groups of employees covered by this Agreement which in any way conflicts with the terms of this Agreement.
- C. The Department agrees to make available to the Association a copy of all general orders issued by the Chief of the Department and/or the Director of the Department at the same time (or earlier if possible) that the general orders are issued to all firefighters.

FULLY BARGAINED PROVISIONS

The **Regional** proposes the following contractual language:

Section 20.0: This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time they negotiated and signed this Agreement.

The Regional asserts that its proposal sets forth that the new collective bargaining agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. The proposal also states that during the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both parties at the time they negotiated and signed this Agreement. The Regional argues that this clause will benefit both parties by requiring that the specific language of the Agreement be the exclusive source of the parties' respective rights and obligations.

The Union objects to this proposal, pointing out that given the sheer number of issues in this first agreement resulting from regionalization, it is likely that terms of conditions of employment could have been inadvertently omitted. The Union further argues that the Regional's proposal could be construed as waving the Union's statutory right to negotiate over unilateral changes made by the Regional.

The Regional's "fully-bargained provisions" proposal is identical to the provision included in the previous North Bergen and Union City agreements. The previous agreements in Weehawken and West New York did not include such a provision.

There is merit to the Regional's Fully Bargained provision to the extent that neither the Regional nor the Union should have a unilateral right to demand negotiations during the term of the Agreement over issues which were or could have been the subject of negotiations. The purpose of the Agreement would be subverted by attempts to do so. This provision, however, cannot be construed to extend to waive the Union's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions. This provision must also be read in *para materia* with Article - Maintenance of Standards. Accordingly, I award the Regional's proposal.

Section 20.0: This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement. This provision cannot be construed to waive the Association's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions.

IDENTIFICATION CARD

The **Union** proposes the following contractual language:

- A. Every firefighter shall, at the Department's expense, be furnished with a card valid for the purpose of identifying said firefighter as a member of the Department.

During this proceeding, the parties have agreed to include this provision in their agreement and it is incorporated into the Award.

MAINTENANCE OF OPERATIONS

The **Regional** proposes the following contractual language:

Section 21.0: It is recognized that the need for continued and uninterrupted operation of the Regional is of paramount importance to the citizens of the respectively represented cities, and that there should be no interference with such operation.

Section 21.1: The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in, any strike, i.e., the concerted failure to report for duty, or other concerted job actions, including willful absence of an employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment, work stoppage, slowdown, walkout or other job action against the Employer.

Section 21.2: Nothing contained in this Agreement shall be construed to limit or restrict the Regional in its rights to seek and obtain judicial relief as it may be entitled to have in law or in equity for injunction or damages, or both, in the event of such breach by the Association or its members.

The Regional asserts that the purpose of this proposal is to set forth a contractual provision avoiding strikes and work stoppages. The Regional maintains that this clause benefits the interests of the public and ensures that there will be no interruption of fire and rescue services. According to the Regional, this clause is consistent with the legislative purposes behind the interest arbitration statute because firefighters do not have the right to strike.

The Union objects to the inclusion of a maintenance of operations provision in the agreement.

This first section of the proposed provision clarifies the existing prohibition against strikes and work stoppages and is awarded.

It is recognized that the need for continued and uninterrupted operation of the Regional is of paramount importance to the citizens of the respectively represented cities, and that there should be no interference with such operation.

The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in, any strike, i.e., the concerted failure to report for duty, or other concerted job actions, including willful absence of an employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment, work stoppage, slowdown, walkout or other job action against the Employer.

The second section of the proposed provision is a mere restatement of the Regional's legal rights and need not be restated in the Agreement. It is not awarded.

SEVERABILITY & SAVINGS

The **Regional** proposes the following contractual language:

Section 22.0: If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees

or members is held to be invalid by operation of law, by any Court, or any other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained herein shall continue in full force and effect, and shall not be effected thereby.

The **Union** proposes the following contractual language:

- A. If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees or members is held to be invalid by operation of law, by a court, or other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained therein shall continue in full force and effect, and shall not be effected thereby.
- B. Invalidation of such part or portion of this Agreement shall not invalidate the remaining portion thereof and the parties agree that with respect to any clause so determined to be invalid the parties will immediately re-negotiate said invalid clause so as to bring same within legal limits.
- C. All other rights, benefits and privileges enjoyed by employees which are not specifically provided for or abridged in this Agreement are hereby protected by this Agreement.

During the proceeding, the parties stipulated to the following provision addressing severability and savings and this agreement is incorporated herein:

If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees or members is held to be invalid by operation of law, by a court, or other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained therein shall continue in full force and effect, and shall not be effected thereby.

NO WAIVER

The **Regional** proposes the following contractual language:

Section 23.0: Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

The **Union** proposes the following contractual language:

Except as otherwise provide in this agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver hereof.

During this proceeding, the parties have stipulated to the Regional's no waiver proposal and this agreement is incorporated herein.

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

DURATION OF AGREEMENT

The **Regional** proposes the following contractual language:

Section 24.0: The Provisions of this Contract shall be in force as of formal ratification of this Contract by both parties and shall remain in force until December 31, 2004, or until a successor Agreement is executed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

The **Union** proposes the following contractual language:

This agreement shall have a term from _____ through

_____.
If the parties have not executed a successor agreement by _____, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public employment Relations Commission.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

During this proceeding, the parties have stipulated to the duration clause as proposed by the Union and it is included in this Award. I supplement that stipulation with the dates of the contract.

This agreement shall have a term from July 1, 1999 through June 30, 2004.

If the parties have not executed a successor agreement by July 1, 2004, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public employment Relations Commission.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

MANPOWER

The **Regional** proposes the following contractual language:

Section 13.0: It is recognized that the health, safety and welfare of employees is dependent, in part, upon the availability of sufficient manpower.

Section : North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited to, the number of firefighters assigned per piece of fire fighting apparatus of all types.

The **Union** proposes the following contractual language:

The Department agrees to maintain a compliment of three (3) firefighters per piece of fire apparatus of all types.

Initially, the Regional argues that contract proposals relating to minimum manning requirements are permissive, rather than mandatorily negotiable. Citing City of Newark, PERC No. 76-39, 2 NJPER 138 (1976), as well as other PERC decisions, the Regional emphasizes PERC's holding in City of Newark, *supra*, that the minimum manpower requirements of the fire department, the minimum number of men responding to a fire, and the minimum number of men on each piece of equipment, are not required subjects for negotiations.

The Regional points out that only the Union City contract included a provision addressing manpower, and its proposal is similar to Article XXII, paragraph (A) of that agreement. The Union City agreement provided that "[I]t is recognized that the health, safety and welfare of employees is dependent, in part, upon the availability of sufficient manpower. Accordingly, the manpower

strength minimums whenever practicable shall not be less than established by ordinance.”

The Regional points to Director DeOrio’s testimony that this proposal is important to the efficiency and proper operation of the Regional. The Regional cites Director DeOrio’s testimony that since the inception of the Regional, the Directors have operated trucks with at least two firefighters and one company officer in contrast to the fact that before regionalization individual municipalities operated trucks with fewer staff.

The Regional relies upon Officer Marino’s testimony that the Union’s proposal is also based upon the Union City contract, but modifies the language to three firefighters per piece of apparatus. The Regional emphasizes that Officer Marino acknowledged the Regional’s assertion that Weehawken and North Bergen operated at times with two firefighters. The Regional also cites Mr. Willard’s testimony that at certain times, West New York operated with two men. Based upon this testimony, the Regional asserts that the Union did not prove its demand for requiring three firefighters on each piece of firefighting apparatus even assuming that such proposal is legal.

Pointing out the frequency of false alarms and the varied nature of conditions which confront it, the Regional asserts that it should not be required to assign a specific number of firefighters to fire fighting apparatus at all times, but

rather should retain flexibility when handling a fire alarm. According to the Regional, when firefighters are dispatched to a fire scene and it becomes a large fire requiring more help, additional firefighters can be dispatched immediately. Accordingly, the Regional urges adoption of its proposal and rejection of the Union's proposal.

The Union notes that both parties have made a proposal on manpower. The Union characterizes its proposal as simply what the Department has already stated is their goal. The Union asserts that its proposal would confirm that this goal is not changed based on an arbitrary basis.

The Union argues that the Regional's proposal appears to be a Management Rights provision. The Union expresses concern about the Regional's reliability, comparing its promise to put three firefighters on each piece of apparatus an accompanying refusal to agree with Union's proposal. The Union notes that there is agreement regarding the Regional's proposal (See Exhibit #E-11). The Union also notes that it seeks a copy of the seniority list in January of each year and asserts that the Regional should have no objection to providing that.

Both parties rely upon the manpower provision included in the previous Union City agreement. The Regional adopts the first sentence of that provision and adds a paragraph retaining the right to determine staffing. The Union

proposes a minimum staffing level of three firefighters per piece of fire fighting apparatus. The Regional's proposal unnecessarily reiterates its management rights proposal while the Union's proposal would unduly limit the Regional's ability to exercise its manning prerogative. However, the second sentence of the Union City agreement, which provides that "manpower strength minimums whenever practicable shall not be less than established by ordinance," provides a useful parameter. Although the Regional does not set manpower minimums by municipal ordinance, similar language incorporating the Regional's manpower goals will provide firefighters with guidance regarding staffing levels. Accordingly, I award the following language:

The Regional shall set a manpower policy and provide written notice of the manpower policy to the Union. The Regional shall also notice the Union of any changes which the Regional makes to its manpower policy.

INJURY LEAVE

The **Regional** proposes the following contractual language:

Section 7.15: An employee who is injured in the performance of duty shall immediately report or cause to be reported, the accident to his supervisor, and shall complete a form provided for such injuries. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

Section 7.16 To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury within twenty-four (24) hours of the occurrence, if possible. The employer will direct the member to one of a panel of physicians to receive prompt and

quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable.

Section 7.17: Any employee of the Fire Department who is disabled as a result of a physical injury suffered in the discharge or performance of his duty, and follows the procedures outlined in Section 7.15 and Section 7.16 above, is entitled to receive the difference between his regular salary and injury time-loss payments during the period of disability up to one year from the date of occurrence, or if sooner, until such time as he has been accepted for retirement by PFRS. Any injured time off must be authorized by one of the Regional's authorized panel physicians in order for the employee to be credited the time. If an employee does not seek such medical authorization in a timely manner, he will be paid his full salary only for the time in which he obtained the necessary approvals. He may, however, be entitled to collect his normal workers compensation benefit (70% of salary).

Section 7.18: A member failing to properly follow on-duty injury procedures will also not be covered for medical care received from physicians or facilities other than those designated by the Regional. Members failing to properly follow all procedures herein may also be subject to disciplinary action.

Section 7.19: If any member, in rendering assistance in another municipality as directed by the Regional, shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, worker's compensation and other benefits to which such member would be entitled if such casualty or death occurred in the performance of his duties in the Regional, rendering such assistance.

Section 7.20: An employee who is injured in the course of performing his duties, may be eligible for modified duty assignment dependent upon a determination by the employer's physician that the employee is capable of work. The administration reserves the sole right to determine whether a modified duty assignment is available within the Regional and to make assignments in the Regional's best interests. A modified duty assignment shall be assigned staff hours unless otherwise designated by the Executive Director. A modified duty assignment is a temporary work assignment and not intended to be indefinite in duration. An employee once assigned to modified duty who has been cleared to return to full duty or has reached a point of permanent restriction will have the modified duty terminated. Failure on the part of the

member to accept a modified duty assignment, if eligible and selected, shall result in discipline, up to and including discharge.

The **Union** proposes the following contractual language:

- A. 1. Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties.
- 2. The firefighter shall be entitled to full pay up to one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.
- B. A firefighter hospitalized with the line of duty injuries will be provided with a private accommodation as the minimum provided such accommodations are available.
- C. A firefighter injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be unreasonably withheld.
- D. If any member in rendering assistance in another municipality shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, workmen's compensation and any other benefits as if such casualty or death occurred in the performance of his duties for the North Hudson Regional Fire and Rescue Department.

The Regional asserts that many of the proposed provisions and policies are currently in place at the Regional, such as reporting and treating injuries. Addressing the provision that, pursuant to State statute, the Regional is responsible for medical expenses and benefits during the recuperation period, and the continuation of salary, the Regional explained that it was aware that most of the municipalities provided their firefighters with a 30% enhancement to give

them full salary when they are injured in the line of duty. However, the Regional's proposal provides that if a firefighter fails to follow the medical protocols established by his doctor(s), or fails to make and keep appointments, the Regional has the right to reduce the benefits to 70%.

Noting that Mr. Marino testified that Paragraph A1 of the Union's proposal is based upon the contractual provisions in the North Bergen, Weehawken and West New York contracts, the Regional emphasizes the differences between the previous agreements and the Union's proposal. Specifically, North Bergen's contract provides that the firefighters would receive their salary "less sums received from compensation awards and temporary benefits," while the Union's proposal is different from Union City agreement because in that contract, injury leave is charged to sick leave.

The Regional distinguishes Paragraph B of the Union's proposal, which states that firefighters who are hospitalized within the line of duty will be provided with a private accommodation as the minimum provided such accommodations are available, from the West New York contract which provided for "semi-private" accommodations. The Regional also distinguishes that proposal from the Weehawken contract which states that "whenever an employee sustains a job-connected injury or illness and such injury or illness requires hospitalization, the employee shall be permitted to receive appropriate hospital attention," but does not mention whether the firefighter should receive private or semi-private hospital

attention. The Regional notes that the North Bergen and Union City contracts do not have provisions similar to the Union's proposal in Paragraph B.

The Regional notes that Paragraph C of the Union's proposal contains the identical language as the West New York contract, but as Mr. Marino acknowledged, the North Bergen, Union City, and Weehawken contracts did not contain similar provisions.

The Union notes that both parties propose that a firefighter injured in a line of duty shall be entitled to full pay for up to one year. The Union proposes that this period may be expanded beyond one year but only at the sole discretion of the Department. The Union also proposes that if there is need for hospitalization, an injured firefighter will be provided with private accommodation. The Union also proposes that the firefighter be permitted to select a physician, provided authorization is first obtained from the Department, as is contained in the West New York contract. The Union also proposes language included in the current North Bergen contract that for firefighters injured while rendering assistance in another municipality, it shall be considered that such injury occurred in the performance of his duty for the Regional. The Union points out that the Regional proposes a similar provision with regard to injuries while rendering assistance to another municipality.

Both parties agree that injured firefighters are entitled to their full salary for up to one year in the event they are injured in the line of duty. Both parties also agree that firefighters injured while providing aide to another department should be treated as though they were providing fire fighting services for the Regional. However, the parties disagree as to the standards and reporting requirements for coverage as well as to the details of benefits provided.

The Regional would have the injured firefighter report the injury immediately. The Regional needs to maintain records of each injury, for reporting purposes as well as to improve safety. However, the reference to “immediately” report may not be reflective of the Regional’s intent to require prompt disclosure of injuries which occur in the line of duty. Further, a strict reporting deadline may be difficult to meet in the event of serious injury although the Regional has qualified to state “if possible.” Therefore, this paragraph, is awarded with modification clarifying the procedure for filing such reports.

The Regional proposes that firefighters injured while on duty be treated by a physician from the panel it would maintain. While some employees may elect not to do so, an employee should have the option to be treated by his designated physician and should not be restricted to those doctors on the Regional’s panel. Accordingly, the provision provides that employees may be treated by a physician of their own choosing with the authorization of reasonable requests by the Regional.

The Regional also seeks to limit benefits to 70% of salary for those injured firefighters who do not follow their physician's recommendations for recovery. It is understandable that the Regional seeks to provide injured firefighters with added incentive to recover as quickly as possible. However, this requirement was not included in any of the previous agreements and there is no evidence of abuse of those prior provisions. For these reasons this proposal is not awarded.

The Union seeks compensation for private hospital rooms for those firefighters who require hospitalization. The West New York agreement included a provision for a semi-private room. Since a private room was not provided under any of the previous municipal agreements, such a benefit is not warranted and is not awarded.

The Regional seeks to include a provision giving it the option of creating a modified duty assignment and setting requirements for those assignments. None of the previous municipal agreements included such a provision. It is not included or awarded at this juncture because modified duty is discussed further when the Regional's more comprehensive modified duty proposal is discussed.

As discussed above, the injury leave provisions are awarded as follows:

An employee who is injured in the performance of duty should report, or cause to be reported, the accident to his supervisor as soon as is reasonably possible. The employee should complete a

form provided for such injuries when he or his designee is able. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

- A. Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Typically, that period shall not exceed one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.

- B. To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury as soon as is reasonably possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable. A firefighter injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be unreasonably withheld. A firefighter who is treated by his own physician may be required to present a certificate indicating his continued inability to return to work from time to time. Nothing herein shall prevent the Regional from independently evaluating the medical condition of an employee injured in the line of duty.

- C. If any member in rendering assistance in another municipality shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, workmen's compensation and any other benefits as if such casualty or death occurred in the performance of his duties for the North Hudson Regional Fire and Rescue Department.

MODIFIED DUTY

The **Regional** proposes the following contractual language:

I. DEFINITION

Modified duty implies that the affected employee cannot physically fulfill the essential functions of the position of a uniformed fire personnel or his or her regular full-time position. Modified duty is that type of assignment that would preclude an officer or employee from aggravating an existing injury or illness. This duty status forbids an employee from working in any capacity other than modified duty for as long as medically necessary up to one year. Modified duty may be available only to those employees who are determined to have a temporary disability or physical restriction as a result of injury or illness.

II. PURPOSE

The purpose of this policy is to set forth a method by which an employee may be placed on modified duty, providing the employee other duties and responsibilities to enable him or her to continue employment without exacerbating or prolonging a temporary disability, illness or physical restriction.

III. APPLICATION

Modified duty applies to all fire personnel who are either injured while on-duty, or injured or become disabled in an off-duty incident or become ill that renders them incapable of performing the essential functions of a firefighter or their regular full-time position. Since there are no permanent modified duty positions available within the North Hudson Regional Fire & Rescue ["Regional"] the assignment of modified duty will remain at the discretion of management, who will take into consideration the extent of restrictions placed upon the employee and the needs of the Regional at any point in time and the availability of excess work within the Regional.

IV. PROCEDURE

A. An employee injured on duty shall follow the same initial procedures as outlined in the Regional's Rules and Regulations, Article XVII, Sections 17.14-17.19 and the Regional's General Orders regarding Leaves.

- B. An employee injured off duty, and incapable of performing the essential functions of a firefighter or his or her regular tasks, shall follow the same initial procedures as outlined in the Regional's Rules and Regulations, Article XVII, Sections 17.0-17.13 and the Regional's General Orders regarding Leaves.
- C. Once an employee submits medical documentation that he is unable to perform his regular responsibilities and duties for a period of five (5) or more tours, the Regional may require such employee to submit to a medical evaluation by a medical expert designated by the Regional to determine whether such employee is capable of modified duty. An employee who refuses to take such examination, without just cause, may subject himself to termination of sick leave benefits, injury leave benefits or workers compensation benefits as described below. The Regional's physician must identify the type of work the employee should be restricted from and give guidance to the Executive Director or his designee as to permissible forms of modified duty.
- D. An employee injured while on duty may also be subjected to drug testing prior to his or her consideration for modified duty. Such testing may be necessary to determine whether any drugs issued for medical purposes implicate issues of safety to the employee or other employees of the Regional. Any employee who refuses to submit to a drug test following an on-duty injury will be subject to dismissal.
- E. Upon return to work in a modified duty status, the employee may be placed in various positions within the Regional. The Executive Director or his designee will make that determination on a case by case basis upon the needs of the Regional, the abilities of the employee and the availability of work.
- F. Depending on the diagnosis of the Regional's physician, an employee on modified duty may temporarily have his or her privilege to operate the Regional's vehicles suspended.
- G. An employee on modified duty should attempt to schedule his or her medical appointments necessary

to achieve recovery either before or after his or her scheduled shift or near the beginning or end of his designated modified duty shift. The Executive Director, or his designee, and the employee's immediate supervisor must be informed of all such necessary appointments so that a shortened workday can be scheduled to accommodate such appointments. If the employee is unable to schedule the medical appointment for before or after work, then the appointment should be scheduled at the beginning or end of a work shift to minimize disruption at work.

- H. Upon re-evaluation, if the Regional's physician determines that the employee is able to perform the essential functions of a firefighter or his or her regular assignment, i.e., the employee is fit for duty, that employee's status will be changed back to full duty.
- I. If the Regional's physician determines that a firefighter or other employee is capable of performing modified duty, the Executive Director offers him or her a modified duty assignment, and he or she refuses to accept it, that Employee's Sick Leave Benefits, Injury Benefits and/or Workers' Compensation benefits will be suspended. Refusal of modified duty is the equivalent of refusing to work. An employee who refuses modified duty will be absent without leave and considered to abandoned his job. However, Workers Compensation medical treatment expenses and any permanent disability rating or rehabilitation will continue and not normally be affected by such action.

V. LENGTH OF MODIFIED DUTY

- A. Since there are no permanent modified duty positions, temporary modified duty positions may only be continued up to:
 - 1. The point in time the employee is cleared to return to full duty.
 - 2. The point in time the employee reaches a period of maximum medical improvement.

In no event shall modified duty be extended beyond one (1) year.

The Regional begins its discussion by emphasizing that the creation of light duty assignments are non-negotiable. The Regional emphasizes that it is only required to pay 70%, but has opted to pay injured firefighters 100% of their salary while they are injured. Although firefighters' injuries often require extended recuperation after an injury, a firefighter may be able to perform administrative functions even though he cannot perform the essential functions of his job. Therefore, the Regional seeks to use modified leave to permit employees in a temporary administrative assignments while they recover. The Regional notes that staffing relates to overtime and that the staff currently earns \$2,200,000.00 worth of overtime. Director Welz explained:

... we're cognizant that we provide 100 percent in the past so we want to continue, but when a member can do many things that has a benefit to the regional, such as filing, answering the phone, within his medical abilities as determined by the doctor, this provides a benefit to the regional, while the man is in his physical therapy or recuperative period before he can do active firefighting duty. So since the regional is paying the enhanced benefit as was done before, we feel that we'd be entitled to get some kind of benefit from his working abilities, if he can't actually be on a line firefighting assignment.

When asked what would happen if the Regional only has one modified duty job available, such as answering phones, but if there were two firefighters who were equally subject to the doctor's limitations, Director Welz stated that the Regional would split the modified duty job equally. The Regional maintains that the modified duty provision would allow it to realize significant cost savings by

permitting an injured firefighter who is unable to perform the essential function of his job to work in an administrative capacity.

The Regional's proposal to include a provision governing modified duty in the Agreement is not unreasonable given that some injuries to firefighters involve prolonged recovery periods that may include significant periods of time when an injured firefighter may be fit for certain work, but not for the rigors of fire fighting. However, none of the previous agreements in any of the municipalities included such a provision governing the standards and procedures for modified duty. There is no evidence at this time that such a provision calling for the creation of standards and procedures for modified duty would foster cost savings or any other efficiencies. A more detailed provision covering modified duty may be considered once experience with a full transition to a regional operation has been realized and the need for standards and procedures for modified duty may be better assessed. Accordingly, provision for modified duty is not awarded at this time.

EMERGENCY LEAVE

The **Regional** proposes the following contractual language:

Section 7.26: Employees may be granted emergency leave, without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised.

The **Union** proposes the following contractual language in its leave of absence proposal:

A. Emergency Leave

1. Members may be granted time off without loss of regular pay in the event of serious illness or emergency in the immediate family necessitating the member's presence. For the purposes of this Article, immediate family is defined as spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household.
2. In the event of childbirth and/or labor on a day the employee is working, the employee is entitled to utilize emergency leave.

The Regional reviews some of the emergency leave benefits included in the municipal agreements. In West New York, the emergency leave provision included step-parents and step-siblings. Under the Union City contract; emergency leave with pay had to be granted by the Chief or Tour Commander. North Bergen limited the amount of emergency leave to three days annually. Weehawken limited emergency leave to one paid tour.

The Regional's proposal for emergency leave allows for time off without pay for serious illness requiring hospitalization of members of the firefighter's immediate family and for childbirth. The Regional relies upon the testimony of Director Welz that hospitalization is the key threshold for definition of an emergency. However, Director Welz stated the Regional retains the discretion to

grant emergency leave even where there is no hospitalization because the Regional is cognizant of the fact the firefighter “may go to what is considered a mini emergency room.” The Regional also emphasizes that Director Welz testified that if a firefighter is denied emergency leave, he or she has other mechanisms to get time off, such as a mutual swap and vacation time.

The Regional cites Mr. Michelin’s testimony that Paragraph A1 of the Union’s proposal is intended to give a firefighter time off with pay if there is an emergency at home, such as the birth of a child. In contrast, the Regional’s proposal for emergency leave would provide time off without pay for serious illness requiring hospitalization for members of the firefighter’s immediate family and also for childbirth. The Regional notes that the main difference between its proposal and the Union’s proposal is that the Union’s proposal is with pay.

The Regional asserts that its proposal should be adopted. Reiterating that a firefighter assigned to line duty is scheduled for approximately 91 days per year, less vacation, and other leave time, the Regional emphasizes that not including overtime and other emergencies, the average firefighter, after vacation, is actually scheduled to work less than 80 days per year. The Regional also reiterates that the number of days worked is lessened by sick leave days and other paid leave, such as convention leave. Accordingly, the Regional concludes that a firefighter might only work seventy or fewer days per year, and urges that this, coupled with the fact that firefighters also receive paid vacation and sick

time and paid bereavement leave, must be taken into consideration. The Regional also points out that firefighters have other mechanisms to get time off, such as a mutual swap and vacation time. For these reasons, the Regional urges adoption of its proposal for unpaid emergency leave.

With respect to emergency leave, the Union has proposed in the event of serious illness, in the immediate family, the firefighter will be granted time off without loss of pay. According to the Union, all four municipal contracts have such a provision and the Regional seeks to change it from paid to unpaid leave without offering justification for such a change.

Both parties propose to include an emergency leave provision that would allow employees to be granted emergency leave in the event of serious illness requiring the hospitalization of an immediate family member or the birth of a child. The chief difference between the proposals is that the Union would provide for this leave with pay, while the Regional would provide only for unpaid emergency leave. The previous municipal agreements included varied forms of paid emergency leave as described above. Under this award, emergency leave will continue to be provided with pay, however, as in Weehawken, such paid time shall be limited to one paid tour. The granting of emergency leave, however, will rest with the Executive Director, which should insure that such leave is legitimate but cannot be unreasonably denied. For purposes of this section, immediate family is defined as "spouse, child, parents, brother, sister, father-in-law and

mother-in-law, or any other member residing in the household.” That definition appropriately limits the use of emergency leave.

Accordingly, the Emergency Leave provision is included in the agreement and will provide as follows:

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee’s presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

For the purposes of this Article, immediate family is defined as spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household.

LEAVE OF ABSENCE

The **Union** proposes the following contractual language²:

B. Leave of Absence

An employee desiring a leave of absence from his employment shall apply for same in writing and may be granted a maximum leave of absence for one hundred eighty (180) days. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

C. Employees shall be granted twenty-four (24) hours off for Communion, Confirmation, Bar-Mitzvah, Graduation and marriage of employee’s children or immediate family.

² Paragraph A of the Union’s proposal covers Emergency Leave and is included in the discussion of that provision.

- D. An employee covered by this Agreement shall be granted one (1) full twenty-four (24) hour tour off with pay upon his marriage.

The Regional points out that in comparison to Paragraph (B) of the Union's proposal, the Weehawken contract provided for an unpaid leave of absence for a maximum of 180 days. According to the Regional, the West New York contract restricted leaves of absence to those employees who have worked for three or more years, and did not set a limit of 180 days.

Addressing Paragraph (C) of the Union's proposal, the Regional notes that it is similar to the Union City contract, but adds "Bar Mitzvah." The Weehawken contract included a similar provision, but provided for 12 hours off. The West New York contract provided that an employee would be granted preferential compensatory time to attend such events as Baptism, Confirmation, First Holy Communion, and marriage in the employee's immediate family.

The Regional compares Paragraph (D) of the Union's proposal to the provision set forth in the Weehawken contract. According to the Regional, the West New York contract provided that an employee would be granted preferential compensatory time and the Union City contract granted firefighters a 24-hour tour.

The Regional argues that there are sufficient leave provisions included in the agreement without this leave of absence provision. Specifically, the Regional

points to its proposals for emergency leave, convention leave and vacation and sick leave. The Regional emphasizes that firefighters are only scheduled for approximately 91 tours each year, less vacation, and other leave time. Thus, not including overtime and other emergencies, the average firefighter, after vacation, is actually scheduled to work less than 80 tours per year. Then, minus sick leave days and other paid leave, a firefighter might only work 70 or fewer tours per year.

Noting that the Regional has failed to make a leave of absence proposal, the Union urges adoption of its proposal which permits a leave of absence for a maximum of 180 days without pay, The Union maintains that its proposal is not onerous to the Regional and notes that only West New York firefighters enjoy this benefit at present.

The Union has also proposed time off with pay be granted for certain religious ceremonies. The Union points out that such a benefit is currently enjoyed in Union City and Weehawken. The Union would add a day off with pay upon the marriage of the firefighter as is also enjoyed by Weehawken and Union City. The Union asserts that the Regional has offered no justification for eliminating this benefit.

The Union's proposal has three components, and extended unpaid leave of absence, time off for attendance at certain religious ceremonies, and time off

for the firefighters' marriage. The Regional, as stated, asserts that firefighters already receive ample time off. The Regional urges rejection of each of these proposals. The leave of absence proposal was unique to the previous West New York agreement, while time off for religious ceremonies and marriage were limited to the Union City and Weehawken agreements. This agreement will provide firefighters with substantial paid leave as well as compensatory time and the opportunity for mutual tour exchanges. In light of these options, additional paid time off to attend religious ceremonies or family graduations or to get married is not warranted. With respect to unpaid leaves of absence, as was provided in the previous West New York agreement, opportunity for such an extended leave shall remain available upon a showing of good cause. Accordingly, a Leave of Absence provision is awarded and shall provide as follows:

An employee desiring a leave of absence from his employment shall apply for same in writing. An employee must have completed three (3) full years of service to be eligible. Such application shall provide the reason that the leave is requested. Upon a showing of good cause, a leave of absence of up to one hundred eighty (180) days may be granted at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

JURY DUTY

The **Regional** proposes the following contractual language:

Section 7.27: Employees shall be granted time necessary for Jury Duty.

The **Union** proposes the following contractual language:

A firefighter who receives a notice for jury duty shall supply a copy to his company officer as soon as possible.

If the jury duty coincides with a firefighters' work schedule; the firefighter shall be relieved with pay of work for the first twelve (12) hours of his shift.

If the jury duty is to begin on the morning that the firefighter's shift ends, the firefighter will be relieved of duty with pay at 10:00 p.m. of the previous day.

The Regional relies upon the testimony of Director Welz that the Regional's proposal, which is based on statute, would grant employees "the necessary time off to make the court proceedings with pay" if they received official notification of jury duty. The Regional points to Director Welz's testimony that where a firefighter is scheduled to work his 24-hour shift from Monday morning at 8:00 a.m. until Tuesday morning at 8:00 a.m., but then is scheduled to report to jury duty at 9:00 a.m., the Regional would give the firefighter adequate time to travel to the courthouse.

The Union asserts that the Regional's proposal is so insufficient that it can not respond substantively. In contrast, the Union points out that its proposal is reasonable. It requires notice to the Regional of the firefighter's call to jury duty. The Union notes that its proposal provides that when a firefighter is selected as a juror and if the jury duty schedule coincides with a workday, the firefighter will be released for the 12 hours during the day. If the jury duty occurs on the morning

when a firefighter would normally be ending his workday, the firefighter will be relieved at 10:00 a.m. on the previous day.

The Union emphasizes that service as a juror is a civic duty. Accordingly, the Union maintains that it is essential to the system of justice that firefighters be released as it proposes to ensure that they are well rested, not only to perform their duties as a juror, but their duties as a firefighter.

Both parties propose that firefighters be given time off for jury duty. The Regional would limit the language of the agreement to a simple statement of that firefighters would receive time for jury duty. The Union would include procedures for receiving time off for jury duty as well as time off before and after jury duty. The Regional and the Fire Officers Association stipulated that “employees shall be granted time necessary for Jury Duty.” That simple statement is sufficient to cover the requirements of jury duty. The Regional has assured that firefighters will be given adequate travel time to attend jury duty. No more is necessary. Any claim of unreasonable application of this policy is subject to the grievance procedure. Accordingly, the provision covering jury duty shall provide as follows:

Employees shall be granted time necessary for Jury Duty.

PROMOTIONS & ASSIGNMENTS AND TRANSFERS

The **Regional** proposes the following contractual language:

PROMOTIONS

Section 13.1: The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

ASSIGNMENTS AND TRANSFERS

Section 14.0: The assignment and transfer of firefighters shall be solely the responsibility of the Executive Director. It shall be understood nothing shall prohibit any employee from submitting, through proper channels, a written request for transfer to a new or vacant position for which that employee is qualified.

The **Union** proposes the following contractual language:

A. APPOINTMENTS:

The Department shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

B. PROMOTIONS:

1. In the event a vacancy occurs and a Civil Service list for the rank exists, the Department will fill the position as soon a practicable.
2. In the event a vacancy occurs and no Civil Service list for the rank exists, the Department will fill the position by Seniority as a provisional appointment (for example: the most senior firefighter shall have the right to fill the position). The firefighter will be compensated at the top base salary of the rank he is assigned.
3. In the event of no civil service list for the rank the Department shall ask DOP to call for an examination.
4. The Department SHALL do EVERYTHING required to maintain a Civil Service list for promotion at ALL TIMES.

C. ACTING PAY

1. Temporary assignment to a higher rank during vacation, sick leave or other leave, shall continue to be made by seniority within the company on a rotating basis.
2. Any qualified employee not desiring to serve in a temporary acting capacity may refuse to do so without prejudice. A qualified employee means having at least 3 years on the job from date of appointment.
3. When an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, compensation shall be provided upon assignment to act in the higher rank. Compensation shall be at the top base salary of the rank he is replacing.
4. In the event an employee acting in a higher rank is killed or permanently disabled in the line of duty, he or his designated beneficiary shall receive a pension in the amount equal to the rank he was acting in and the difference, if any, shall be paid by the Department.

The Regional urges rejection of paragraphs C (1) and C (2) of the Union's proposal because assigning qualified individuals to positions is the exercise of the employer's right to control assignments. Addressing paragraph C (3) of that proposal, the Regional asserts that the Union's proposal to pay employees working out of title at the higher rank at the top of the base salary for the rank he is replacing, the Regional asserts that this proposal may be distinguished from the provisions included in the four municipal contracts. According to the Regional, the West New York agreement provided that compensation for working at the higher rank would be an additional one-half the salary rate between the top-step firefighter and captain, while North Bergen provided for an acting captain

stipend of \$375.00. The Regional points out that Union City provided for acting pay of \$75.00 to firefighters with at least three years on the job only after the firefighter has acted in a temporary position 320 times and Weehawken provided that the firefighter would receive the regular rate of pay of the acting position only after 30 times.

The Regional maintains that a firefighter need not be compensated for working in another rank. The Regional reiterates that firefighters work roughly 65 tours per year and are compensated very well. The Regional points out that the Union did not provide any testimony to prove why their proposal for acting pay should be adopted. Instead, the Regional asserts that the Union simply relied on the individual municipal contracts, none of which provided for acting pay in the manner the Union proposes.

The Regional argues that paragraphs B (1) through B (4) of the Union's proposal are not negotiable because they impinge on the Regional's prerogative to determine whether and when to fill a vacancy and are pre-empted by Civil Service Statute. Specifically, the Regional asserts that the Union's proposals are very similar to the proposals of the Association in Town of Kearny, supra, which were found to be non-negotiable. Those proposals stated:

Section 1. In the event of vacancies in the rank of Captain, such vacancy shall be filled within sixty (60) days of the effective date of the vacancy provided there is an existing Civil Service list.

Section 2. If no civil service list for the rank enumerated in Section 1 above exists at the time of the vacancy, the Town shall request or call for such test within thirty (30) days of the promulgation of a list resulting from said test. All appointments to the rank of Captain must be made from a Civil Service list, subject to Federal Laws and provided such action does not cause a loss of State and Federal Aid which should be beneficial to the Town.

Accordingly, the Regional asserts that the Union's proposal is not negotiable because it impinges on the Regional's prerogative to determine whether and when to fill a vacancy. The Regional maintains that the Union's proposal also impede the Regional's prerogative in choosing a candidate and to set promotional criteria.

Moreover, the Regional asserts that the Union did not provide support for its position that its proposal should be included in the contract. With regard to paragraph B (1) of the Union's proposal, the Regional notes that Mr. Marino acknowledged that the North Bergen, Weehawken, Union City, and West New York contracts did not contain a requirement that vacancies are to be "filled as soon as practicable," which is included in the Union proposal. The Regional also points out that Mr. Marino acknowledged that the proposal in paragraph B (3) that "[I]n the event of no civil service list for the rank the Department shall ask DOP to call for an examination," is not included in any of the individual municipal contracts except for North Bergen. The Regional notes as well that the Union's proposal in paragraph B (4) is not contained in any of the municipal contracts.

The Regional also points out that the Union's proposal in paragraph B4, which states that, "[t]he Department shall do everything required to maintain a Civil Service list for promotion at all times," differs from the language found in the Union City contract, which does not use the term "shall" but instead uses the term "attempt".

Turning to Section C covering acting pay, the Regional cites Mr. Marino stated that although the Union's proposal in C (1) mentions a seniority requirement, such requirement did not exist in the Union City, North Bergen, Weehawken, or West New York contracts. The Regional also notes that the North Bergen and Weehawken contracts did not include a provision similar to C (2).

The Regional asserts that the Union's proposal in C (3), that "[w]hen an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, compensation shall be provided upon assignment to act in the higher rank. Compensation shall be at the top base salary of the rank he is replacing" may be distinguished from the municipal contracts. According to the Regional, the West New York agreement provided that compensation for working at the higher rank would be an additional one-half ($\frac{1}{2}$) of the salary rate between the top-step firefighter and captain. The Regional points out that the North Bergen agreement included an acting captain stipend of \$375.00 and the Union City agreement provided for acting pay of \$75.00 to firefighters with at least three

years on the job. The Regional notes that Weehawken provided that the member would receive the regular rate of pay of the acting position only after 30 days. The Regional also notes that the Union City, Weehawken, and North Bergen agreements did not have a provision similar to C (4). I conclude that the provision concerning rate of pay for out of title work in West New York is reasonable and it is awarded here to be implemented after filling two (2) consecutive tours.

In contrast, the Regional points out that Section 13.1 of its proposal is identical to the provision in the Union City contract, and very similar to the provision in the West New York contract. Similarly, the Regional notes that section 14.0 of its proposal are much like provisions set forth in the municipal contracts. Addressing the effectuation of assignments and transfers, the Regional relies upon Director DeOrio's testimony that requests for either mutual transfers or requests to transfer from an engine to a truck or vice versa, are considered in light of the staffing situation. The Regional cites Director DeOrio's testimony that he typically looked to see who requested a transfer first.

Accordingly, the Regional asks that its proposal be adopted and that the Union's proposal be rejected.

The Union contrasts its substantive proposals regarding promotions and vacancies with the Regional's position, which it considers insufficient. The Union compares the Regional's sole proposal with regard to promotion to maintain a

promotional list with its proposal that includes a similar provision, and proposals concerning the filling of permanent and temporary vacancies. In the event of a permanent vacancy, where there is no civil service list for the opening, the most senior firefighter would have the right to fill the position, under the Union's proposal. The Union points out that this type of practice is used in Weehawken and Union City.

Addressing temporary absences in a higher rank which will be filled by firefighters, the Union proposes that such absences be filled by seniority within the company on a rotating basis. Under the Union's proposal, the employee performing as the acting supervisor shall be compensated at the top base salary at the rank he is filling. The Union notes that the West New York contract provides for acting pay, while the North Bergen contract provides for a \$375.00 stipend on an annual basis and Union City provides a stipend of \$75.00 per day. The Union argues that if a firefighter is required to do the duties of a supervisor, that firefighter should receive the same compensation that the supervisor would have received if he was present. The Union asserts that there is no justification for paying an acting supervisor less than a supervisor, when their duties are the same. The Union asserts that vacancies in supervisory ranks, whether temporary or permanent, will occur and that an orderly process to fill these positions and to determine the compensation to be earned by the firefighter is needed. The Union argues that the absence of clear contract language will generate grievances that might have otherwise been avoided.

Both parties have now proposed that the Regional will attempt to maintain a Department of Personnel list for promotional purposes and that promotional vacancies be filled in accordance with Department of Personnel Rules and Regulations. That provision is awarded.

The parties' positions diverge over the issues of assignments and acting pay. The Union's proposals would require that the Regional fill vacant positions as soon as possible and would impose criteria upon how vacancies may be filled. Additionally, the Union proposes that those firefighters provisionally promoted or those firefighters filling fire officer positions on an acting basis be paid at the highest rate for the position in which they are acting. The Regional objects to these proposals asserting that the Union's proposals regarding assignments are not negotiable. The Regional also contends that the Union's proposals regarding acting pay exceed the provisions included in any of the predecessor agreements. The Regional seeks to retain its authority to transfer and assign with no additional pay for acting in a higher position. The Union's proposal would provide greater benefits in the event of a promotion, assignment or transfer than was provided under any of the previous municipal agreements while the Regional's proposal would provide less than under the previous agreements.

The Union's proposals regarding assignments is more restrictive than any of the previous agreements, while the Regional's proposal would place no specific standards upon the Regional's authority to assign.

The Regional would provide for no additional compensation to employees assigned to work in an acting capacity. Nor would the Regional provide that such an employee could refuse such an assignment. Each of the previous municipal agreements provided some form of acting pay for those working in a higher rank in an acting capacity. The Union's proposal, which would provide that such assignments were made by seniority and paid at the highest step for the higher rank exceeds the benefits provided by all of the municipal agreements.

The previous agreement in West New York protected management's right to assign firefighters to acting duty, while also protecting employee's rights to refuse an appointment to a fire officer position in an acting capacity as well as providing additional compensation for working in a higher rank. I find merit in the wording of this provision. Accordingly, a provision similar to that included in the previous agreement in West New York is awarded as follows:

PROMOTIONS

The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

ASSIGNMENTS AND TRANSFERS

The assignment and transfer of firefighters is the responsibility of the Executive Director in accordance with DOP Rules and Regulations. It is understood that any employee may request, in writing, a transfer to a new or vacant position for which that employee is qualified.

ACTING PAY

Where a vacancy exists, the appointing of employees to higher ranks in an acting capacity shall not serve as a long-term substitute for the filling of the vacancy on a permanent basis. The Regional shall adhere to DOP Rules and Regulations with respect to the filling of vacancies.

Temporary assignments to higher rank during vacation, sick leave or other leave, shall continue to be made by the Regional in conformity with DOP Rules and Regulations.

Any qualified employee not desiring to serve in a temporary acting capacity may refuse to do so without prejudice. A qualified employee means having at least 3 years on the job from date of appointment.

When an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, beyond two (2) consecutive tours, compensation shall be provided upon appointment to act in the higher rank, which compensation shall be an additional one-half (1/2) the salary rate between ranks on the existing salary schedule.

CLOTHING, EQUIPMENT AND QUARTERS

The **Regional** proposes the following contractual language:

Section 15.0: The Employer agrees to furnish, at no cost to the employee and assure the use of, required protective clothing, and equipment as set forth in N.J.A.C. 12:100 et seq.

Section 15.1: Firefighters shall receive an annual \$300.00 bank for the repair and replacement caused by normal wear and tear of

station wear. Upon presentation of receipts for the maintenance or replacement of worn uniforms, the employee will be reimbursed for such expenses up to the limit provided above.

Section 15.2: Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

Section 15.3: If a firefighter loses equipment due to negligence, such firefighter shall be charged with the cost of replacement in the first instance. In subsequent instances, the firefighter shall be charged with the cost of the replacement and may be subject to discipline. Intentional damage to equipment shall result in discipline and charge for the cost of replacement.

The **Union** proposes the following contractual language:

- A. The employer agrees to pay all employees covered by this agreement the amount of six hundred and fifty (\$650.00) dollars per year as a clothing maintenance allowance. This payment is to be made on or before July 1st of each year. If such payment is not provided, then each employee covered by this Agreement shall receive an additional ten (10%) percent of this payment.
- B. The wearing of blue tee or sweat shirts with firefighter insignia is permissible, as long as they conform to the Department's specifications.
- C. Clothing lost, destroyed or damaged during the course of duty shall be replaced at the Department's expense. The employee, absent extenuating circumstances, must report any damaged clothing to the (Platoon Commander, his designee or fire headquarters) within twenty-four (24) hours. Employees must present damaged clothing, helmet, boots, coats or gloves in order to verify loss.
- D. All employees shall be provided with two (2) individual lockable clothes lockers.
- E. Whenever the Employer determines that it desires to change the uniform or part thereof, it shall be the employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the allowance set forth in this agreement.

No employee shall be required to report on a day off without pay to receive any change in uniform.

The **Union** has also proposed the following contractual language:

- A. Upon the signing of this agreement, all members of the Department will be furnished with two (2) station pants, two (2) short sleeve station shirts and two (2) long sleeve station shirts.

- B. The work uniform shall be purchased and maintained by the Department in accordance with the following:
 - 1. New Hires:
Four (4) station shirts (2 short sleeve and 2 long sleeve) and 2 station pants.

 - 2. All existing firefighters will receive two (2) station shirts (one (1) long and one (1) pair of station pants by December 1st of each year.

 - 3. The Department shall supply to each employee, at its own cost, all OSHA standard protective gear included but not limited to turnout gear.
 - a. The Department shall replace, at its own cost, all OSHA standard protective gear damaged in the line of duty or through normal wear and tear. Such gear including but not limited to, helmet, gloves, hood, turnout pants and jacket, boots, station wear, etc.

- C. The following optional wear, shall be purchased and maintained by the employee in accordance with the uniform specifications (agreed to by the Department and the Association):

Windbreaker, baseball cap, sweat shirt, shorts, golf shirts and T-shirts.

- D. All members shall be issued a second set of Turnout Gear as of December 2, 2001. Effective at the signing of this agreement, members shall have access to current inventory when in need of immediate replacement of damaged or wet Turnout Gear.

- E. The Department agrees to provide replacement for any safety gear, equipment and uniform stolen out of a Fire Department facility or vehicle.

The Regional acknowledges that the cost of purchasing, maintaining, and replacing uniforms is a mandatorily negotiable subject. The Regional asserts that the Union's proposal infringes upon its right to determine daily uniforms, which is not mandatorily negotiable. Township of Saddle Brook, P.E.R.C. NO. 91-95, 17 NJPER 250 (¶ 2214 1991). The Regional urges adoption of its proposal and rejection of the Union's proposal.

Asserting that its proposed uniform allowance is reasonable, the Regional notes that it provides each firefighter, at its expense, with turnout gear consisting of boots, pants, coat, gloves, helmet, and hood. The Regional cites Director DeOrio's testimony that turnout gear costs the Regional approximately \$1,000.00 per firefighter. The Regional also cites Director DeOrio's testimony regarding the replacement of lost turnout gear:

As far as the loss of turnout gear, it varies from possibly responsibility of the Regional's behalf of replacing it, if we feel that it was a reason of reasonable questioning of how it was misplaced that we would be responsible to the extreme where we felt the individual was negligent ...

The Regional maintains that when a firefighter loses his equipment due to negligence, he should be charged with the cost of replacement in the first instance. The Regional argues that it should not be held financially responsible

when a firefighter is negligent with his equipment. Additionally, the Regional argues that when a firefighter is negligent with his equipment more than once, he should be charged with the cost of the replacement and the Regional should have the discretion to bring the negligent firefighter up on disciplinary charges. The Regional maintains that it can not afford and should not be required to replace gear that a firefighter negligently loses. Additionally, the Regional asserts that intentional damage to equipment should result in discipline and the firefighter should be charged for the cost of replacement. The Regional also proposes that when a firefighter is terminated or retires, the firefighter return his turnout gear.

Addressing Paragraph D of the Union's proposal, which would provide all firefighters with a second set of Turnout Gear as of December 2, 2001, the Regional points to Mr. Michelin's testimony acknowledging that, no department ever supplied firefighters with two sets of turnout gear. Relying upon Mr. Michelin's testimony, the Regional asserts that it is very rare to be called to two fires in the same tour, and that there is no need for two sets of turnout gear.

The Regional notes that it and the Union have agreed on the contractual language as proposed by the Regional in 15.2.

Addressing the Regional's proposed language in 15.3, it notes that the parties agreed that "[i]f a firefighter loses equipment due to negligence, such

firefighter shall be charged with the cost of replacement.” The parties have also agreed with the Regional’s proposal that “Intentional damage to equipment shall result in discipline and charge for the cost of equipment.” The Regional notes that there is no agreement on whether discipline could be administered to a firefighter who negligently loses his equipment more than once.

The Union seeks a clothing maintenance in the amount of \$650.00 per year as well as a provision that it be paid by July 1, with interest due on the amount in the event late payment. In contrast, the Union points out that the Regional proposes a \$300.00 annual payment. In light of clothing maintenance amounts for Union City, West New York, Weehawken and North Bergen of \$650.00, \$500.00, \$425.00³ and \$590.00 respectively, the Union asserts that there is no rationale for the reduction of those amounts to \$300.00 per year. Instead, the Union maintains that the cost of clothing and the cost of maintaining that clothing warrants maintaining the \$650.00 per year currently enjoyed by Union City firefighters. I am aware that this benefit may have been folded into base pay in the past in Weehawken but any such action I deem to be part of a salary increase which does not conflict with the award of clothing allowance for all firefighters of \$650 effective July 1, 2002.

³ The clothing allowance was increased to \$500 in Weehawken pursuant to a Memorandum of Agreement covering July 1, 1998 through regionalization.

The Union also seeks to maintain the second section, which permits firefighters to wear t-shirts or sweatshirts with firefighter insignia, as is currently included in the North Bergen contract.

Next, the Union proposes that clothing lost, destroyed or damaged during the course of duty should be replaced at the Department's expense. According to the Union, this is the current practice in North Bergen, Union City and Weehawken. The Union objects strenuously to the Regional's proposal that such reimbursement be taken from the annual \$300.00 bank. According to the Union, the clothing allowance is for purchase and maintenance, not for damaged or destroyed clothing. The Union urges that the current practice be maintained.

The Union asserts that its members need two lockers. The Union explains that the first locker is for personal clothing and station wear and a place where firefighters put their valuables, while the second locker is for firefighting gear. According to the Union, this gear is often exposed to hazardous substances and cannot be intermingled with other clothing. The Union maintains that this gear must be stored separately, and, since the Regional proposes that equipment lost due to negligence of the firefighter shall be his responsibility, the firefighter must be given a secure place to store his firefighting gear and his individual gear. The Union notes that the firefighters in Union City enjoy this benefit by contract. The Union notes that as a practice, several locations have lockers, but they are insufficient in number to provide each firefighter with two lockers.

The Union agrees with the Regional's proposal that a firefighter must return all firefighting gear upon retirement or termination.

Regarding the Regional's proposal that firefighters be disciplined for losing equipment, the Union agrees that if the loss is due to the firefighter's negligence, then the firefighter be charged with the cost of replacement for the first instance. However, in the absence of negligence, the Union proposes that Regional pay for the replacement. If there are subsequent incidents of negligence, the Union also agrees that the firefighter may be charged for the replacement costs and may be disciplined. The Union asserts that the penalty of paying for the equipment is sufficient for a first offense. The Union points out that the Regional seeks to ensure that the firefighter has the proper firefighting gear. Accordingly, the Union asserts that requiring the firefighter to pay for the replacement of the gear is sufficient penalty to meet the Regional's goal.

The Union also seeks to require the Regional to pay for the cost of uniforms in the event the Regional decides to change the uniforms, as is the case under the Union City and Weehawken agreements. The firefighters also propose that the Regional issue new station wear as well as new firefighter gear. Specifically, the Union asks that upon signing of the Agreement, all firefighters of the Department will be issued two pairs of pants, two short sleeve shirts and two long sleeve shirts, which is the clothing that is worn during non-firefighting duty.

The Union also asks that such clothing be supplied to new hires and that existing firefighters will receive one set of clothing each year of the contract to replace worn clothing.

Turning to firefighting gear, the Regional has agreed to provide such gear. The Union asserts that its proposal is more descriptive than the Regional's proposal and since the gear is life-saving for a firefighter, the Union proposes that the Regional replace such gear by January 1, 2002. This will provide that all firefighters are properly protected and that old equipment is retired, thus furthering the parties' mutual goal of providing safe and effective fire fighting.

This section addresses issues concerning the provision and replacement of clothing and turnout gear only. The parties have stipulated to language requiring the return of turnout gear and equipment upon retirement or termination. The parties have also stipulated to a provision requiring firefighters to cover the replacement cost of equipment lost due to negligence or intentional damage to equipment. Those stipulations, which provide as follows, are awarded.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a firefighter loses equipment due to negligence, such firefighter shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Additionally, the Union proposes a series of additions to the firefighters' uniforms as well as a proposal for two lockers per firefighter, new uniforms and a second set of turnout gear. Before the regionalization, firefighters in Union City had separate lockers for their clothing and their turnout gear. As the Union acknowledges, there are not currently enough lockers to provide each firefighter with a second locker and this proposal is not awarded. As Mr. Michelin testified, none of five (5) municipalities provided two sets of turnout gear prior to regionalization. Additionally, it is not in dispute that firefighters are normally not called out to more than one fire per tour. For these reasons, a second set of turnout gear per firefighter is not warranted at this time. Similarly, the Union's proposals for additional clothing and for new uniforms and new turnout gear are not warranted at this time. The Union, however, has proposed that when the Regional determines to provide new uniforms or equipment, that the Regional will assume the responsibility for providing each firefighter with the uniform at no cost to the firefighter and separately from the clothing maintenance allowance. Since the clothing maintenance allowance is an allowance for the maintenance of existing uniforms and does not cover new uniforms and equipment, the Union's proposal is warranted. Accordingly, a provision requiring that when the Regional determines to change or modify uniforms, it will provide new uniforms to firefighters at no additional cost to them is awarded.

Accordingly, the Clothing and Equipment provision is awarded as follows:

The employer agrees to pay all employees covered by this agreement the amount of six hundred and fifty (\$650.00) dollars per year as a clothing maintenance allowance. This payment is to be made on or before July 1st of each year commencing July 1, 2002.

The Employer agrees to furnish, at no cost to the employee and assure the use of, required protective clothing, and equipment as set forth in N.J.A.C. 12:100 et seq.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a firefighter loses equipment due to negligence, such firefighter shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Clothing lost, destroyed or damaged during the course of duty shall be replaced at the Department's expense. The employee, absent extenuating circumstances, must report any damaged clothing to the (Platoon Commander, his designee or fire headquarters) within twenty-four (24) hours. Employees must present damaged clothing, helmet, boots, coats or gloves in order to verify loss.

Whenever the Employer determines that it desires to change the uniform or part thereof, it shall be the employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the clothing maintenance allowance set forth in this agreement.

MISCELLANEOUS

The **Union** proposes the following contract language:

A. NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver hereof.

B. OFF DUTY DEPARTMENT ACTION

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action taken by the employee on active duty

with the NHRF&R department, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty.

C. ASSIGNMENTS

1. No employee of the Fire Department shall be assigned to perform any duty which is unrelated to firefighting, rescue, salvage, overhaul work, care and maintenance of fire fighting equipment and apparatus, or any other similarly related work.
2. No such employee shall be assigned any duty which is unrelated to the normal daily care required to maintain the quarters to which he is assigned in a clean, safe and sanitary manner.

D. PERSONNEL INFORMATION

All employees of the Department shall be required to give the Director his current telephone number and address for the purpose of contacting employees in time of emergency or recall. Such information shall be considered confidential.

E. COPY OF THE AGREEMENT

The Employer shall pay the cost of printing and supplying each member of the Department with a printed copy of this Agreement.

F. LEGAL PLAN

The Legal Services Benefit shall provide the sum of \$200.00 per employee for each employee covered by this Agreement. Said payment shall be made during the month of August each year, in the same manner as the clothing allowance.

G. ANNUITY PLAN

1. The Association may establish an Annuity Program with contributions to be made through payroll deduction. The program shall be by employee only contribution at no cost to the department.
2. The Association shall indemnify, defend and save the department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the department in reliance upon salary deduction authorization cards and submitted by the Association

to the department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction for participation in the Annuity Program.

The Union has proposed seven (7) miscellaneous provisions. The first, a “no waiver” provision, is the subject of a stipulation by the parties. The “no waiver” provision agreed to by the parties is awarded as follows:

NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one’s rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

Next, the Union proposes a section concerning off-duty department action. According to the Union, it is a good samaritan clause. It provides that if a firefighter, on his time off, engages in duty as a firefighter which would have been proper as his normal work assignment, it will be deemed that the firefighter shall have all rights and benefits concerning such action as if it was taken while on active duty for the Department. The purpose of this clause is to insure that firefighters who react to an emergent situation while off-duty do not lose the benefits under the agreement.

This provision is modeled after a similar provision in the previous Weehawken agreement. This provision would provide firefighters proper

protection when they respond to emergencies throughout the State when off duty. However, the previous Weehawken agreement included an exception for those firefighters “regularly performing duties as a member of a volunteer fire company.” That exception limits the Regional from providing protection to its firefighters when they are volunteering in other jurisdictions, which provide alternate protections to their volunteers. Accordingly, this provision is awarded with the same exception for firefighters regularly serving as a member of a volunteer fire company:

OFF DUTY DEPARTMENT ACTION

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action taken by the employee on active duty with the NHRF&R department, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

Next, the Union proposes an “out-of-title work prohibition” which would provide that firefighters would not be assigned duties that are not normally and customarily performed by firefighters. According to the Union, the Regional has not articulated its objection to this provision.

This provision is also modeled upon a similar provision in the previous Weehawken agreement. The only difference is that the previous Weehawken agreement includes fire prevention as a duty firefighters may regularly be assigned. With that modification, this provision is awarded as follows:

C. ASSIGNMENTS

1. No employee of the Fire Department shall be assigned to perform any duty which is unrelated to firefighting, fire prevention, rescue, salvage, overhaul work, care and maintenance of fire fighting equipment and apparatus, or any other similarly related work.
2. No such employee shall be assigned any duty which is unrelated to the normal daily care required to maintain the quarters to which he is assigned in a clean, safe and sanitary manner.

The next provision would codify the current practice of requiring each firefighter to give the Department his current telephone number and address. According to the Union, the firefighters seek to keep this information confidential.

This proposal also has its genesis in the previous Weehawken agreement, which also required that employees notify the Department of a change of address within 48 hours. Additionally, this proposal would require that the employees' personal information be kept confidential. Such a provision would protect the firefighters' privacy and is awarded with the limitation that the information would be divulged where legally required. Accordingly, the provision covering personnel information is awarded as follows:

D. PERSONNEL INFORMATION

All employees of the Department shall be required to give the Executive Director his current telephone number and address for the purpose of contacting employees in time of emergency or recall. In the event of any change of address, said employee shall notify the Executive Director within forty-

eight (48) hours. Such information shall be considered confidential unless disclosure of such is required by law.

Additionally, the Union proposes to require the Regional to pay the cost of printing and supplying each member of the Department with a printed copy of this agreement. According to the Union, this will reduce the number of grievances that arise and ensure that the firefighters are aware of their rights and responsibilities.

Only the Weehawken agreement provided this benefit and such benefit does not necessarily need to extend to the Regional Department. However, since this is the first agreement covering the newly regionalized department, there is merit to the proposition that each firefighter receive a copy of the finalized agreement. Accordingly, this provision is awarded specifically for this first agreement and will sunset at its expiration and be subject to future negotiation thereafter.

E. COPY OF THE AGREEMENT

The Employer shall pay the cost of printing and supplying each member of the Department with a printed copy of the initial Agreement between the Regional and the Union.

The Union also propose that the Regional fund the Legal Services Plan in the amount of \$200.00 per firefighter per year. Currently, the former Weehawken firefighters enjoy this benefit. According to the Union, this nominal amount

cannot be rationally opposed in light of the millions of dollars in savings and cash flow that the creation of the Regional Department has generated.

Only the previous agreement in Weehawken included a legal services plan and that plan was funded in the amount of \$100 per firefighter per year. The record does not reflect the extent of this benefit or how often the benefit was used by Weehawken firefighters. Accordingly, there is insufficient evidence of a need to extend this program to the Regional and it is not awarded.

The final proposal of this Article concerns the establishment of an Annuity Program. According to the Union, this proposal has no cost for the Regional. The Union asserts that it proposes a savings plan which it will establish and maintain and the Regional will be required only to make payroll deductions. The Union also emphasizes that it proposes to indemnify and hold the Department harmless against any and all claims regarding the payroll deduction.

This benefit is currently enjoyed by the Weehawken, West New York and North Bergen firefighters. It is awarded here as follows:

G. ANNUITY PLAN

1. The Association may establish an Annuity Program with contributions to be made through payroll deduction. The program shall be by employee only contribution at no cost to the department.
2. The Association shall indemnify, defend and save the department harmless against any and all claims,

demands, suits or other forms of liability that shall arise out of or by reason of action taken by the department in reliance upon salary deduction authorization cards and submitted by the Association to the department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction for participation in the Annuity Program.

Accordingly the miscellaneous provisions of the agreement are awarded as follows:

A. NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

B. OFF DUTY DEPARTMENT ACTION

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action taken by the employee on active duty with the NHRF&R department, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

C. ASSIGNMENTS

2. No employee of the Fire Department shall be assigned to perform any duty which is unrelated to firefighting, fire prevention, rescue, salvage, overhaul work, care and maintenance of fire fighting equipment and apparatus, or any other similarly related work.

2. No such employee shall be assigned any duty which is unrelated to the normal daily care required to maintain the quarters to which he is assigned in a clean, safe and sanitary manner.

D. PERSONNEL INFORMATION

All employees of the Department shall be required to give the Executive Director his current telephone number and address for the purpose of contacting employees in time of emergency or recall. In the event of any change of address, said employee shall notify the Executive Director within forty-eight (48) hours. Such information shall be considered confidential unless disclosure of such is required by law.

E. COPY OF THE AGREEMENT

The Employer shall pay the cost of printing and supplying each member of the Department with a printed copy of the initial Agreement between the Regional and the Union.

F. ANNUITY PLAN

1. The Association may establish an Annuity Program with contributions to be made through payroll deduction. The program shall be by employee only contribution at no cost to the department.
2. The Association shall indemnify, defend and save the department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the department in reliance upon salary deduction authorization cards and submitted by the Association to the department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction for participation in the Annuity Program.

MAJOR ECONOMIC ISSUES

PROPOSALS, DISCUSSION AND FINDINGS ON MAJOR ECONOMIC ISSUES

In rendering this Award, I have endeavored to make a reasonable determination on all issues in dispute after giving due weight to the statutory criteria I have judged to be relevant. The evidence and argument on each of the statutory criteria referenced by the Regional and the Union to support their respective positions have been carefully considered and reviewed. All of the statutory criteria are clearly relevant to the resolution of the dispute, although in individual instances, each factor cannot be given identical weight. In addition, I have strongly considered a factor or standard not explicitly enumerated which, when applied more broadly, fits under the “interests and welfare of the public” criterion. That is, the policy interests supporting the regionalization of fire services should be furthered, with due consideration given to the work, welfare and terms and conditions of the firefighters and fire officers who perform life-saving and life-threatening duties.

Each party bears a burden of proof in support of each proposal it has advanced. In reaching my conclusions I will summarize the position taken by each party along with the rationale each has submitted. Because of the sheer volume and complexity of the issues and the evidence, I will set forth an Award on each issue along with a concise statement of reasons in support of each

determination without an extensive analysis of the statutory criteria on each major economic issue. Some of the criteria are implicitly reflected in many of the issues which require decision. For example, an issue proposed by the Union which may contain excessive costs would, if granted, cause adverse financial impact on the Regional. Another example would be an issue the Regional might propose which would have such harsh economic consequences on individual firefighters which could undermine the need for continuity and stability of employment.

Prior to deciding each issue, I note that I have given substantial consideration to the main themes advanced by the Regional and the Union which thread through almost every supporting argument and evidence on each position taken. The Union contends that the most heavy weight should be given to a retention of all provisions which historically exist in the Agreements of each municipality which pre-date regionalization. Further, the Union urges that the new terms on each issue must be set at the absolute highest level which can be found in any of the prior Agreements. By way of hypothetical example, if Town X provided 3 personal days, but others provided fewer, the new provision on personal days should begin at 3 or better for all firefighters and then increase to 4. As a corollary, the Union further asserts that no firefighter previously employed by any of the five municipalities should be subject to a reduction in the status quo which existed in any portion of the prior Agreements which may have applied to that firefighter. The Regional disputes the Union's theory and

advances another which the Union rejects. The Regional contends that the most weight must be given to the fact that it is a new public employer. As such, it asserts that, when setting new terms, it should be unencumbered by any of the terms in the prior agreements which had been negotiated by the individual municipalities. The Regional urges that each term and condition be developed anew, mostly with decreased value, and with less weight and consideration given to what one municipality or another had negotiated in the past since those municipalities are no longer the employer.

The uniqueness of this impasse requires an analysis which gives meaning to the overall construct of the economic terms rather than to focus narrowly on any single component or issue. There are also reasonable limits on what can be accomplished in an initial agreement which require modification of agreements developed over many decades under varied individualized circumstances. A status quo on any particular issue, nor any specific change made herein, does not constitute a waiver of either party's ability to propose modifications in the future.

I am persuaded that the interests and welfare of the public in having an expert, efficient and affordable regional entity, the need to have continuity and stability among those engaged in fire services, the Regional's interest in managing and administering efficient and cost effective fire services and the employees' interests in receiving or maintaining economic benefits while working

in a safe but productive environment are best served and balanced by following these broad guidelines and objectives:

1. To the extent feasible, the goal of merging or unifying major terms and conditions of employment should be attained for those employees previously employed in the five municipalities prior to regionalization. For example, certain major compensation issues should be levels of uniform even if accomplished over a period of time to ease the cost burden on the Regional.

2. To the extent that such merger or unification is not feasible, certain benefits of certain employees employed by individual municipalities should be retained even if retention of that specific benefit level cannot be enjoyed by the remainder of the workforce. One factor traditionally employed in collective bargaining is to “red circle” an individual or class of employees due, in part, to the need to avoid unfair individual impacts. For example, certain benefits have accrued over the course of one’s career with a reasonable expectation of continuation until retirement. A unity of result on issues such as these may not be achievable without producing harsh inequities either in terms of benefit elimination or excessive cost.

3. Employees hired by the Regional after regionalization who were not employed by any individual municipality which helped form the Regional should have terms and conditions of employment which give some consideration, but

less weight, to the prior terms and conditions of the individual municipalities and some consideration, but more weight, to the establishment of the Regional as a new employer. The Regional, as a new employer, must be given some latitude to offer employment on terms reflective of its own character and needs. For example, a firefighter hired after regionalization has never had any employment tie to any individual municipality. Prior terms set by any individual employer should not automatically be controlling on the Regional. This consideration, however, must be balanced by the establishment of terms not so disparate in relation to the more experienced firefighters that morale and unity among all firefighters are compromised or the continuity and stability of employment among the newly hired firefighters.

4. Consideration must also be given to internal comparability between firefighters and fire officers. Each bargaining unit faces many of the same considerations and challenges. Although each has separate bargaining units, all employees, regardless of rank, must be integrated into one department charged with the same mission serving the public's health, welfare and safety. The ability to administer and manage the department will be furthered by internal comparability between these two units as well as harmony between an employee and his supervisor.

Application of these principals will result in some differentiation in terms and conditions of employment on certain individual issues from what existed in

the past. Differentiation, or tiering, while commonplace in public and private sector labor relations, can be an unsettling concept. In this instance, disparate salaries, benefits and other terms and conditions of employment were inherited by the Regional and this Union upon regionalization. For employees who were employed prior to regionalization, the Regional seeks to ease differentiated terms by freezing salaries and other terms until such time that the Regional's new employees catch up to their levels over time. The Regional proposes a separate and lower salary tier for the new employees as well as new longevity schedules. The Union seeks to eliminate any and all differentiation by having all employees' salaries, benefits and terms and conditions of employment immediately rise to the highest level set by each highest term of an existing agreement and then have those terms advanced during the term of this agreement. Each theory has been given serious consideration when evaluating the economic proposals advanced by the parties and I have embraced, in part, each approach where the merits require such conclusion. However, I reject each approach in its totality because each theory, as a whole, is neither reasonable nor feasible.

An additional major consideration is the effective date of any changes to the terms and conditions of employment. Retroactivity is warranted for some, but not all terms. By law, there has been a status quo in terms and conditions of employment pending a resolution of new terms. The legislature has allowed prior terms to be fixed subject to the negotiation of new terms but has allowed for flexibility. With respect to retroactivity, employees have enjoyed paid time off at

levels previously set. Terms involving paid time off shall not be retroactive and any award modifying this type of benefit shall be prospective and shall take effect January 1, 2003. This will allow unit employees to may make plans prospectively while the Regional will be able to make staffing and administrative strategies in anticipation of change. Other issues, such as health insurance, simply cannot be resolved on a retroactive basis and must, by necessity, be prospective. Other terms such as salary require retroactive application. Salary adjustments have not been made nor received in anticipation of this award. While adjustments on such issues may not be uniform, salary increases are retroactive.

I next turn to the individual major economic issues. I conclude that effective January 1, 2003, there shall be a unification of sick leave, paid vacation and holidays.

SICK LEAVE

The **Regional** proposes the following contractual language:

Accrual

Section 7.0: Sick leave is defined as a required absence from work due to a personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an additional 120 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Section 7.1: Evidence in the form of a physician's certificate shall be required as proof of illness for (1) any sick leave paid for an absence of 24 hours or more; (2) on the third occasion after absences less than 24 hours. Evidence in the form of a physician's certificate may be required (1) for absences in excess of eight (8) hours; (2) whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities. It must also be signed by a physician or surgeon who is qualified to practice within the scope of the diagnosis. Certificates signed by chiropractors will not be considered sufficient proof of injury or illness unless such chiropractor is also a licensed medical doctor.

Section 7.2: The Employer reserves the right to send, at the Regional's expense, an employee for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Section 7.3: Employees on sick leave are expected to be at home except when attending a medical appointment. Whenever an employee who is out on sick leave, leaves his residence for a period exceeding two (2) hours, he is required to inform Headquarters during normal business hours or the Duty Chief after normal business hours of such absence. Employees who are actively working at a second job are deemed well enough to perform their normal responsibilities within the Regional. Therefore sick leave benefits will be denied to those employees actively working a second job.

Section 7.4: Employees on extended medical leave shall contact the office of the Chief every Monday, between the hours of 9:00 a.m. and 12:00 noon.

Section 7.5: Employees returning to duty from medical leave shall work one (1) full tour of duty before becoming eligible for regular overtime rotation.

Sick Leave Use Incentive

Section 7.7: An employee who has taken no sick days during the calendar year shall receive a stipend of \$425.00 to be paid on or before February 1st of the following year.

The **Union** proposes the following contractual language:

- A. Sick leave may be utilized by employees in accordance with DOP regulations.
- B. Commencing with the date of employment all employees shall be entitled to unlimited sick leave up to one year.
- C. During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient monthly, from the attending physician and/or a Department medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.
- D. If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible.
- E. Any employee who takes no sick days during the calendar year shall receive \$500.00. Employees who fail to qualify for the \$500.00 shall receive \$150.00 for each one third (1/3) year perfect attendance (1/1-4/30, 5/1-8/31, 9/1-12/31). Monies to be paid within thirty (30) days after each period ends.
- F. An employee shall not have to produce a doctor's certificate to return to duty unless he has suffered an injury, or undergone any form of surgery, or is out sick for more than two (2) working days.

Pursuant to Section 7.1, the Regional proposes that evidence in the form of a physician's certificate should be required as proof of illness for (1) any sick leave paid for an absence of 24 hours or more; (2) on the third occasion after

absences less than 24 hours. Evidence in the form of a physician's certificate may be required (1) for absences in excess of eight (8) hours; (2) whenever there is reason to believe that sick leave is being abused. Pursuant to Paragraph (F), the Union proposes that "[a]n employee shall not have to produce a doctor's certificate to return to duty unless he has suffered an injury, or undergone any form of surgery, or is out sick for more than two (2) working days." The Regional asserts that its proposal is closer to the four municipal contracts. The Regional notes that the West New York's contract provides that:

An employee shall not have to produce a doctor's certificate to return to duty unless he has suffered an injury or undergone any form of surgery or is out sick more than two (2) working days. If an employee reports sick on two (2) separate unrelated occasions during a calendar year, then the Employer may require him to submit a doctor's certificate for any subsequent sickness during that calendar year before he returns to duty regardless of the length of sickness. The Employer shall uniformly require a doctor's certificate before the employee returns to duty when an employee reports sick on more than two (2) separate unrelated occasions during a calendar year."

The Regional also points to the North Bergen contract which states that "[t]he appointing authority may require proof of illness of an employee on sick leave, whenever such requirement appears reasonable." The Regional notes that the Weehawken contract also provides that when an employee does not report to duty for a period of one (1) workday because of sickness, he is required to show proof of his inability to work by submitting a physician's certificate to the department head. In contrast, the Regional notes that the Union, instead of

providing the Regional the ability to take action after two days, would prohibit the Regional from taking action.

Pursuant to Section 7.2, the Regional proposes that it “reserves the right to send, at the Regional’s expense, an employee for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.” Director DeOrio distinguished the circumstances when the Regional would send a firefighter to a psychiatrist as opposed to when a firefighter would be sent to a physician: “I would think just on a basis of an individual who may be claiming that he’s still injured in some ways and possibly from our physicians and evaluating the individual can’t find anything wrong at all with the individual.” The Regional cites Director DeOrio’s testimony that the Regional would send a firefighter to a neurologist “under the claims that [the firefighter is] having some type of nerve problems.” Furthermore, Director DeOrio stated that “under the Regional we’ve sent people to our independent doctors to get an evaluation in the past.”

Addressing its proposed Section 7.3, which provides that employees on sick leave are expected to be at home except when they are attending a medical appointment, and the provision that the employee notify the Regional whenever he or she leaves their residence for over two hours, the Regional cites the West New York agreement for support. In West New York, the contract provided that “[a]n employee off from work on sick leave shall be required to remain at home

during the period he is on sick leave (tour of duty), except for a visit to the doctor's office or hospital." The Regional also cites Mr. Michelin's testimony that Union City had a requirement that a firefighter on sick leave was required to stay home. The Regional emphasizes that the Union's proposal would eliminate that requirement. The Regional also points to Mr. Michelin's testimony that the Union's proposal does not include language that would permit the Regional to send a firefighter to one of its doctors.

Turning to the amount of sick leave available to firefighters, the Regional points out that Union City provided a maximum of one year, West New York provided seven 24 hour tours each year; North Bergen provided between 11 and 15 sick days per year; and Weehawken did not provide for a certain number of sick days or for a defined period of time. The Regional points to Director DeOrio's explanation of its reasoning for its proposal that upon hire, each employee shall be entitled to a bank of 120 hours and that commencing on January 1st of the following year, the employee will be credited with an additional 120 hours, as opposed to granting one (1) full year of unlimited sick time:

. . . we're finding people are being injured for a multiple of different reasons, whether being in a car accident, whether working on the side, working on their house, and what's happening is that they're utilizing sick days with one year unlimited and basically we're paying overtime on every day that they're off from an injury that didn't occur while they were working . . . I could show a list of today we have 27 individuals that are either out sick or out on extended. It's a mixture of job-related, regular sick days for the day and off-the-job injuries, but I'll estimate that between six and ten individuals as of today are out for unrelated regional reasons. . .

The Regional acknowledges that none of the previous municipal contracts included a provision similar to the Regional's proposed sections 7.4 and 7.5. However, the Regional asserts that these sections involve a management prerogative.

Director Welz also testified that "The Director's Leave Report" provides:

. . . a snapshot of our members that are out on sick or injury leave and some of them have other emergency leave. What it does as director it gives me on a daily basis a very quick snapshot of the members of the total department that are off on benefits, receiving full pay or whatever their particular contract calls for on a given day. And it looks at whether they're sick, whether they're on emergency leave, whether they're on injury leave.

The Regional highlighted examples of the information that Director Welz could glean from the report, such as who was on extended sick leave and for how long. Director Welz testified that if he noticed a firefighter with questionable long-term sick leave, he would question the battalion chief and see if there were updates on the firefighter's condition. If no current information was available, the individual and his doctor would be contacted for an update.

With regard to the amount of sick leave, the Regional proposes that firefighters, upon hire, would be entitled to a sick bank of 120 hours. Commencing on January 1st of the following year, the firefighter would be credited with an additional 120 hours of sick time. In comparison, the Regional notes that the Union proposes that commencing with the date of employment all employees shall be entitled to unlimited sick leave up to one year. The Regional

asserts that its proposal should be adopted because it compares favorably with the amount of sick time received by firefighters in other jurisdictions.

Viewing sick leave benefits within New Jersey, the Regional notes that Atlantic City firefighters receive 100 hours of sick time per annum; Paterson firefighters are entitled to sick leave without “docking” for the first occurrence of sick leave in any calendar year, but then are “docked” six hours pay per occurrence of sick leave for the first work day or part thereof missed for sick leave. Looking to sick leave benefits in the municipalities that have united to form the Regional, West New York firefighters received seven 24 hour tours each year; North Bergen firefighters received between 11 and 15 sick days per year; and Weehawken firefighters did not receive a set number of sick days or a defined period of time.

The Regional’s proposal that upon hire, each employee shall be entitled to a bank of 120 hours and that commencing on January 1st of the following year, the employee will be credited with an additional 120 hours, as opposed to granting one (1) full year of unlimited sick time is explained by Director DeOrio’s testimony:

. . . we’re finding people are being injured for a multiple of different reasons, whether being in a car accident, whether working on the side, working on their house, and what’s happening is that they’re utilizing sick days with one year unlimited and basically we’re paying overtime on every day that they’re off from an injury that didn’t occur while they were working . . .

The Regional maintains that its sick leave proposal compares very favorably with sick leave received by other firefighters employed in the State and nationally. Moreover, the Regional asserts that it has offered a rational explanation of why its proposal must be adopted. In contrast, the Regional asserts that the Union has offered no testimony regarding the rationale behind its proposal other than to acknowledge its proposal was taken from the contract granting the most generous sick leave benefit. Accordingly the Regional urges adoption of its proposal and rejection of the Union's proposal.

The Union acknowledges that its proposal references DOP rules and regulations and the Regional's definition is consistent with those rules and regulations. However, the Union rejects the Regional's proposal that employees be limited to five 24-hour tours or 120 hours. Instead, the firefighters propose up to one year of sick leave. Reviewing current sick leave benefits, the Union notes that the current practice is seven 24-hour days in West New York, eleven (11) to fifteen (15) 24-hour days in North Bergen and up to one year in Weehawken and Union City. The Union emphasizes that there has been no allegation made by the Regional of sick leave abuse in these jurisdictions. Additionally, the Union maintains that there is no reason to diminish this benefit for those in Weehawken and Union City. On the other hand, the Union points to the need for consistency in this benefit by setting it at the highest level. Rather than limiting sick leave, the

Union suggests that the Regional utilize the tools it has at its disposal to curb any abuse.

With respect to doctor's notes, the Union notes that the Regional proposes that a doctor's note be presented if a firefighter is out more than 24 hours, while it proposes two days. The Union acknowledges that the current practice in Weehawken is that a doctor's note is required after one sick day; in North Bergen, whenever the requirement appears reasonable; in Union City, after two sick days; and in West New York after two sick days. Based upon this comparison, the Union asserts that its proposal of two days is more reasonable.

The Union asserts that the Regional's proposal that firefighters are expected to be at home except when attending a medical appointment is unconstitutional and overly broad. According to the Union, a firefighter must be permitted to leave his home not only for medical appointments but for situations such as religious ceremonies and to vote in elections. Additionally, the Union asserts that the Regional legally can require an employee to remain at home during his normally scheduled workday, and the firefighters have no objection to that requirement. The firefighters object strenuously to the requirement that a firefighter be home when he is not normally assigned to work.

Turning to its sick leave bonus proposal, the Union points out that firefighters in North Bergen are eligible to receive \$325.00 if they work for four

months without taking a sick day. According to the Union, in Weehawken, there is a sick leave bonus of \$300.00 for the period of May through October and \$200.00 for November through April. In contrast, the Regional's proposal is \$425.00 for no sick time in an entire calendar year. The Union asserts that the Regional is attempting to take the average of the North Bergen and Weehawken contracts. On the other hand, the Union points out that Hoboken firefighters are eligible for \$1,000.00 per year. Instead, the Union seeks what it terms a modest increase to \$500.00 for the full calendar year and \$150.00 for every four month period with no use of sick time.

As discussed above, the parties' proposals regarding the amount of sick leave differ dramatically, with the Regional proposing 120 hours, or five 24 hour shifts per year and with the Union proposing unlimited sick time up to one year to be used as necessary. Because a separate provision in this award covers leave in the event of an on-the-job injury, the availability of unlimited sick time of up to one year is not necessary and instead, sick leave defined by hours granted annually as is the case in North Bergen and West New York is more appropriate for the Regional. I also conclude that a single or unified program be implemented for all firefighters commencing January 1, 2003.

In this regard, I note that each aspect of sick leave programs for firefighters who work the 24 on, 72 off work schedule cannot directly compare to each aspect of sick leave programs for the more common work schedules

worked by non-firefighters and also firefighters who work 10/14 schedules. I find the Regional's proposal to provide up to a bank of 120 hours during the first year of hire and an annual allotment of a bank of 120 hours commencing January 1 of the following year to be reasonable during a firefighters first five years of service. I also set the remainder of the schedule for firefighters based upon years of service and prior employment which allows for increased amounts beyond five years of service. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, firefighters shall receive a sick leave bank of 240 hours as ten (10) 24-hour tours. While firefighters are now eligible to earn 15 sick days per year pursuant to a prior labor agreement in North Bergen, I conclude that uniformity at no more than ten (10) 24-hour tours is reasonable, attractive on a comparable basis and allows for administration of this benefit on a Regional-wide basis. When compared to the previous agreements in the municipalities that comprise North Hudson, as well as with sick leave benefits provided to firefighters in Hudson County and throughout the State, an amount equal to ten (10) tours of duty or 240 hours per year is more reasonable and is awarded. I also award that portion of the Regional's proposal to permit an employee to return to work after eight hours and to grant discretion to the executive director to permit an employee to complete a tour of duty.

The parties' proposals regarding sick leave verification also differ widely. The Regional proposes that a doctor's note be required in the event that sick

leave is used for an entire tour of duty, or upon the second occasion where there is an absence of less than a full tour of duty and permits the requirement of a doctor's note for any absence in excess of eight hours or where there is reason to believe that sick leave is being abused. In contrast, the Union's proposal would require a doctor's note only in the event that sick leave is used for over two tours of duty. Additionally, the Regional's proposal would require that a firefighter using sick leave must stay at home except for medical appointments and must provide the employer of notice when leaving his house for periods of greater than two hours while on sick leave. The Union voiced vigorous objection to this proposed restriction.

Sick leave verification is a recognized tool to assist in the prevention of sick leave abuse and should be included in this agreement. However, the Regional's need to minimize abuse of sick leave and to regulate the use of sick leave must be balanced with the rights of employees, particularly while they are off-duty between tours, and restrictions that would necessitate employees' visiting the doctor for each and every incidence of illness is unreasonable. Accordingly, sick leave verification shall be required in the event that an employee is on sick leave for more than one tour of duty and when there is reason to believe that sick leave is being abused. Only the Union City agreement required that employees remain at home except for medical appointments while on sick leave. Although the Regional has established justification for a sick leave verification policy, the Regional has not demonstrated

a need to restrict employees while on sick leave. Accordingly, the provision requiring employees to remain at home while on sick leave is not awarded. However, the Regional may require employees on extended sick leave to check in on a periodic basis as was required by the North Bergen and Weehawken agreements. Additionally, the Regional's option to send an employee for a medical exam by the Regional's physician at the Regional's expense was included in the previous agreements in North Bergen, Weehawken, and West New York and is awarded here.

Both parties propose sick leave incentive plans with differing financial incentives with the Union proposing a \$500 incentive and the Regional proposing \$425 for employees who do not use sick leave for the entire year. The Union also proposes an incentive for those employees who do not use any sick leave in a four month period as was included in North Bergen. None of the remaining predecessor agreements included incentives for less than a full year and there is no specific demonstration such a benefit is necessary here and I award qualification of this benefit for those who do not use sick leave for an entire year. The dollar amount of the incentive (\$500) as proposed by the Union is reasonable and is also awarded.

The Regional also proposes that employees returning to duty from medical leave shall work one (1) full tour of duty before becoming eligible for

regular overtime rotation. This provision was not included in any of the predecessor agreements and is not awarded here.

As concluded above, the parties' sick leave provisions, shall be as follows:

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an annual allotment of 120 hours during a firefighters first five years of service. Thereafter, I set the following schedule based upon years of service and prior employment. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, firefighters shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Evidence in the form of a physician's certificate shall be required as proof of illness for any sick leave paid for an absence of more than one tour of duty. Evidence in the form of a physician's certificate may be required whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, and if appropriate, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities.

The Employer reserves the right to send an employee, at the Regional's expense, for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Employees on extended medical leave shall contact the office of the Chief on a weekly basis.

Sick Leave Use Incentive

Effective January 1, 2003, an employee who has taken no sick days during the calendar year shall receive a stipend of \$500.00 to be paid on or before February 1st of the following year.

During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient, from the attending physician and/or a Department medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.

If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

VACATION

The **Regional** proposes the following contractual language:

Accrual Rate

Section 7.8: Annual vacation leave shall accrue as follows:

From the date of hire until December 31st of the first calendar year worked: Upon completion of four (4) months service, and for each succeeding four (4) month period up to the end of the calendar year, an employee scheduled on a 24 hour tour shall be entitled to one day paid vacation. Alternatively, employees scheduled on an 8 hour tour will become entitled to take three (3) days of paid vacation upon completion of four (4) months service and for each succeeding four (4) month period up to the end of the calendar year. Thereafter, the following schedule shall be followed:

<u>Years of Service</u>	<u>Employees on 24 hour tours</u>	<u>Employee on 8 hour tours</u>
1 to 5 years	four (4) days	twelve (12) days
6 to 10 years	five (5) days	fifteen (15) days
11 to 15	six (6) days	eighteen (18) days
16 to 20	eight (8) days	twenty-four (24) days
21 and above	nine (9) days	twenty-seven (27) days

In the calendar year in which an employee retires, such employee shall be entitled to a prorated amount of paid vacation time.

Section 7.9: It is the responsibility of each employee to timely submit and properly schedule his vacation according to the procedures issued by the Regional. Failure to do so may result in the forfeiture of such vacation. All vacation shall be used prior to the end of the calendar year unless otherwise approved in writing by the Executive Director or his designee.

Usage

Section 7.10: An employee's vacation shall be scheduled for those firefighters assigned to line duty in 24 hour blocks and approved by the Executive Director or his designee by December 31st of the prior year. Vacation may be taken anytime between January 2 and December 30 with the exception of Christmas Day. Annual leave may be used for vacation, absence for the transaction of personal business, for non-covered portion of sick leave when such leave has been exhausted through illness, and for any absence from work not covered by another type of leave provision. An employee may arrange to exchange scheduled vacation dates with other members provided they follow the requirements listed under Section 6.2 and Section 6.3 of this Agreement.

Vacation Scheduling

Section 7.11: It is the purpose of this Agreement to prevent the depletion of manpower below critical limits. The schedule will be promulgated annually by the Department. Regular vacations shall be granted in accordance with the following excepting those firefighters assigned to Central Office:

- (a) All vacations shall be drawn by either lottery or seniority.
- (b) There shall be three (3) vacation periods and a drawing for each period. Period One (Spring) shall generally include January through May; Period Two (Summer) shall generally include June, July and August vacation weeks; Period Three (Fall) shall generally include September through December available vacation weeks.
- (c) Period Two (Summer) will provide up to a maximum of four (4) twenty-four (24) hour tours which must be taken

consecutive and no more than eight (8) firefighters will be permitted off that day.

- (d) During Period One (Spring) and Period Three (Fall), vacation must be scheduled with a minimum of two (2) consecutive tours.
- (e) The vacation schedule will be adjusted annually to reflect firefighters entitlement to vacation in conjunction with the number of firefighters to each Platoon.
- (f) Every scheduled vacation must be in 24 hour blocks (excepting those firefighters assigned to staff duty).

Cancellation of Vacation

Section 7.12: An employee who is off work because of sickness or injury and is under a doctor's care, if his vacation was scheduled to begin before he is able to return to work, may have his vacation rescheduled for a later date. This request must be in writing and turned in to the Department Head prior to the vacation period starting. Approval rests with the Executive Director or his designee. Vacation will be reassigned during that calendar year unless specifically approved otherwise by the Executive Director or his designee.

The **Union** proposes the following contractual language:

- A. January 1st of each year line firefighters shall be entitled to fourteen (14) twenty-four (24) hour shifts of vacation time. Staff firefighters will be entitled to the equivalent time off.
- B. The vacation schedule for line companies shall provide all firefighters with at least four (4) twenty-four (24) hour tours between June 15th and September 15th. The firefighters must pick for this time by March 31st. At least one (1) firefighter from each company shall be permitted to be on vacation at any given time. The firefighters shall have their choice of vacation periods within this schedule in accordance with their seniority with the Fire Department.
- C. In the case of the death of a member, all vacation due him shall be paid to his estate.

D. Vacation Buy Back:

The Department agrees to buy back up to five (5) unused vacation days per year from each member of the bargaining unit. Offers to sell vacation days will be made during the vacation year. The procedure consists of written notice to the Chief of an employee's desire to sell the vacation time, including the number of days the employee wishes to sell back to the Department. Payment for "sold" vacation time will be made in each vacation year, based on the employee's straight hourly rate. Nothing in the foregoing will preclude the Department from buying back more than five (5) days per year, if offered by an employee and accepted by the Director.

E. In addition to the vacation allotment provided for herein, all firefighters shall receive one (1) additional twelve (12) hour tour of vacation time for each five (5) years of service in the Fire Department, up to a maximum of four (4) such tours.

F. a. In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently.

b. Employees shall be permitted to exchange vacations without prejudice or discrimination.

G. No employee who is on vacation shall be recalled except in a case of the full mobilization by the Director or his designee to meet a clear and present danger confronting the Department.

H. All employees shall have the right to bank a minimum of one (1) year of vacation time. In the event that an employee desires to use the vacation time that has accumulated in his/her bank, then he/she shall make a request to his/her Deputy Chief, and it shall be granted where manpower permits.

I. Any firefighter who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the firefighter chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

- J. Guidelines for Administering Vacation Days:
- a. There will be one firefighter allowed off for vacation per company.
 - b. Members pick their days off through their company commander and only from their fire company. If two (2) members from the same company, want the same day off, the member with the most seniority would be given that day. The member who was not given the day, has the ability to call another fire company to see if he can get the day off from their company. (If a fire company gives up a vacation day to another fire company, they are giving up the vacation day for their company. If they need the day after giving it up, they would have to get it from another fire company, they can not cancel the day they gave up).
 - c. A member may request 24 hours, 12 hours, or 6 hours off (except between 6/15 or 9/15; only 24 hour time slots)
 - d. When conflicts arise, seniority within the fire company will prevail.
- K.
- a. Use of vacation or comp time on a holiday will be picked separately by each fire company. One (1) firefighter per company will be permitted off on a holiday. Picking of time off on a holiday shall be amongst the members of the company. Time off could be 24, 12 or 6 hour block split amongst the members of the company.
 - b. The above procedures will be used for the following holidays.

a. New Year's Day	f. Thanksgiving
b. Easter Sunday	g. Day after Thanksgiving
c. Memorial Day	h. Christmas Eve
d. Washington's Birthday	i. Christmas Day
e. Columbus Day	j. New Year's Eve

The Regional urges adoption of its vacation proposal because it believes it to be fair and reasonable, particularly when compared with vacations received by other firefighters and private sector employees. Turning to the backdrop for its proposal, the Regional cites a chart it prepared setting forth firefighter's sick and vacation days from November 1999 through October 2000. According to Director DeOrio, the chart began with November 1999 because he sought to use a 12-month period. This chart shows that in November 1999, firefighters used 99 sick days and 178 vacation days, for a total of 277 days. In December 1999, firefighters used 133 sick days and 207 vacation days, for a total of 340 days. In January 2000, firefighters used 121 sick days and 76 vacation days, for a total of 197 days. In February 2000, firefighters used 122 sick days and 70 vacation days, for a total of 192 days. In March 2000, firefighters used 106 sick days and 112 vacation days for a total of 218 days. In April 2000, firefighters used 93 sick days and 113 vacation days, for a total of 206 days. In May 2000, firefighters used 104 sick days and 156 vacation days, for a total of 260 days. In June 2000, firefighters used 132 sick days and 155 vacation days, for a total of 287 days. In July 2000, firefighters used 108 sick days and 299 vacation days, for a total of 407 days. In August 2000, firefighters used 107 sick days 290 vacation days, for a total of 397 days. In September 2000, firefighters used 72 sick days and 205 vacation days, for a total of 277 days. Finally, in October 2000, firefighters used 78 sick days and 140 vacation days, for a total of 218 days. In sum, the Regional argues that paid leave time is taken disproportionately during certain months thereby aggravating its staffing needs.

The Regional also created a chart which set forth firefighters' sick and vacation days, day by day, from November 1, 1999 through October 31, 2000. Specifically, on Mondays, firefighters took 171 sick days and 241 vacation days, for a total of 412 days. On Tuesdays, firefighters took 171 sick days and 224 vacation days, for a total of 395 days. On Wednesdays, firefighters took 175 sick days and 222 vacation days, for a total of 397 days. On Thursdays, firefighters took 163 sick days and 242 vacation days, for a total of 405 days. On Fridays, firefighters took 195 sick days and 331 vacation days, for a total of 526 days. On Saturdays, firefighters took 217 sick days and 365 vacation days, for a total of 582 days. Finally, on Sundays, firefighters took 218 sick days and 369 vacation days, for a total of 587 days. The Regional concludes that this chart demonstrates that a significant number of firefighters used their sick and/or vacation days on Fridays, Saturdays, Sundays, and Mondays. The Regional also points out that sick leave utilization on Saturday and Sunday is 20% higher than on the other days of the week, though Director DeOrio acknowledged that he did not know of any medical reason that would lead to such a result.

The Regional points out that firefighters also predominately use vacation time on Friday, Saturday, and Sunday. Director DeOrio testified that, "[w]e found that probably on an average 60 to 70 percent higher is being utilized on Friday, Saturday and Sunday than Monday through Thursday." When asked why it is

important to have vacation scheduled throughout the year and why it is important to have a requirement of two consecutive days, DeOrio testified that:

It seems obvious that looking at the charts . . . it shows that the highest are being used on Friday, Saturday and Sunday and the rest of the week are pretty steadfast the same going across . . . So what we're looking for is somewhere in the middle where people have to take times during the months, say, from January up until May, and trying to balance it out. And by having an individual take two consecutive 24 hour days almost ensures that when he takes the two, at least one of those days will be during the week on our 24/42 hour schedule.

The Regional points to section 7.11 of its proposal, which would include a statement that "the purpose of this Agreement to prevent the depletion of manpower below critical limits." According to the Regional, that concept incorporates the scheduling of vacations on an annual basis in three periods and vacation is spread out over the course of the year and provides that vacation to be taken in the spring and fall periods in at least two consecutive 24 hour tours. Furthermore, the Regional notes that its proposal would provide that all vacation would be scheduled in 24 hour tours, but also provides for summer time vacation tours.

Referring to section 7.11(a) of the Regional's proposal, which provides that vacations "shall be drawn by either lottery or seniority," Director Welz explained that management would let the Union determine whether it prefers straight seniority, rotating seniority, or a lottery system for selecting vacations. According to Director Welz, management's interest is in having vacations spread

out during the course of the year to maintain adequate manpower levels. According to Director Welz, the summer period is the most desired period for the taking of vacation days. Citing Director Welz's testimony, the Regional explains that its proposal is designed to allow all firefighters to use "prime time" vacation and also to minimize the overall impact of overtime on the Regional.

The Regional cites Director DeOrio's explanation of its proposal that firefighters' vacations be taken over a twelve (12) month period in filling of the block system because this system would:

spread out the months and then actually spread out the weeks into a 12 month vacation plan, instead of it being bottled in, say, four out of the 12 months . . . So by spreading it out over a block of the 12 month period . . . it somewhat distributes it somewhat equally over the 12 month period or spreads it out as close as possible where the averages definitely would be reduced and come closer in number than what they are actually in this 12 month and also this weekly chart.

The Regional cites Director DeOrio's testimony that the proposal would reduce the overtime cost because the heaviest overtime comes on Friday, Saturday and Sunday, and during December, July and August. The Regional points out that in 1999 it paid approximately \$900,000 in overtime, and in 2000, the total amount of overtime almost tripled to approximately \$2,400,000.

In contrast, the Regional cites Mr. Michelin's testimony acknowledging that the Union's proposal for vacation days exceeds the amount of vacation time provided for by any of the four municipal contracts. The Regional points out that

the Union's rationale for seeking increased vacation time is, as stated, because "[y]ou always want more vacation" to spend more time with the family.

The Regional asserts that the Union's proposal for 14 vacation days should be viewed in the context of a firefighter normally being scheduled to work about 90 days each year. The Regional calculates that if certain longevity is attained, firefighters could actually receive eighteen (18) 24-hour vacation days per year under the Union's proposal. Accordingly, the Regional notes that under the Union's proposal, some firefighters could actually work only between 60 and 70 tours per year.

Analyzing paragraph B of the Union's proposal, the Regional notes that Mr. Michelin calculated that under the Union's proposal, approximately 18 firefighters would be allowed off at one time. In comparison, the Regional points out that the individual municipal contracts, each typically permitted only up to a maximum of 15 firefighters and fire officers combined to be on vacation at the same time.

The Regional also points to Mr. Michelin's discussion of the method used to accommodate vacation scheduling in Union City. The Regional points out that Union City would reduce the number of men assigned to a particular vehicle, close down an engine, and take a truck off service. The Regional notes Mr. Michelin's testimony that West New York and Weehawken would reduce the

number of men on a vehicle to two in order to accommodate vacation scheduling. The Regional emphasizes that Mr. Michelin acknowledged that during the heaviest vacation months, the Regional is forced to call firefighters in on overtime. The Regional points out that instead of meeting vacation staffing needs through overtime, its proposal is designed to reduce the amount of overtime.

With regard to allotted vacation time, the Regional proposes that firefighters working 24-hour tours receive between four and eight vacation tours per year, with each vacation day being equivalent to a 24-hour tour. Similarly, the Regional proposes that firefighters working eight hour days, or staff, receive between 12 and 24 vacation days per year, with each vacation day being equal to an eight hour shift. In contrast, the Regional points out that the Union proposes that firefighters receive fourteen (14) 24-hour shifts of vacation time.

The Regional asserts that its proposal compares favorably with the amount of vacation time received by other firefighters throughout the State. Atlantic City firefighters work two ten-hour tours, followed by two 14-hour tours, followed by four consecutive days off, and receive between 12 and 24 tours off. Elizabeth firefighters work two ten-hour day tours, followed by 48 hours off, followed by two 14 hour night tours followed by 72 hours off and receive between ten and 16 tours off. Jersey City firefighters work 24-hours on duty immediately followed by 72 hours off and receive between six and fifteen 24-hour tours.

Newark firefighters work two days of 10 hours each, followed by 48 hours off, followed by two nights of 14 hours each, followed by 72 hours off. Newark firefighters hired prior to January 1, 1980 receive 20 days vacation. Newark firefighters hired prior to January 1, 1999 receive between 19 and 20 vacation days. Newark firefighters hired on or after January 1, 1999 receive between 14 and 20 vacation days based upon the 10/14 schedule. Paterson firefighters work 24 hours on duty immediately followed by 72 hours off and receive between 6 and 16 working days off. Trenton firefighters work two days of ten hours each, followed by 24 hours off, followed by two nights of 14 hours each, followed by 72 hours off and receive between 17 and 26 tours off per year based upon the 10/14 schedule.

The Regional maintains that its proposal compares favorably with the average paid vacation of full time employees. According to the Regional, full-time employees in medium and large private establishments averaged 9.6 paid vacation days after the first year. According to the Regional, professional and technical employees averaged 12.4 paid vacation days, clerical employees averaged 9.9 paid vacation days, and blue-collar and service employees averaged 7.9 paid vacation days. The Regional submitted evidence that full-time employees in medium and large private establishments averaged 18.8 paid vacation days after 15 years on the job. In particular, professional and technical employees averaged 20.7 paid vacation days, clerical employees averaged 19.4

paid vacation days, and blue-collar and service employees averaged 17.4 paid vacation days.

The Regional acknowledges that professional and technical employees and those employees in medium and large private establishments usually work “eight hour” days. Accordingly, the Regional reasons that while these employees are on vacation, they are relieved from working those eight hours, and correspondingly, its firefighters work a 24 hour shift and are relieved for an entire 24 hour shift when they are on vacation. The Regional maintains that a firefighters’ vacation is equivalent to three “regular” vacation days taken by professional and technical employees and those employees in medium and large private establishments. Based upon this calculation, the Regional asserts that under its proposal firefighters working 24-hour tours receive between four and eight vacation tours per year which is actually equivalent to between 12 and 24 ‘eight hour’ vacations days. Based upon this analysis, the Regional maintains that its proposal compares favorably with the average paid vacation of full time employees.

The Regional contends that the Union’s proposal that firefighters receive fourteen 24-hour shifts of vacation time greatly exceeds the amount of vacation time received by other firefighters, and, when converted to eight hour vacation days, is actually equivalent to 42 eight (8) hour vacation days. Additionally, the Regional points out that its proposal greatly exceeds the amount of vacation

granted to professional and technical employees and those employees in medium and large private establishments.

For these reasons, the Regional urges adoption of its proposal and rejection of the Union's proposal.

The Union proposes that all firefighters shall be entitled to fourteen (14) 24-hour shifts off. According to the Union, the Regional's proposal, which provides for nine (9) vacation days, would result in a 10% percent reduction for former Weehawken firefighters and more than a 33% percent drop for the firefighters in the other three towns. The Union maintains that no rationale exists for this drastic drop in vacation, because the former municipal fire departments operated efficiently while granting firefighters vacation days under their collective bargaining agreements. Accordingly, the Union disagrees with the Regional's assertion that a bigger department with more firefighters cannot function with the same number of vacation days. Noting that vacation time is one of the most highly valued benefits enjoyed by any employee, the Union asserts that there is no reason to reduce this benefit by a shocking 33%. However, the Union acknowledges that uniformity of benefits for all firefighters is a desirable goal.

Turning to the issue concerning summer vacation, the Union proposes that all firefighters shall be guaranteed four vacation days between June 15 and September 15 with at least one firefighter from each Company permitted to be on

vacation. Although the Regional agrees with a summer vacation period, it also seeks to divide the remainder of the year into a Spring/Fall period, requiring firefighters to choose a Spring vacation and a Fall vacation. According to the Union, the Regional has failed to articulate any basis to force employees to take a Spring/Fall vacation. Within staffing limitations, the Union asserts that there is no reason why firefighters can not choose to take all of their vacation in the Spring or all their vacation in the Fall. The Union argues strenuously that requiring firefighters to take vacation time in each period is unsupported and unfair. With respect to the number of firefighters on vacation, the Union contends that the Regional's proposal is unclear. The Union interprets the Regional's proposal to indicate that the number of firefighters permitted on vacation is the quotient of the number of firefighters divided by three. Under this interpretation, the Union points out that this proposal would result in permitting one firefighter off on vacation, because the goal is to assign three firefighters to each Company.

The Union notes that both parties provide that if sick leave and vacation coincide, the firefighter will be charged with sick leave only and the firefighter will be permitted to reschedule his vacation for a later date. Both parties also agree that employees shall have the right to exchange vacations.

The firefighters also propose a vacation buy back program which mirrors the language in the North Bergen contract and permits firefighters to sell back five unused vacation days per year.

The firefighters also propose a seniority vacation program like that included in the North Bergen agreement. Under this proposal, each firefighter would be granted one 12-hour vacation day for each five years of service up to a maximum of four such tours or two 24-hour tours.

The Union also proposes that employees shall have the right to bank a maximum of one year of vacation time. The Department of Personnel rules and regulations permit all public employees to bank one year of vacation time and the Union maintains that this proposal is reasonable.

Turning to proposals regarding the administration of vacations, the Union notes that the Regional's proposal does not address these issues. The firefighters' proposals, which are gleaned from the contracts and the past practices of the municipalities, provides for one firefighter allowed off per Company, and the ability to take less than twenty-four (24) hours off. Under the Union's proposal, firefighters would be permitted to take six or 12 hour vacation days except during the Summer months. The Union emphasizes that ability to take time off in less than twenty-four (24) hour increments is currently enjoyed by all firefighters from all municipalities.

Finally, the Union has proposed a specific procedure covering vacation time on holidays so that if manpower permits, firefighters may enjoy the holiday like all other employees.

Looking first to the goal of unifying the amount of vacation leave to be provided to the Regional's firefighters, unification should occur, to the extent possible, in a manner consistent with the previous agreements as well as what comparability suggests for the amount of vacation leave provided to firefighters throughout Hudson County and New Jersey.

The vacation benefits provided to firefighters previously employed by the municipalities that comprised the Regional varied widely depending upon both years of service and dates of hire. North Bergen firefighters received twenty (20) 12-hour tours. Union City firefighters hired before January 1, 1994 received nine (9) 24-hour tours for years one through five, ten (10) 24-hour tours for years six through ten, eleven (11) 24-hour tours for years eleven through fifteen, and twelve (12) 24-hour tours for years sixteen and above. Union City firefighters hired after January 1, 1994 received five (5) 24-hour tours for years one through five, seven (7) 24 hour tours for years six through ten, nine (9) 24-hour tours for years eleven through fifteen, and eleven (11) 24-hour tours for years sixteen and above. Weehawken firefighters received five (5) working tours during years zero through one, six (6) working tours during years one through five, and seven (7) working tours during years six and above. West New York firefighters received

two (2) workdays during their first year of service, four (4) workdays during their second year of service, six (6) work days during their third year of service, eight (8) workdays during their fourth year of service, and eleven (11) days during their fifth year of service and beyond.

Similarly, firefighters in other Hudson County municipalities receive vacation benefits that vary based upon their date of hire and their years of service. For example, Hoboken firefighters, who work on a 24/72 schedule, hired after July 1, 1994 receive seven workdays off during years one through three, nine workdays off during years four through eight, 12 workdays off during years 9 through 12, 14 workdays off during years 13 through 15, and 15 workdays off during years 16 and above. Hoboken firefighters hired before July 1, 1994 receive ten workdays off during years one through three, thirteen (13) workdays off during years four through ten, fifteen (15) workdays off during years 11 through 15, and seventeen (17) workdays off during years 16 and above. Jersey City firefighters receive one (1) 24-hour tour for each two months of service during the first year of service, thirteen (13) 24-hour tours during years two through five, fifteen (15) 24-hour tours during year six and above. In Bayonne, where firefighters work two (2) 10-hour day shifts followed by 48 hours off, then three (3) 13-hour night shifts followed by 72 hours off, firefighters receive one (1) eight-day vacation period in their second year, two (2) eight-day vacation periods in their third year and three (3) eight-day vacation periods in their third year.

I now turn to vacation benefits for firefighters in other municipalities although the number of days must be considered in light of the number of hours which constitute a day in each municipality. Atlantic City firefighters hired on or after January 1, 1997 receive 12 days during year one, 12 days during year two, 12 days during year three, 16 days during year four, 20 days during year five, 24 days during year six through retirement. Atlantic City firefighters hired on or after April 1, 1994 receive 12 days during year one, 16 days during year two, 20 days during year three, 20 days during year four, 20 days during year five, 20 days during year six, and 24 days during year seven through retirement. Elizabeth firefighters receive one day per month of service during the first year, ten days during years one through four, 14 days during years five through 14, and 16 days during years 15 and over. Newark firefighters hired prior to January 1, 1980 receive 20 days vacation. Newark firefighters hired prior to January 1, 1999 receive 19 vacation days until completion of year 19, and 20 vacation days upon completion of year 19. Newark firefighters hired on or after January 1, 1999 receive 14 vacation days from date of hire through year five, 17 vacation days during years six through 15, 19 vacation days during years 16 through 19, and 20 vacation days during years 20 and thereafter. Paterson firefighters receive six working days during the first year, nine working days during years two through five twelve working days during years six through eight, 14 working days during years nine through ten, 15 working days during years 11 through 15, and 16 working days during years 16 and thereafter. Trenton firefighters receive 17 vacation days during their first two years, 19 vacation days during years three

and four, 21 vacation days during years five through seven, 23 vacation days during years eight and nine, and 26 vacation days after ten years of service.

Other New Jersey fire departments with 24/72 work schedules receive vacation benefits in either 12 or 24 hour shifts. For example, West Orange firefighters receive eight 24 hours tours of vacation annually. In Passaic, those firefighters who work a 24/72 schedule with one through five years of service e receive four vacation tours. Passaic firefighters with six through ten years of service receive six working tours of vacation annually and those with eleven through 15 years of service receive seven tours of vacation annually. Passaic firefighters with 16 through 20 years of service receive eight tours of vacation annually and those with over 20 years of service receive nine tours of vacation each year.

In Ridgewood, firefighters working 24/72 schedules receive one tour of vacation for each two months of service during their first year. Thereafter, Ridgewood firefighters with one through five years of service receive six 24 hour tours of vacation leave and those with six through ten years of service receive seven tours of vacation leave. Ridgewood firefighters with 11 through 15 years of service receive eight tours of vacation leave and those with 16 through 20 years of service receive nine tours of vacation leave. Ridgewood firefighters with over 20 years of service receive an additional 3/365 of annual salary or an additional tour of vacation leave.

In Teaneck, vacation leave is calculated based upon 12 hour tours and firefighters in their first year of service receive one tour per month of service. Teaneck firefighters with one through five years of service receive 12 tours of vacation. Teaneck firefighters with six through ten years of service receive 14 tours of vacation and those with eleven through 15 years of service receive 16 tours of vacation. Teaneck firefighters with 16 through 20 years of service receive 18 tours of vacation and those firefighters with over 20 years of service receive 20 twelve hour tours of vacation.

New Brunswick firefighters, who work on a 10/14 schedule receive 12 ten hour vacation days after one year, 20 vacation days after three years of service, 24 vacation days after ten years of service, 28 vacation days after 14 years of service and 33 vacation days after 16 years of service. Hackensack firefighters, who also work a 10/14 schedule receive, starting in 2002, 11 work days of vacation with one through four years of service. Hackensack firefighters with five through nine years of service receive 12 working days of vacation, and firefighters with ten through 14 years of service receive 16 vacation days and those with 15 through 19 years of service receive 18 vacation days and those with 20 or more years of service receive 20 working days of vacation.

Turning first to the amount of vacation to be provided to firefighters, as stated earlier, the parties' proposals must be examined in light of the benefits

provided in the municipalities that comprise the Regional with an eye towards unifying those benefits to the extent feasible. The Regional proposes that vacation for firefighters be accrued according to the following schedule:

<u>Years of Service</u>	<u>Employees on 24 hour tours</u>	<u>Employee on 8 hour tours</u>
1 to 5 years	four (4) days	twelve (12) days
6 to 10 years	five (5) days	fifteen (15) days
11 to 15	six (6) days	eighteen (18) days
16 to 20	eight (8) days	twenty-four (24) days
21 and above	nine (9) days	twenty-seven (27) days

The Union proposes that all firefighters receive fourteen 24 hour tours of vacation, or the equivalent in the case of staff firefighters. In comparison, under the predecessor agreements with the municipalities, firefighters generally received more generous vacation benefits than are proposed by the Regional but fewer vacation days than are now proposed by the Union. Specifically, in North Bergen, firefighters received 20 twelve-hour tours. Union City firefighters hired before January 1, 1994 received nine 24-hour tours for years one through five, ten 24-hour tours for years six through ten, eleven 24-hour tours for years eleven through fifteen, and twelve 24-hour tours for years sixteen and above. Union City firefighters hired after January 1, 1994 received five 24-hour tours for years one through five, seven 24 hour tours for years six through ten, nine 24-hour tours for years eleven through fifteen, and eleven 24-hour tours for years sixteen and above. Weehawken firefighters received five working tours during years zero through one, six working tours during years one through five, and seven working tours during years six and above. West New York firefighters received two

workdays during their first year of service, four workdays during their second year of service, six work days during their third year of service, eight workdays during their fourth year of service, and eleven days during their fifth year of service and beyond.

In consideration of all of the above, I set the following vacation schedule. Effective January 1, 2003, for firefighters working a 24 hour tour, paid vacation leave shall be as follows:

Years of Service	24 Hour Tours of Duty
1 to 5 Years	5
6 to 15 Years	7.5
16 to 20 Years	10
21 Years and above*	12*

I have set the number of vacation days for employees after twenty years of service at twelve days with the provision that this benefit shall only apply to firefighters, effective January 1, 2003, who were previously employed by the municipalities prior to regionalization and who achieved more than twenty years of service as of January 1, 2003.

For firefighters who work eight hour days, the following schedule of paid vacation leave is reasonable although not strictly proportioned with those in every respect who work 24 hour tours of duty:

Years of Service	8 Hour Tours of Duty
1 to 5 Years	15
6 to 15 Years	20
16 to 20 Years	25
21 Years and above	30

In addition to vacation leave, the Union also seeks a seniority vacation program that would provide an additional 12 hour tour of vacation for each five years of service to a maximum of four such tours. A similar benefit was provided in North Bergen, where firefighters received one additional 12 hour tour of vacation time for each five years of service to a maximum of four 12 hour tours. Weehawken is the only other municipality to provide a seniority vacation benefit. In Weehawken, firefighters with eight to fifteen years of service inclusive received one additional 24 hour tour of vacation, firefighters with sixteen through twenty years of service received two additional 24 hour tours of vacation leave per year and those with 21 or more years of service received three additional 24 hour tours of vacation leave per year. In consideration of the above schedule for paid vacation leave, which unifies paid vacation leave throughout the department, I conclude that there is insufficient basis to add additional paid vacation leave based upon years of service above and beyond the paid vacation schedule awarded which also includes consideration for additional days based upon years of service. This proposal is denied.

The parties agree that vacations during the summer months should be limited to a block of four 24 hour tours, but disagree as to the extent to which

vacation scheduling should be regulated throughout the remainder of the calendar year. The Regional would break down vacation into three periods, spring, summer and fall. While both parties agree to the necessity to place some limits on summer vacations, the Union asserts that there is no justification for precluding firefighters from taking a single day of vacation or a long block of vacation during the remainder of the year. The Regional asserts that its review of vacation use shows a high incidence of using vacation and sick time on Fridays, Saturdays or Sundays and that requiring firefighters to use vacation in minimum blocks of at least two 24 hour tours would result in firefighters using at least one of those tours on a weekday. According to the Regional, this would serve to spread vacation use throughout the week and cut down on the use of overtime. Only the Weehawken agreement placed specific limits on when spring and fall vacations could be taken and the limits included in that agreement provided for early or winter vacation between February 3 and March 17 and spring vacation between March 21 and May 4. On this issue, I do not award a specific program specifying vacation distribution beyond that which the parties have agreed upon. The firefighters have a right to anticipate vacation scheduling which is reasonable and allows for vacation use throughout the year. At the same time, the Regional has a right to allow for vacation use in a fashion which is consistent with its staffing needs without causing an undue or excessive amount of overtime. Because I have set a regional-wide program for paid vacation time, the parties are urged to return to this issue for the next round of negotiations and

agree upon a more specific program for vacation use and distribution. In the interim I award the following language:

Firefighters may bid on vacation use by seniority. The Regional shall allow for vacation use throughout the year. While vacation use may cause the need for some overtime, the Regional may consider whether the granting of vacation would cause an undue or excessive amount of overtime before granting its use.

The parties also disagree as to whether firefighters are permitted to use vacation leave in blocks of less than 24 hours. The Union proposes that, except in the summer months, firefighters be permitted to use vacation leave in 6, 12 or 24 hour blocks. In contrast the Regional proposes that vacation be used only in blocks of 24 hours. I conclude that vacation leave may be taken in 12 as well as 24 hour blocks except during the summer months when vacation leave shall be taken in blocks of 24 hours. The taking of a 12 hour block for vacation is contingent upon the remaining 12 hours of that firefighter's tour of duty not incurring non-overtime. I award the Union's proposal with the modification that the Executive Director or his designee retains discretion to approve a firefighter's obtaining of a vacation day from a firefighter assigned to a different company.

Other vacation procedures at issue include those covering the selection and administration of vacation time, the cancellation of vacation time, exchange of vacation, recall from vacation, banking of vacation time, and the buyback of vacation time and the use of vacation on holidays.

The Regional proposes that vacations be drawn either by lottery or by seniority. The Union proposes that vacations be selected by seniority within each company. Additionally, the Union proposes that when more than one firefighter per company seeks to take the same day off that the more senior firefighter receive the day off. However, the firefighter who is not able to take the day off may try to obtain the day from another company.

In North Bergen vacation was selected by seniority. In Union City and West New York, vacation was rotated annually, and in Weehawken a combination of rotation and seniority was used to determine vacation selection.

The Union's proposal with respect to administering vacation days [J. (a., b., d.)] is awarded with the following modifications. The procedures set forth in J. (b) with respect to receiving a vacation day from another fire company must complete one full tour of duty prior to the taking of that vacation day upon approval of the company commander from the other fire company and the company commander of the firefighter taking the vacation day.

Both parties agree that in the event that an employee is on sick leave during his scheduled vacation, the vacation may be rescheduled. The Regional would reschedule the vacation before the end of the calendar year. The Union's proposal, which states that in such an event the employee will be charged only with sick leave and may take his vacation subsequently, is modeled upon the

language contained in the previous Union City agreement. The Union City agreement also provides that if an employee is on vacation and becomes ill he can not convert his vacation to sick leave. The previous West New York agreement provides that an employee on sick leave at the start of his vacation period will not be charged with vacation, but an employee who becomes sick on his vacation will be charged for vacation time rather than sick time for the remainder of his vacation. The previous agreements in Weehawken and North Bergen did not address the cancellation of vacation. The Union's proposal as modified herein is awarded. On this issue, the contract shall provide that

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be converted to sick leave and the employee will be charged for vacation time rather than sick time for the remainder of the scheduled vacation leave.

The Union proposes that firefighters be free to exchange vacations without prejudice or discrimination. This proposal is similar to the language included in the previous agreements in Union City and West New York. The previous agreements in North Bergen and Weehawken did not address the exchange of vacation. I award the Union's proposal with the following modification. An employee's ability to exchange vacations with another employee upon approval of the company commanders whose companies are involved in the exchange. Such approval shall not be unreasonably denied.

The Union proposes that employees may not be recalled from vacation except in the event of a full mobilization of the department. This proposal is modeled after a provision in the Weehawken agreement. None of the other previous agreements from the municipalities that comprise the Regional include such a provision. The Union's proposal is conceptually meritorious but is overly restrictive. I award the following language. An employee may not be recalled from vacation except for circumstances where that firefighter's absence would significantly interfere with the Regional's ability to provide firefighting services.

The Union's proposal to bank one year of vacation time is based upon the previous Union City agreement, which includes a similar provision. The Regional's proposal that vacation may not be banked or carried from year to year is based upon the previous North Bergen agreement which does not permit banking of vacation time except in the context of a terminal leave bank. The previous agreement in Weehawken provided that firefighters could not accumulate vacation unless a vacation request was not granted due to Department activity. The West New York agreement provided that if a firefighter could not use his full vacation entitlement by the end of the calendar year, due either to disability or departmental procedure, he would be compensated either in cash or in compensatory time. I do not award the Union's proposal as advanced but there is merit in the inclusion of some aspects of the prior agreements on this issue. I award the following. Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled

vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

The Union proposes that firefighters be permitted to sell back to the Regional up to five unused vacation days per year. A similar vacation buy-back provision was included in the previous North Bergen agreement. In North Bergen, firefighters were permitted to sell back up to five unused vacation days per year, or more at the discretion of the employer. Although the West New York agreement did not include a buy-back provision, unused vacation time could be paid for in cash or comp time in certain circumstances, as noted above. Neither of the previous agreements in Weehawken or Union City included a buy back provision. Although this issue has potential benefit for both the firefighter and the Regional, I do not award this proposal during the term of the parties' first agreement.

The Union proposes that the use of a vacation or compensatory day on a holiday will be picked separately by each fire company and one firefighter per company will be permitted to use vacation on a holiday. Additionally, firefighters will be permitted to use a 6, 12 or 24 block so that the time may be split among members of the company. This proposal is not included in any of the previous agreements and is not awarded here.

In addition to the above, I also award the following miscellaneous proposals.

1. In the case of the death of a member, all vacation due him or her shall be paid to his estate.
2. Any firefighter who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the firefighter chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

Accordingly, the Vacation provision shall provide as follows:

Effective January 1, 2003, for firefighters working a 24 hour tour, paid vacation leave shall be as follows:

Years of Service	24 Hour Tours of Duty
1 to 5 Years	5
6 to 15 Years	7.5
16 to 20 Years	10
21 Years and above*	12*

The number of vacation days for employees after twenty years of service shall only apply to firefighters, effective January 1, 2003, who were previously employed by the municipalities prior to regionalization and who have achieved more than twenty years of service as of January 1, 2003.

For firefighters who work eight hour days, I set the following schedule of paid vacation leave.

Years of Service	8 Hour Tours of Duty
1 to 5 Years	15
6 to 15 Years	20
16 to 20 Years	25
21 Years and above	30

Vacation leave may be taken in 12 as well as 24 hour blocks except during the summer months when vacation leave shall be taken in blocks of 24 hours. The taking of a 12 hour block for vacation is contingent upon the remaining 12 hours of that firefighters tour of duty be covered on a non-overtime basis. The Executive Director or his designee retains discretion to approve a firefighter's obtaining of a vacation day from a firefighter assigned to a different company.

There will be one firefighter allowed off for vacation per company.

Members pick their days off through their company commander and only from their fire company. If two (2) members from the same company, want the same day off, the member with the most seniority would be given that day. The member who was not given the day, has the ability to call another fire company to see if he can get the day off from their company. (If a fire company gives up a vacation day to another fire company, they are giving up the vacation day for their company. If they need the day after giving it up, they would have to get it from another fire company, they can not cancel the day they gave up). The firefighter seeking the vacation day must complete one full tour of duty prior to the taking of that vacation day and receive the approval of his or her company commander and from the company commander of the other fire company.

When conflicts arise, seniority within the fire company will prevail.

Firefighters may bid on vacation use by seniority. The Regional shall allow for vacation use throughout the year. While vacation use may cause the need for some overtime, the Regional may consider whether the granting of vacation would cause an undue or excessive amount of overtime before granting its use.

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be converted to sick leave and the employee will be charged for

vacation time rather than sick time for the remainder of the scheduled vacation leave.

Employees shall be permitted to exchange vacations upon approval of the company commanders whose companies are involved in the exchange. Such approval shall not be unreasonably denied.

An employee may not be recalled from vacation except for circumstances where that firefighter's absence would significantly interfere with the Regional's ability to provide firefighting services.

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

In the case of the death of a member, all vacation due him or her shall be paid to his/her estate.

Any firefighter who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the firefighter chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

HOLIDAYS

The **Regional** proposes the following contractual language:

Section 7.13: The following holidays are those which shall be recognized and observed:

- New Year's Day
- President's Day
- Memorial Day
- Independence Day
- Labor Day
- Thanksgiving
- Day after Thanksgiving
- Christmas

Section 7.14: All employees who are scheduled to work (not including those employees scheduled on overtime) and on duty on the holiday shall be compensated in addition to their normal rate, an additional eight hours pay at straight time.

The **Union** proposes the following contractual language:

- A. There shall be eighteen (18) paid holidays per annum.
- B. Each firefighter shall be paid 18 holidays at 8 hours a day or 144 hours of pay. The rate of pay will be based on the individuals annual compensation including, but not limited to longevity, service differential, educational credits, etc. divided by 2080 hours.
- C. Holiday compensation as provided herein shall be included in base salary and paid in equal installments included in the member's bi-weekly salary.
- D. A three (3) hour mealtime period shall be given to those employees who are on duty on the following holidays, except in cases of emergency:

New Year's Day	Easter Sunday
New Year's Eve	Christmas Eve
Thanksgiving Day	Christmas Day

The mealtime period shall exist from 8:00 a.m. to 8:00 p.m.

The Regional bases its proposal (to pay firefighters if they worked on a particular holiday) on Director DeOrio's testimony that "it's fairer [to compensate employees for working holidays]—it's a lot fairer for the individual working a holiday than it is for the individual working a holiday and not working a holiday and getting the same amount of money. This is a fairer solution for those people." According to the Regional, on average, firefighters would work four holidays a year, but the Union's proposal would pay firefighters for 18 holidays even though they are not working on those days. The Regional points out that

the Union's proposal for 18 holidays exceeds the number of holidays firefighters received while working for the individual municipalities before the merger.

The Regional asserts that its proposal would limit circumstances that tend to cause significant overtime costs. The Regional relies upon Director DeOrio's testimony that on at least one occasion, a number of firefighters called out sick where the maximum amount of firefighters were granted vacation time. The Regional notes that every time an individual calls out sick, the Regional incurs approximately \$1,000.00 in overtime costs. According to the Regional, it has had to order firefighters to come to work on holidays to overcome the manning problems and according to Director DeOrio, it was difficult to get people to come in to work on holidays.

Director DeOrio further testified that the Regional's proposal creates an incentive for firefighters to work on a scheduled holiday because they would get paid for an additional eight (8) hours. The Regional points to Director DeOrio's testimony that this proposal would be successful at getting firefighters to work on holidays. The Regional also asserts that its proposal would not negatively impact its recruitment efforts because applicants coming into the fire department would appreciate that they receive extra money for working a scheduled holiday, though none of the individuals that were hired in 2000 requested information regarding the holiday schedule. Additionally, the Regional notes that its proposal would be a financial gain for the firefighters.

With regard to the Union's proposal, the Regional cites Mr. Michelin's acknowledgement that its proposal would place 18 eight-hour days in the firefighters' base salary. Accordingly, the Regional notes that this proposal increases the firefighters' hourly rate. The Regional also notes that the Union seeks an increase of three days over the holiday benefit received by Union City firefighters. Additionally, the Regional points out that under the Union's proposal, the longevity increase and service differential would be applied on top of that rate so that holiday pay would increase by the longevity percentage. The Regional emphasizes that Mr. Michelin acknowledged that the Union's proposal would result in increased costs to the Regional.

The Regional emphasizes that its financial resources are limited and can not afford the increased costs associated with the Union's holiday pay proposal. Noting that Mr. Foti testified on the Union's behalf that the surplus or free balance that would be appropriate for the Regional would be a two payroll surplus, the Regional points to Mr. Pianese's explanation that a two payroll surplus would be approximately \$1,500,000. This year, the Regional only anticipates having a surplus of less than \$100,000, if it is even able to maintain a surplus at all.

Turning to the Union's proposal for a meal time period, the Regional notes that it would permit firefighters working on certain holidays to take several hours off during their shift to have a meal and/or spend time with their family and that

only the Union City contract contained a holiday meal time provision. In the Union City contract, firefighters were only entitled to a two hour meal period for New Year's Day, Thanksgiving, Easter, and Christmas Day, despite the Union's efforts to lengthen the time period.

The Regional contends that the Union's proposal would have a negative financial and social impact on the Regional and its firefighters. Relying upon the testimony of Director DeOrio, the Regional asserts that the Union's proposal would cause a manning problem, would result in overtime, and would create a hardship to the employee forced to cover the absence. Director Welz explained the problem of covering the meal time for those firefighters working in holidays:

So if we do a little simple math, we have maybe a 12 hour window that we have to give some 70 employees or 60 employees off. That's a rough average of 9 per period or 12 per period. That means that we either find 12 overtime replacements three times a day or four times a day or we take three trucks or four trucks out of service and reduce the coverage to the regional communities.

The Regional points to Director DeOrio's testimony explaining the impact of the holiday meal time proposal. Director DeOrio testified that the existence of the meal period required taking two companies out of service on a rotating basis on the last Thanksgiving holiday, raising concerns that the Union's proposal would reduce the Regional's ability to provide fire protection.

Turning to holiday benefits in comparable fire departments nationwide, the Regional asserts that its proposal compares favorably with New York City where

no holiday pay is provided and Phoenix where firefighters receive ten holidays per year and San Diego where firefighters receive eleven holidays annually. The Regional asserts that its holiday proposal compares favorably with holidays provided by the larger fire departments in New Jersey. Specifically, the Regional points out that Atlantic City firefighters receive 14 holidays based upon a ten-hour work day. Elizabeth firefighters receive 14 holidays or 168 comp time hours. Jersey City firefighters receive 14 holidays, of which ten are to be used as comp days off and two are to be paid in cash based upon 8.4 hours. Newark firefighters receive 13 12-hour days. Paterson firefighters receive between six and 16 holidays based upon years of service.

The Regional asserts that its proposal compares favorably with the average number of paid holidays received by full-time employees throughout the United States. According to the Regional, full-time employees in medium and large private establishments averaged 9.3 paid holidays per year, with professional and technical employees averaging 9.6 paid holidays, clerical employees averaging 8.8 paid holidays, and blue-collar and service employees averaging 9.4 paid holidays per annum.

The Union notes that at present, West New York and Weehawken enjoy 14 paid holidays and Union City enjoys 15. The Union notes that it proposes an increase to 18 holidays, while the Regional proposes that there be only eight holidays. Acknowledging that both parties propose that firefighters be paid eight

hours for each holiday, the Union proposes that this payment be made to all firefighters and that it shall be included and paid as part of the yearly salary. The Union points out that prior to the regionalization, only North Bergen included the holiday pay in the base salary.

The Union characterizes the Regional's proposal that only firefighters who are scheduled to work on duty shall receive eight hours for the holiday as "bizarre". The Union asserts that such a drastic change from the current benefit enjoyed by the firefighters in these five communities and throughout the State is not justified. The Union maintains that there is no rational basis to pay only those who work on the holiday. According to the Union, it is well-recognized in police and fire departments that due to their schedule, they are entitled to the same holiday pay as those employees who only work Monday through Friday.

Turning to its proposal that firefighters on duty during six listed holidays also receive a three hour meal period, the Union notes that currently former Union City firefighters are entitled to a two hour meal period on four holidays. The Union asserts that this provision is designed to permit firefighters to enjoy a holiday with their family, is limited to the major holidays and is for a relatively short period of time based upon a 24-hour schedule.

I have examined the evidence with respect to comparability on this issue.

West New York and Union City firefighters receive 14 holidays per annum. North Bergen firefighters receive five compensatory 12-hour tours. Weehawken firefighters received 13 paid holidays or a total of 104 hours.

Atlantic City firefighters receive 14 holidays based upon a 10-hour workday. Elizabeth firefighters receive 14 holidays or 168 comp time hours. Hoboken firefighters receive 14 paid holidays at \$120 per holiday. Jersey City firefighters receive 14 holidays, in which ten are to be used as comp days off and two are to be paid in cash based upon 8.4 hours. Newark firefighters receive 13 12-hour days. Paterson firefighters receive between 6 and 16 holidays based upon years of service.

In comparisons around the country, no holiday pay is provided to New York City firefighters. Phoenix firefighters receive 10 holidays per year, and San Diego firefighters receive 11 holidays per year.

The parties agree that holidays should be compensated on an eight-hour basis, but disagree as to the number of holidays as well as the circumstances under which firefighters should receive compensation. Turning first to the number of holidays, the Union proposes that firefighters receive 18 holidays per year, while the Regional proposes firefighters receive eight holidays per year. Under the previous agreements, with the exception of North Bergen, firefighters received between 13 (Weehawken) and 15 (Union City) holidays per year. In

North Bergen, firefighters receive five compensatory 12-hour tours or a total of 60 hours.

Additionally, firefighters throughout Hudson County and in New Jersey generally receive 14 holidays but hours received are not on a full 24-hour tour basis. The Union has established that holiday pay should continue to be received as compensation and also included in base pay. Based upon an 8-hour standard, I award 112 hours or fourteen (14) days of holiday pay for all firefighters commencing January 1, 2003.

The Union seeks to include a provision allowing firefighters who work on any of six major holidays to be off for three hours during their 24-hour tour to participate in a holiday dinner with their family. This proposal is based upon a provision in the previous Union City agreement which permitted firefighters working on any of four major holidays a two-hour break to enjoy a holiday dinner with their family. There is merit to the Regional's arguments both as to the cost of continuing and extending such a proposal as well as the danger that enacting such a proposal could result in less than adequate coverage to the Regional's communities. This proposal is denied.

In accordance with the above discussion, the Holidays article of the Agreement shall provide as follows:

1. There shall be 112 hours of paid holidays per annum effective January 1, 2003.
2. Payment for all holidays shall be considered as added to an employee's base salary.

OVERTIME

The **Regional** proposes the following contractual language:

Section 9.0: Rate

Employees shall receive all overtime payments to which they are entitled under the Federal Fair Labor Standards Act. Overtime shall be paid at the rate of time and one-half.

Section 9.1: Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond thirty (30) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Section 9.2: Recall

An employee called in for overtime work shall be paid a four (4) hour minimum at the overtime rate of pay. The four (4) hour minimum shall not apply to employees held over following the termination of their regular duty shift or to employees who elect to leave when the work is done if the time worked is less than four (4) hours. In that event, overtime pay shall be only for actual time worked, computed to the nearest quarter hour.

Section 9.3: Off-Duty Testimony

When an employee is required by the Regional to testify during off duty-hours in a legal proceeding in connection with his duties with the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

Section 9.4: Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at their regular hourly rate. All tuition incurred in the required training programs will be paid by the Employer upon satisfactory completion of the course.

The **Union** proposes the following contractual language:

- A. Overtime rate:
 - 1. Overtime shall be paid for all hours worked in addition to the employees normal schedule hours. The rate shall be one and one-half (1 ½) the employees normal schedule hours.
 - 2. Overtime rates shall be calculated by dividing the yearly salary by 2080 hours and multiplied by 1.5.
- B. Manpower overtime will be awarded in accordance with current system of a (seniority) list for firefighters.
- C.
 - 1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.
 - 2. It is agreed that an overtime roster will be maintained by the Association. In the event a need arises to engage an employee on an overtime basis, the Officer-in-Charge shall request the appropriate Association Official to call employees covered by this Agreement in order of seniority.
 - 3. The overtime roster is not to be used for fires.
- D.
 - 1. Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of four (4) hours at the overtime rate.
 - 2. Any employee working one (1) minute beyond his normal tour will be paid at a minimum of one (1) hour at the overtime rate.

- E. Any employee recalled to duty in an emergency situation, which by its nature, cannot be preplanned (e.g. multiple alarms of fire) will be compensated portal to portal.
- F. Overtime shall be paid to the employees in the pay period immediately following the earning of such overtime.
- G. The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½).
- H. At the employee's discretion he may take any O/T as cash or comp time at the same time & one half (1 ½) rate. At completion of their OT period, employee shall notify his company commander with OT slip stating payment preference (Cash or Time).
- I. If an employee is required to report to a station other than their regularly assigned station the employee shall report to his normal work station at normal starting time to retrieve his gear before traveling to the changed work location. Said firefighter shall be released one hour early for transporting the employees gear back to the employee's regularly assigned station for proper storage and retrieval for the next work day.

The Regional points to Director Welz's testimony in support of its proposals. Specifically, the Regional points to Section 9.0 which acknowledges its obligation to pay overtime at time and one-half when required by the FLSA. Section 9.1 covers holdover pay when an employee works beyond the end of his or her regular shift. Section 9.2 addresses situations where an employee is off duty but is recalled. Section 9.3 states that when an employee is required to testify by the Regional during off-duty hours in a legal proceeding in connection with his duties with the Fire Department, the employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. Section 9.4 addresses off-duty training and provides that if the

Regional sends a member to training while off duty, that member will be compensated at a regularly hour rate as opposed to the overtime rate, in addition to any expenses incurred.

The Regional notes that Mr. Marino testified that the Union's proposal calls for overtime at time and one-half for all hours worked over regular tours as is included in all of the municipal contracts, a standard the Regional as a new employer does not wish to continue. The Regional also points out that Mr. Marino testified that the Union's proposal provides that overtime rates shall be calculated by dividing the yearly salary by 2080 hours and multiplied by 1.5 is also found in the other four municipal contracts. The Regional maintains that in fact, only the Union City contract is similar to the Union's proposal.

Addressing Paragraph B of the Union's proposal that manpower overtime will be awarded in accordance by a seniority list for firefighters, the Regional notes that Mr. Marino testified that the Regional has followed this system for over one year. The Regional cites Mr. Marino's definition of manpower overtime as when a shift is understaffed and firefighters are noticed in advance; but notes that manpower overtime is not the system used in the case of emergencies caused by fires. The Regional notes Mr. Michelin's testimony that Union City firefighters never had the option of taking comp time in lieu of overtime. The Regional notes that only the North Bergen contract has a provision similar to the Union's proposal.

Turning to Paragraph D1, the Regional cites Mr. Marino's statement that all four municipal contracts include a provision for a minimum of four hours if called in. The Regional maintains that review of the prior agreements reveals that none of the contracts provide for such a provision. Additionally, the Regional emphasizes that Mr. Marino acknowledged that Paragraph D2's proposal that firefighter be paid in the very first minute of overtime is not based on the municipal contracts. According to the Regional, the practice in North Bergen was that employees would not get paid for the first 15 minutes, and in West New York, firefighters would not get paid for the first 30 minutes.

With regard to Paragraph E of the Union's proposal, which would require that firefighters to be compensated from portal to portal, the Regional notes Mr. Marino's testimony that only the West New York contract provides that firefighters recalled to duty in an emergency situation will be compensated portal to portal. The Regional also cites Mr. Marino's acknowledgement that West New York actually places a 30 minute limit on travel paid to report to the firefighters' station or assignment. The Regional maintains that the Union's proposal is not based on any of the other municipal contracts.

With regard to Paragraph I, the Regional relies upon Mr. Marino's acknowledgement that releasing a firefighter one hour early would likely require the Regional to call in another firefighter one hour early, thereby, creating an

overtime cost. The Regional notes that this proposal has no basis in any of the municipal contracts.

The Union notes that both parties propose that firefighters are entitled to overtime at time and one-half. According to the Union, the firefighters propose the practice currently in existence in all municipalities that firefighters shall be paid time and one-half for all hours worked in addition to the normally scheduled hours. The Union maintains that the Regional's proposal that firefighters shall receive all overtime payments to which they are entitled under the Fair Labor Standards Act would change this practice. The Union asserts that the Regional offers no rationale for its proposed change. The Union asserts further that the Fair Labor Standards Act has many provisions regarding overtime and the Regional has not explained which would apply to these firefighters. The Union notes that the Fair Labor Standards Act permits an agreement between the parties to pay overtime for hours in excess of 40 hours per week for firefighters and absent some other agreement, the 40-hour week standard should apply.

The Union points out that its definition of overtime includes all mandatory off-duty details, while the Regional's proposal is silent with respect to this issue. The Union maintains that since these assignments are in addition to the normal work schedule, firefighters should be paid at time and one-half.

The Union also proposes that manpower overtime be awarded in accordance with the current seniority system and that it will continue to maintain that seniority list and be responsible to call firefighters for purposes of overtime. The Union points out that the Regional's proposal assumes the continued use of the seniority list and notes that these two provisions are found in the North Bergen and West New York contracts.

Turning to holdover pay, the Union proposes that once a firefighter is required to stay beyond his shift, he is entitled to a minimum of one hour at the overtime rate, as is currently included in the Union City contract. The Union points out that in Weehawken, a firefighter required to stay past his shift is guaranteed a minimum of two hours of overtime pay. The Union also notes that in North Bergen and West New York, a firefighter must work 30 minutes to be guaranteed one hour of overtime pay. The Union notes that the Regional proposes that a firefighter must work 30 minutes after his shift ends to be entitled to the one-hour minimum. The Union urges that the Union City language be continued because a firefighter required to stay past his normal end of his tour should be compensated for the inconvenience.

In the event the firefighter is recalled to work, the Union notes that both parties propose a minimum of four hours pay. According to the Union, its proposal makes it clear that this four hours is guaranteed whenever the firefighter is required to report prior to the normal starting time or if the firefighter is recalled

when he is not working. The Union notes that the Regional's proposal does not contradict either of these situations, but would include a limitation that the firefighter who elects to leave prior to the completion of the four hour shift would be paid only for those hours worked. The Union notes that this limitation would be a new requirement. According to the Union, the Union City and North Bergen contracts provide that a firefighter is guaranteed four hours without a requirement to stay the four hours and the Weehawken contract has the same language except that if the overtime continues past the end of a shift, the firefighter is only guaranteed two hours pay.

The Union also proposes that if an employee is recalled to duty in an emergency situation, the firefighter would be compensated for travel time. The Union notes that the West New York contract has such a provision but limits the time to 30 minutes to travel. The Union maintains that if there is an emergency that requires the firefighter to report for work, he should be compensated from the time that he leaves his home until he returns to his home.

The Union notes that its proposal includes two new provisions. The first would permit firefighters an option of taking overtime or compensatory time. According to the Union, this provision would provide the firefighter with some flexibility in the accumulation of compensatory time and saves the Regional overtime costs. Since the use of compensatory time is subject to approval by the Regional, the Union reasons that the Regional is not placed in a position of

granting compensatory time and having to pay the replacement firefighter overtime.

The Union also proposes that firefighters assigned on a daily basis to fill a temporary vacancy be permitted to retrieve his fire fighting gear and return it to his normally assigned work location on work time. The Union points to testimony that a firefighter's gear must be properly stored and must not be mingled with other clothing because it may have been exposed to hazardous substances. According to the Union, a firefighter should not be required to take his fire fighting gear home, nor should a firefighter be required to report early for the purposes of retrieving his gear from his normally assigned work location to report to the assignment of the day. The Union maintains that this provision would permit a firefighter to retrieve his fire fighting gear and return it to his normally assigned work location on work time.

The Union also points out that the Regional proposes a section on off-duty training that provides that firefighters be compensated at their regular hourly pay rate. The Union asserts that off-duty training is in addition to normally scheduled work hours and should be compensated at the overtime rate.

Both parties agree that overtime shall be paid at a rate of time and one-half. However, the parties disagree as to how that is calculated. The Regional would provide that overtime be paid at a rate of time and one-half but only when

required to do so under its FLSA obligation. The Union proposes that the overtime rate be calculated by dividing the yearly salary by 2080 and multiplying by 1.5. Each of the predecessor agreements provide that employees will be paid for overtime at a rate of time and one half.

The parties disagree as to when firefighters will receive overtime. The Regional would pay overtime when required by the Fair Labor Standards Act. The Union proposes overtime payments for all mandatory off-duty details including parades, funerals and special events, as is included in the previous agreement in West New York. The Regional proposes that employees be compensated for off-duty training at their regular hourly rate. A similar provision specifying overtime pay for special events is included in the predecessor agreement in West New York.

The Regional proposes that when an employee is held over beyond his regular shift for more than 30 minutes, the employee will be compensated at time and one half for a one hour minimum and thereafter will receive time and one half for actual time worked in quarter hour increments. That proposal is similar to the provision included in the previous agreement in West New York. The Union proposes the same one hour minimum, but proposes that any employee held over beyond his regular shift for one minute receive the one hour minimum. In Union City, the previous agreement provided that employees who are held over

beyond their shift shall be compensated at the overtime rate for a minimum of one hour.

Both parties propose a four-hour minimum in the event that an employee is recalled. However, the Regional proposes that this provision not apply to employees held over after the end of their regular shift and that employees who elect to leave when the work is completed shall be compensated only for the time worked. The previous North Bergen agreement included language specifying that the recall provision does not apply in holdover situations and that it retained the right to require the employee to stay for the full four hours. None of the other previous municipal agreements addressed payment for less than the recall minimum.

The Union also proposes that when employees are recalled to duty in emergency situations they should be paid portal to portal. Under the previous West New York agreement, employees were provided 30 minutes of travel time when they were recalled in the case of an emergency.

The Union also proposes that it maintain the overtime roster and that employees be called for overtime in order of seniority for situations of manpower overtime. Manpower overtime is when a shift is understaffed and firefighters are notified in advance. Manpower overtime is not used when there is a fire. During the hearing, Mr. Marino testified that this is the system presently in effect for

assigning manpower overtime. The Union's proposal is similar to the procedure included in the previous West New York agreement.

The Union also proposes that employees be paid for overtime in the pay period immediately following when it is earned. Additionally, the Union proposes that employee's have the choice of receiving overtime compensation in cash or compensatory time, as is the case in the previous West New York agreement.

The Union proposes that if employees are required to report to a station other than their regularly assigned station, then the employee shall initially report to his regular station at the normal reporting time to collect his gear before traveling to the changed station. Additionally, the Union proposes that in that situation, a firefighter will be released one hour early to return his gear to his regularly assigned station.

As noted above, various practices and provisions predated regionalization in the municipal fire departments. These issues should be unified in the regionalized department. The initial question concerns the overtime rate.

The record reflects that the Regional is paying a substantial amount of overtime. This may be due to several factors including administering the transition and the decrease in manpower. The Regional's proposal could, more

than likely, reduce overtime costs because it would eliminate some excess hours over normally scheduled hours. But such change would represent a significant departure from overtime schemes which previously had been administered in the municipalities. Another consideration is the award in a separate section has rejected the Union's proposal for an additional three hours compensation each week for the two hours the normal work schedule on average requires above forty (40) hours. I award the following:

- A. Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The Overtime rate shall be calculated by dividing the employee's annual salary by 2080 hours times one and one-half (1 ½).

The record reflects that the Union's manpower overtime proposal is consistent with the system which the Regional has administered and there is no evidence that this system has not worked or filled its necessary manpower requirements. Thus, I award the Union's proposal:

- B. Manpower Overtime
Manpower overtime will be awarded in accordance with the current system of a (seniority) list for firefighters.
- C.
 - 1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.
 - 2. It is agreed that an overtime roster will be maintained by the Association. In the event a need arises to engage an employee on an overtime basis, the Officer-in-Charge shall request the appropriate Association Official to call employees covered by this Agreement in order of seniority.

3. The overtime roster is not to be used for fires.

The Regional has proposed overtime compensation when an employee is required to testify by the Regional when off duty. The Regional's proposal is awarded:

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

I do not award the Union's proposal to allow an employee, at his or her discretion, to take compensatory time in lieu of cash for overtime earned. Such benefit was not widespread among the municipalities. Further, the staffing levels for the Regional at the time of hearing do not appear to be sufficient to support additional paid time off for this purpose which could create the need for additional overtime.

I also do not award the Union's proposal with respect to procedures and early release (by one hour) for firefighters who are assigned to stations other than their regularly assigned station. There are no contractual requirements which presently exist and I decline to award a new benefit on this issue.

I also do not award the Union's proposal for portal to portal pay when a firefighter is recalled to duty in an emergency situation because firefighters

recalled to duty will be entitled to minimum call in pay. On the latter issue, each propose a four hour guarantee if a firefighter elects to leave prior to the completion of the four hour shift, although the Regional's proposal would pay for only those hours worked. I award the Union's proposal which is less ambiguous than the Regional's with the modification that the four (4) hour minimum shall not apply to employees held over following the termination of their regular shift. The issue of time actually required after a recall should be left to the discretion of the Company Commander. Thus, I award:

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). Time actually required after a recall shall be left to the discretion of the Company Commander. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

The Union's proposal to pay employees in the pay period following the earning of overtime is awarded although there may be legitimate administrative difficulties which may, despite the Regional's good faith efforts, interfere with this obligation. Accordingly, I award the following:

Payment of Overtime

The Regional shall make every effort to pay overtime to the employee in the pay period immediately following the earning of such overtime.

The Regional's proposal regarding off-duty training guarantees compensation for required off-duty training but at an employee's regular hourly rate. Because required off-duty training is in addition to normally scheduled working hours, compensation should be set at the overtime rate rather than at the regularly hourly rate. The Regional retains the discretion to require training during the regularly scheduled workweek. Accordingly, I award:

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. All tuition incurred in the required training programs will be paid by the Employer upon satisfactory completion of the course. The Regional retains the discretion to require training during the regularly scheduled workweek.

Each party has a proposal concerning holdover pay. The Regional's proposal that to pay for time beyond thirty minutes is not equitable and is susceptible to potential abuse. The Union's proposal requiring overtime pay of at least one hour for more than one minute of holdover is unreasonable and inflexible. I award the following which I believe reasonably balances the parties' positions on this issue:

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

The Union has proposed a guaranteed minimum of four (4) hours at the overtime rate for employees required to report to duty prior to their assigned start time. A guaranteed minimum for early call-in is reasonable but the Union's proposal is excessive given the fact that the call-in is linked to the employee's normal work shift. Under these circumstances, a two (2) hour guarantee is more reasonably linked to the inconvenience for the early call-in. I award:

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

Accordingly, the overtime clause shall provide as follows:

Overtime Rate

Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The overtime rate shall be calculated by dividing the employee's annual salary by 2080 hours times one and one-half (1 ½).

Manpower Overtime

Manpower overtime will be awarded in accordance with the current system of a (seniority) list for firefighters.

Mandatory Off-Duty Detail

1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.
2. It is agreed that an overtime roster will be maintained by the Association. In the event a need arises to engage an employee on an overtime basis, the Officer-in-Charge shall

request the appropriate Association Official to call employees covered by this Agreement in order of seniority.

3. The overtime roster is not to be used for fires.

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). Time actually required after a recall shall be left to the discretion of the Company Commander. The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

Payment of Overtime

The Regional shall make every effort to pay overtime to the employee in the pay period immediately following the earning of such overtime.

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. All tuition incurred in the required training programs will be paid by the Employer upon satisfactory completion of the course. The Regional retains the discretion to require training during the regularly scheduled workweek.

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

COMPENSATORY TIME

The **Union** proposes the following contractual language:

- A. As of January 1 of each year all members shall be entitled to eight (8) compensatory twelve (12) hour tours off. The Compensatory tours off can be taken between January 1 and December 31 or carried over from year to year. Use of compensatory time off will not be during the months of June, July, or August.
- B. All the accumulated compensation time from former Municipal employment, shall be recognized by this department. When a firefighter uses compensatory time, it will be paid at the rate that the firefighter then currently receive.
- C. An employee may request that the Department grant him leave equal to back time owed to him. The Department shall notify said employee no later than seventy-two (72) hours, except in case of emergency, prior to the date the required leave is to commence as to whether said leave shall be granted.

The Regional urges rejection of the proposal to grant tours of compensatory time. The Regional asserts that the Union's proposal is without merit and would also expand the amount of compensatory time received by the municipal firefighters. The Regional notes that the Union City contract did not include a provision for compensatory time. Acknowledging that the Union's proposal is similar to the language provided in the North Bergen contract, the

Regional points out that North Bergen firefighters only received five compensatory 12-hour tours off. The Regional also notes that Weehawken firefighters only received one 24-hour tour in comp time and West New York firefighters only received preferential compensatory time for baptism, graduation, holy communion, and marriage.

The Regional reiterates that the testimony revealed that a firefighter assigned to line duty is scheduled for only approximately 91 days per year, less vacation, and other leave time. The Regional calculates that not including overtime and other emergencies, the average firefighter, after vacation, is actually scheduled to work less than 80 days per year, less sick leave days and other paid leave, such as convention leave. Accordingly, the Regional concludes that a firefighter might only work less than 70 days per year. The Regional recognizes that firefighters work a 24-hour shift and that firefighting can be a dangerous occupation, but believes that firefighters are granted sufficient time off, without the need for compensatory days.

The Union proposes that all firefighters be entitled to eight 12-hour compensatory tours, which cannot be used during the summer vacation. According to the Union, the North Bergen contract provides that all firefighters are currently entitled to five compensatory days off. The Union notes that there is no such provision in any of the other contracts, but asserts that the failure to

award this compensatory leave time will result in the loss of 60-hours off for North Bergen firefighters.

The Union's comp time proposal has three components. The Union seeks eight compensatory twelve-hour tours per year and that the time may be carried from year to year. The Union also proposes that all comp time accumulated by firefighters while they were working for the municipalities that comprise the Regional should be recognized by the Regional and paid at the rate the firefighter then currently receives. The Union also proposes procedures for the use of comp time.

The Union's proposal for eight compensatory twelve-hour tours per year is based upon the previous North Bergen agreement, which provided five compensatory 12-hour tours off per year. However, the compensatory tours in North Bergen were included in the vacation provision of the agreement and were apparently in lieu of additional vacation time. This Award provides vacation leave in excess of that provided to North Bergen firefighters under the previous municipal agreement. Further, none of the other municipalities that comprise the Regional included the same benefit in their predecessor agreements and it is not awarded here.

The Union's proposal that all comp time accumulated by firefighters while they were working for the municipalities that comprise the Regional should be

recognized by the Regional in an effort to insure that no firefighter loses a benefit that had been previously earned. This proposal recognizing previously earned compensatory time is awarded, but in the event that the firefighter receives monetary compensation for the time, it shall be based upon the hourly rate at which the time was earned.

The Union's proposal establishing a procedure for firefighters to request compensatory leave at least 72 hours before that leave would commence is awarded.

Accordingly, the compensatory time clause shall provide as follows:

- B. All the accumulated compensation time from former Municipal employment, shall be recognized by this department. When a firefighter receives monetary compensation for earned compensatory time, it shall be calculated at the hourly rate when the time was earned.
- C. An employee may request that the Department grant him leave equal to back time owed to him. The Department shall notify said employee no later than seventy-two (72) hours, except in case of emergency, prior to the date the required leave is to commence as to whether said leave shall be granted.

TERMINAL LEAVE

The **Regional** proposes the following contractual language:

Section 7.6: Upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment

for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day. One-half of all accumulated sick leave shall be paid at retirement. The rate of pay shall be based upon the compensation received during the time such sick leave was earned. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

The **Union** proposes the following contractual language:

1. All accumulated time due (whether earned and accumulated as an employee of NHRF&R or previous department) shall be payable upon retirement, separation or discharge at the then applicable rate. Accumulated time due includes but is not limited to; vacation time, compensatory time, etc.
2. For the purpose of terminal leave, however, each firefighter shall be entitled to one hundred twenty (120) hours per year for each calendar year of employment. Employment means years with NHRF&R and years with the former Municipal department. The maximum benefit shall not exceed the last twelve (12) months wages earned by the individual retiring.
3. Upon the employee's retirement, terminal leave shall be payable in either one lump sum upon retirement or in three (3) equal installments. The manner of payment is at the option of the employee. In the event the employee shall select the installment method of payment, the employee shall receive one-third of the terminal leave upon retirement and one-third on the anniversary date of retirement of each of the next two (2) immediately succeeding years. It is understood that payment shall be made at the end of the ensuing regular pay period following the retirement and/or anniversary date(s).
4. In the case of an employee's death, such shall be considered retirement for the purpose of this terminal leave benefit and his estate shall be entitled to the payment. The payment of any other accumulated time due under this agreement shall also be paid.
5. Payment of deferred compensation on separation from service or death:

The employer shall pay an employee who shall resign, be retired or be discharged, all money due him on the pay day

immediately following the termination of employment. Said pay shall include vacation pay, and cash in lieu of compensatory time due. In order to avoid any misunderstanding or errors, a Pre-Termination conference will be held, said conference to be attended by the Chief of the Department, the employee, a Union representative, and any other appropriate person such as a representative from the Department of Revenue and Finance, to ensure that terminal payments are correct and that the individual understands what elements comprise such payments.

6. If payment is not made within 30 days, the firefighter will receive 10% interest.

The Regional points out that each agreement included a different provision covering terminal leave. For example, the Regional notes that North Bergen provided that upon retirement, compensation would be paid to employees for each full day of earned and unused sick leave time computed at one-half the employee's average daily rate of during the last year of employment up to 75% of maximum firefighter salary. Under the Union City agreement, upon the employee's retirement, he would be paid a terminal leave benefit of either 720 hours pay or one-half of the remaining accumulated sick leave (one hour for every two), whichever is greater. Weehawken provided that a retiring employee would receive 90 days leave with pay plus accrued vacation time and West New York provided that all unused accumulated sick leave would be paid out at a maximum of \$15,000, which is based upon a rate system of one 24-hour day at \$120 per day.

The Regional objects to paragraph B of the Union's proposal which would create an automatic terminal leave program that would equal one year's salary,

including all the holidays and longevity. Under that proposal, the firefighter would get the full terminal leave benefits irrespective of whether the firefighter used one day of sick time or one month per year for 25 years. The Regional cites Mr. Michelin's testimony that Paragraph (A) would permit Regional firefighters to obtain terminal leave based upon their employment with the individual municipalities.

The Regional explains that certain municipal contracts set forth a maximum payment that could be taken by each firefighter. For example, West New York provided that all unused accumulated sick leave would be paid out at a maximum of \$15,000. In contrast, the Regional asserts that the Union's proposal would establish an automatic terminal leave program that would equal one year's salary, including longevity and holidays. The Regional highlights Mr. Michelin's testimony that none of the other individual municipal department have the kind of program proposed by the Union.

The Regional urges that its contractual proposal for newly hired firefighters be granted. The Regional also asks that one standard for awarding terminal leave benefits to be applied to those firefighters presently employed by the Regional but who were previously employed by the individual participating municipalities.

The Union characterizes the Regional's proposal that firefighters, upon retirement, shall receive payment for unused sick and vacation up to a maximum of \$120.00 per 24-hour day as "absurd". The Union points out that the Regional has provided no explanation as to why vacation days are lumped with sick days and paid at only \$120.00 per day. According to the Union, all municipal contracts provide for full compensation of vacation days at retirement. In addition, the Union views the compensation of \$120.00 per day as an insult. The Union calculates that a theoretical salary of \$60,000.00 divided by 91 24-hour days is approximately \$660.00 per 24-hour tour. By only paying for one-half of the accumulated sick days, the result is that a firefighter will be paid \$60.00 for accumulated days for a value of \$660.00. The Union views this proposal as unrealistic, and unconscionable. In contrast, the Union's proposal uses the same 120 number but rather indicates that each firefighter shall receive 120 hours of pay for each calendar year of employment up to twelve months salary.

The Union notes that the current contracts each have a different provision regarding terminal leave. In the North Bergen contract, the firefighters are entitled to up to 75% percent of the firefighter's salary based upon accumulated sick leave. The Union calculates that since each sick day is paid at one-half, a firefighter in North Bergen would have to accumulate approximately 82 sick days. According to the Union, those sick days are earned at the rate of 15 per year and will require a firefighter not use any sick days for approximately one-half of his career.

According to the Union, in Weehawken, a firefighter, upon retirement, is entitled to 90 days of terminal leave, approximately 25% percent of his salary and in West New York, a firefighter is entitled to a maximum of \$15,000.00 upon use of accumulated sick leave. In Union City, a sick leave bank of 120 hours per year for each year of employment, that is the same proposal sought by the firefighters in this contract. The Union points out that there is no maximum on the Union City benefit, but it proposes to limit the benefit to one year salary.

The Union explains that this proposal is intended to insure there is no reduction in the terminal leave benefit that firefighters have come to expect. The Union emphasizes that its proposal would have no impact upon accumulated compensation time or vacation time. According to the Union, its proposal is a formula based on years of service rather than on sick leave. The Union explains that the formula cannot be based upon sick leave because Weehawken had no provisions in its contract using sick leave for terminal leave purposes. According to the Union, it would be impossible to determine what accumulated sick time former Weehawken firefighters acquired since they had unlimited sick leave.

For these reasons, the Union maintains that as a result of regionalization, the payment of terminal leave must be based, not upon sick leave, but upon years of service to the individual municipalities as well as to the Regional Department, because it would provide equity to all firefighters.

The Union proposes a terminal leave program similar to that provided in Union City where a sick leave bank of 120 hours per year of service was created for terminal leave purposes. Under the Union City agreement, the sick leave bank time was used only in the event of a non-work related illness or injury and upon retirement, Union City firefighters received the accumulated sick leave remaining in their sick leave bank at a rate of one hour of compensation for every two hours accumulated.

The Regional proposes a more limited terminal leave benefit that would limit the value of each leave day to \$120 and would pay a benefit for half of all leave days accrued. The Regional notes that benefits such as terminal leave were adopted as part of agreements that included other trade-offs and should not be included wholesale in this agreement.

In addition to Union City, each of the previous agreements with the municipalities included terminal leave. Under the previous Weehawken agreement, upon retirement, firefighters received 90 days of leave with pay plus accrued vacation. This time was calculated based upon 1,924 hours in a year. Prior to regionalization, West New York firefighters were permitted to put all unused accumulated sick and vacation leave days in a bank by March 1 of the year in which they retire. There is no limit to the number of days that may be placed in the "terminal leave bank", but the maximum payment upon retirement

for time accumulated is \$15,000 and each 24 hour tour paid at a rate of \$120. Additionally, all firefighters hired before January 1, 1987 accumulated five days in his sick leave bank for each year of service and those days may be used only for terminal leave. Firefighters also received a pro-rata share of any other sums that they are entitled to, such as clothing allowance. Under the West New York agreement firefighters who terminated their employment prior to retirement were compensated for accumulated sick leave as follows:

1 year through 5 th year	No payment
6 th year through 10 th year	Up to max of \$5,000
11 th year through 15 th year	Up to max of \$10,000
16 th year through 24 th year	Up to max of \$12,000

In addition, firefighters who accumulated “book time and compensatory time” before January 1, 1987 are considered vested and with that book time to be applied and calculated under the parties’ then current practice.

In North Bergen, upon retirement, firefighters were compensated for accumulated unused sick leave at one-half the average daily rate of pay received by the employee during their last year of employment up to a maximum of 75% of the maximum firefighter salary.

In addition, to a terminal leave provision, the Union proposes that all leave accumulated by firefighters in their employment with the municipalities that

compose the Regional should be maintained and carried forward for compensation at retirement.

There is merit to the Union's argument credit is due to firefighters who have accumulated sick or vacation leave for use as terminal leave while employed by the predecessor municipalities. Since each of the predecessor agreements included a terminal leave provision, elimination of the benefit is unwarranted. However, the Regional makes a strong argument as to the need to limit terminal leave benefits. Balancing the firefighter's desire to consolidate all firefighters in a single terminal leave program, while maintaining terminal leave benefits previously accrued while they were employed by the municipal fire departments with the Regional's need to control future costs warrants different terms for those employees originally employed by one of the municipalities that comprise the Regional and for those employees hired directly into the Regional department.

Terminal leave is a benefit where the merger of accrued benefits under the prior agreements is simply not feasible. The benefits for those employees employed by individual municipalities should be retained, even though those specific benefit levels can not be enjoyed by the entire workforce on a uniform basis. Each of the previous agreements included different methods of accumulating time towards terminal leave and different formulas for its

calculation. It is generally accepted that leave time accrued by employees towards terminal leave is vested and should not be diminished.

Accordingly, a “red circling” or maintenance of each of the previous terminal leave benefits provided to firefighters who were employed by one of the municipalities that make up the Regional Department is appropriate and is awarded.

Employees hired originally by the Regional have no such history and have no vested interest in a particular terminal leave benefit previously provided. Accordingly, the establishment of a new terminal leave benefit for those employees is appropriate. The Union’s proposal, which is modeled after the Union City agreement would provide a sick leave bank of 120 hours per year of service is created for terminal leave purposes. However, that sick leave bank is premised upon the availability of sick leave of up to one year rather than the sick leave provisions included in this agreement. The Union’s proposal would also compensate firefighters for the accumulated sick leave remaining in their sick leave bank at a rate of one hour of compensation for every two hours accumulated in addition to 120 hours per years of service.

The Regional’s proposal would limit compensation for accrued leave to \$120 per 24 hour tour and would provide compensation for half of all accrued sick and vacation leave. In other words, the Regional’s proposal would

compensate fire officers for accrued sick and vacation leave at a rate of \$60 per accrued 24-hour tour of duty while the Union's proposal would compensate accrued time at half of the hourly rate at retirement, up to one year's salary. The Regional's proposal is significantly less than comparable terminal leave policies throughout Hudson County, while the Union's proposal exceeds most of the terminal leave benefits previously enjoyed by firefighters in the municipalities that compose the Regional.

Accordingly, the terminal leave benefit for those employees hired by the Regional after regionalization shall provide that employees shall be compensated for each day of sick or vacation leave accrued at the rate of \$120 per 24-hour tour, as proposed by the Regional and as previously provided in West New York. However, firefighters shall be compensated for all leave days rather than for one-half subject to a cap which previously existed in West New York. Terminal leave shall be subject to a maximum of \$15,000, similar to what the agreement currently provides in West New York. The \$120 per tour provided to firefighters provides reasonable compensation for unused sick and vacation leave time to firefighters while also providing a cap of \$15,000 which provides the Regional with a limit on future terminal leave costs as well as the ability to plan for those costs.

The Terminal Leave clause shall provide as follows:

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for eligible days as provided in the municipalities' collective bargaining agreements which employed that employee at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day up to a maximum benefit of \$15,000. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

EDUCATION INCENTIVE

The **Regional** proposes the following contractual language:

Section 8.5: \$1000 per year will be added to base pay for an A.A. degree in Fire Science or Fire Science Technology.

Section 8.6: \$1500 per year will be added to base pay for a B.A. degree in Fire Science or Fire Science Technology.

The **Union** proposes the following contractual language:

- A. The Fire Department recognizes the need for the education advancement of its Firefighters; therefore, those Firefighters who have earned an Associates Degree in Arts or Sciences on or before January 1st, 1975 from an accredited institution

of higher learning, shall receive an additional two point five (2.5%) percent of their annual base salary.

- B. Those Firefighters who on or before January 1, 1975 have earned a Bachelor's Degree in the Arts or Sciences from an accredited institution of higher learning, shall receive five (5%) percent of their annual base salary.
- C. Those Firefighters who on or after January 1, 1975 have earned an Associate Degree from an accredited institution of higher learning, shall receive an additional five (5%) percent of their annual base salary.
- D. Those Firefighters who on or after January 1, 1975 have earned a Bachelor's Degree in the Arts or Sciences from an accredited institution of higher learning, shall receive an additional (10%) percent of their annual base salary.
- E. Those Firefighters who on or after January 1, 1975 have earned a Masters or Doctorate Degree in from an accredited institution of higher learning, shall receive an additional (15%) percent of their annual base salary.
- F. Any Firefighters, on or after January 1, 1975, furthering his education in an accredited institution of higher learning, and is enrolled in a course, which is required by a candidate for a Fire Science degree, shall be paid annually twenty-five (\$25.00) dollars for each credit earned, provided he is not encompassed within Paragraph A, B, C, D or E above.
- G. Entitlement to compensation shall be conditioned upon:
 - a. Enrollment and matriculation in a program at an institution of higher learning, or attainment of the Degree.
 - b. Presentation to the Employer of transcripts demonstrating attainment of such credits or Degree.
- H. The employer shall provide for the Association, on January 1st of each year, a fund of \$1,200.00 for use by the Association for general education purposes, including, but not limited to attendance and incidental expenses at seminars, schools and educational gatherings of Firefighters. The monies paid into such fund annually by the Employer shall be permitted to accumulate.

- I. Educational compensation as provided herein shall be included in base salary and paid in equal installments included in the members bi-weekly salary.

Relying upon Director DeOrio's testimony, the Regional maintains that its proposal would standardize dollar amounts for degrees obtained in fire science or fire science technology. The Regional notes that the West New York, Union City, and North Bergen contracts all provided for either percentages or dollar amounts for each credit. The Weehawken contract did not provide for an educational incentive, and as such, monetary compensation for an A.A. or a B.A. degree in Fire Science or Fire Science Technology would be a new benefit for those firefighters. Director DeOrio testified that the Regional's proposal serves to benefit both the Regional and its fire firefighters, stating:

To the employee themselves, it would help if they're taking it in the general area of getting their degree in fire science or fire technology, where staying in line with taking fire-related courses will possibly help them in the future of promotional tests. . . For the department themselves if an individual in getting these degrees in these services, first, enhance their education, and, secondly, probably give them a better understanding with our daily training or educational programs that were run on a daily basis in regional would also help them in a quick understanding or even an aid to the regional on things they've learned taking these fire courses.

The Regional cites Mr. Michelin's testimony that Paragraphs A through D of the Union's proposal are based upon the Union City contract. But, the Regional points out that the requirements differed from town to town. Specifically, to be eligible for an education incentive in North Bergen, the agreement required that the degree be in fire science or public safety; and in

West New York, the agreement required that the degree be in fire science, while Weehawken did not provide an education incentive. The Regional notes that the Union's proposed Paragraph B would grant firefighters a 5% bonus for obtaining a Bachelor's Degree in the Arts or Sciences on or before January 1, 1975. The Regional compares this proposal with North Bergen's contract, which provided for a 4% bonus for fire science of public safety degree and West New York's contract, which did not provide a percentage. The Regional notes that the Union's proposed Paragraph C would grant firefighters a 2% bonus for obtaining an Associate's Degree in Fire Safety on or after January 1, 1975. The Regional compares this proposal with North Bergen's contract, which provided for a 2% bonus for fire science of public safety degree and West New York's contract, which did not provide a percentage. Likewise, the Regional compares the Union's proposed Paragraph D, which would grant firefighters a 5% bonus for obtaining a Bachelor's Degree in Fire Safety on or after January 1, 1975 with North Bergen's contract, which provided for a 4% bonus for fire science of public safety degree and West New York's contract, which did not provide a percentage. Similarly, the Regional compares the Union's proposed Paragraph E would grant firefighters a 15% bonus for obtaining a Masters or Doctorate Degree in Fire Safety on or before January 1, 1975 with North Bergen's contract, which provided for a 4.5% bonus for a Masters Degree and 5% for a Doctorate. The Regional notes that the West New York contract did not provide a percentage.

The Regional cites Mr. Marino's testimony that Paragraph F of the Union's proposal is based on the West New York contract. The Regional notes that the West New York provided for only \$15.00 a credit. Similarly, the Regional compares Mr. Marino's statement that Paragraph H is based upon the West New York contract with the provision in that contract that provided that any excess monies would be paid to the department. The Regional notes that Mr. Marino testified that Paragraph I is based upon all of the contracts; but the North Bergen contract does not include a similar provision.

The Union acknowledges that it has proposed what is currently contained in the Union City contract because it provides the best benefit. The Union emphasizes its intent that those receiving a benefit should not lose it. The Union points out that the Regional's proposal would cause the loss of benefits because it would eliminate the benefit in degrees other than Associates and Bachelor's Degrees in fire science or fire technology. The Union emphasizes its efforts to insure that those currently receiving a benefit continue to receive that benefit.

Both parties propose education incentives. The Regional would standardize the education incentive by adding \$1,000 per year to base pay for all firefighters with an Associate's degree in Fire Science or Fire Science Technology and \$1,500 per year will be added to base pay for a Bachelor's degree in Fire Science or Fire Science Technology. The Union proposes language that would retain benefits for firefighters with college degrees in majors other than fire science or fire technology.

Specifically, the Union proposes that those firefighters who have earned an Associates Degree in Arts or Sciences on or before January 1st, 1975 receive an additional 2.5% of their annual base salary and those firefighters who on or before January 1, 1975 have earned a Bachelor's Degree in the Arts or Sciences receive an additional 5% of their annual base salary. Likewise, the Union proposes that those firefighters who on or after January 1, 1975 have earned an Associate Degree receive an additional 5% of their annual base salary and those firefighters who on or after January 1, 1975 have earned a Bachelor's Degree in the Arts or Sciences receive an additional 10% of their annual base salary. Without regard for the nature of the degree, the Union also proposes that those firefighters who on or after January 1, 1975 have earned a Masters or Doctorate Degree receive an additional 15% of their annual base salary.

The previous agreements in West New York, Union City and North Bergen included an educational incentive. The previous agreement in North Bergen included an educational incentive for studying toward and/or earning a degree in public safety or fire science. Although firefighters were not compensated or reimbursed for attending courses, they received 1% of base salary for 30 college credits in fire science, 2% of base salary for an Associate's Degree, 3% of base salary for 90 college credits; 4% of base salary for a Bachelor Degree; 4.5% of base salary for a Masters Degree and 5% of base salary for a Doctorate.

Those Union City firefighters who earned an Associate's degree on or after January 1, 1975 received an additional 5% of annual base salary in the form of an annual payment. Those Union City firefighters who earned a Bachelor degree on or after January 1, 1975 received an additional 10% of annual base salary in the form of an annual payment. In Weehawken and West New York, firefighters were not compensated for the completion of a degree program.

The Union further proposes that firefighters who are enrolled in a course, which is required by a candidate for a Fire Science degree, shall be paid annually \$25.00 for each credit earned provided that he has not yet received a degree for which he is receiving an education incentive. Under the Union's proposal, firefighters would be entitled to compensation under this program if they are enrolled and matriculated in a program at an institution of higher learning, or attain a degree and if they provide the Regional with evidence of the attainment of such credits or degree. Additionally, the Union proposes that the employer provide it with \$1200 annually for its use for general educational purposes for firefighters. In Union City, any firefighter who on or after January 1, 1975 who has earned credits in fire safety related courses, received \$10.00 annually for each credit earned. In West New York, firefighters received an annual stipend of \$15.00 per qualified college credit completed payable each September.

The Union proposes that these incentives be added to base salary and be included in their bi-weekly pay. In Union City education incentives were paid in

an annual lump sum and West New York firefighters received an annual stipend. The North Bergen agreement is silent as to how the education incentive is paid.

The issue of education incentive pay is an example of a benefit which is difficult to merge or unify for firefighters previously employed in the municipal departments. The benefit itself is a reward for educational progress and attainment and was given widely different treatment among the various municipalities. The Regional's proposal to have a single benefit for all firefighters is reasonable to the extent that not all firefighters previously enjoyed this benefit. This view, however, must be weighed against the longstanding nature of the benefit, where previously provided, and the time and effort invested by each firefighter towards the incentives and goals required by the prior contracts in order to achieve the benefit. To disturb each prior scheme for those who have earned degrees or commenced participation towards a degree would be inequitable. Thus, I award the following:

Educational incentives shall be provided for all unit employees based upon the standards below:

- A. Firefighters employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements in those departments.
- B. Firefighters employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have not commenced matriculation in higher education for credit, shall receive education incentive in a

fashion identical to firefighters hired by the Regional on or after regionalization.

- C. Firefighters hired by the Regional on or after regionalization shall receive \$750 per year for an A.A. degree at an accredited institution or \$1,250 for an A.A. degree at an accredited institution for fire science or fire science technology.
- D. Firefighters hired by the Regional on or after regionalization shall receive \$1,500 per year for a B.A. degree at an accredited institution or \$2,500 for a B.A. degree at an accredited institution for fire science or fire science technology.
- E. Educational compensation as provided herein shall be included in base salary and paid in equal installments included in the members bi-weekly salary.

SALARIES

The **Regional** proposes the following contractual language:

Section 8.0: The annual base salary for all employees covered by this Agreement shall be as follows. Upon completion of one year of service up to six years of service, employees will become entitled to each successive step.

	7/1/99	7/1/00*	7/1/01*	7/1/02*	7/1/03*
New Hires during training period	25,000				
New Hires after training	29,000				
First Step	32,337				
Second Step	35,674				
Third Step	39,011				
Fourth Step	42,348				
Fifth Step	45,685				
Sixth Step	49,023				

** to be negotiated*

(Note step six represents the highest step paid by NYC.)

The rates set forth in the above schedule shall not reduce any firefighter's base salary compensation currently paid and received. Such firefighter's current rate of pay shall be red-circled until the rates provided on the above schedule become equal to or greater than the firefighter's current base salary.

Section 8.1: The hourly rate shall be the sum of employee's annual compensation (base salary and longevity) divided by 2080 hours, as defined by the Federal Labor Standards Act.

The **Union** proposes the following contractual language:

A. Base salaries for the period of this Agreement shall be as follows:

	<u>7/1/99</u>	<u>7/1/00</u>	<u>7/1/01</u>	<u>7/1/02</u>	<u>7/1/03</u>
1 st year	\$27,965.05	\$29,363.30	\$30,831.47	\$32,373.04	\$33,991.69
2 nd year	\$35,211.99	\$36,972.59	\$38,821.22	\$40,762.28	\$42,800.40
3 rd year	\$41,101.57	\$43,156.65	\$45,314.48	\$47,580.20	\$49,959.21
4 th year	\$46,983.62	\$49,332.80	\$51,799.44	\$54,389.41	\$57,108.88
5 th year	\$52,870.08	\$55,513.59	\$58,289.27	\$61,203.73	\$64,263.92
6 th year	\$58,755.25	\$61,693.01	\$64,777.66	\$68,016.55	\$71,417.37

B. Since firefighters work a 42-hour week, they shall be paid in addition to their base salary, three (3) hours per week.

C. Salary will be paid in regular bi-weekly installments on the Wednesday of each week. If a holiday falls on a Wednesday, then the pay will be distributed on the Tuesday of said week.

D. The Department shall establish direct deposit and every effort shall be made to have checks available at 8:00 a.m. on payday.

E. The Hourly rate for each employee in the bargaining unit shall be computed by dividing the employee's yearly salary divided by 2080. The resulting figure will be the individual employees' hourly rate. The yearly salary shall include all items (such as, but not limited to, longevity) added to above base salary and paid on a periodic basis.

The Union notes that it has crafted a proposal that takes the last Union City six step salary guide and adds 5% for each of the five years commencing 7/1/99 and ending 6/30/03. According to the Union, its proposal that the salary

guide increase by 5% for each of the five years is reasonable because it does not condense steps but rather maintains a six step salary guide. The Union contrasts this with the Regional's proposal for an eight step salary guide. The Union emphasizes that the Regional did not provide an explanation as to the need for two additional steps. Noting that the Regional compared the top step of its proposal with the highest step paid in New York City, the Union asserts that the Regional has not offered a rationale for the comparison to the New York City Fire Department. Accordingly, the Union urges that the Regional's proposal be rejected in total.

Another problem the Union identifies with the Regional's proposal is that the sixth step would result in a top step that is substantially less than is presently being paid in the five municipalities. Acknowledging that the Regional's proposal would "red circle" firefighters presently paid above the sixth step, the Union contends that would, in effect, freeze the maximum pay of firefighters previously employees. The Union asserts that the firefighters are entitled to reasonable increases. The Union argues that Regional's proposal, which would create a two-tier wage structure, is unacceptable. According to the Union, the firefighters need and deserve to be paid equally once they have achieved the six step salary guide. The Union asserts that the Regional's efforts to artificially lower the top pay for firefighters is irrational and unjustified. The Union maintains that once firefighters have achieved the top step, they must all be paid the same salary.

The Union also notes that it has proposed an equity adjustment for former Union City firefighters. According to the Union, under the proposed firefighter salary structure, the firefighters in the other municipalities except Union City would receive increases over and above the 5% across-the-board increase. In other words, former Union City firefighters would be denied the increase resulting from placing former North Bergen, West New York, Weehawken and Guttenberg firefighters on the higher Union City salary guide. The Union asserts that in the interest of justice, and fair treatment of the Union City firefighters, they should be provided with an equity adjustment in the form of a one time bonus in an amount equivalent to the average amount of the adjustment given to former North Bergen, West New York, Weehawken and Guttenberg firefighters in placing them on the Union City salary guide. Under this proposal, each former Union City firefighter would receive an amount based on the firefighter's years of service. The Union argues that absent an equity adjustment, former Union City firefighters would be relegated to second class firefighters by receiving less wage increases than the others.

The Union maintains that Paragraph B of its proposal requires a payment for their 42 hour work week. Noting that other public employees, are generally paid overtime for all hours over 40, the Union seeks compensation at the overtime rate for all hours over 40. The Union seeks an additional three hours of pay per week (apparently based upon two (2) hours overtime at time and one half), in recognition of the fact that firefighters are working a 42 hour workweek.

Next, the Union in Paragraph C seeks to incorporate the current practice of being paid on Wednesday of every other week and if a holiday falls on a Wednesday, they are paid the prior Tuesday. The Union also seeks to maintain direct deposit, which is a common alternative method of paying employees, currently enjoyed by the firefighters.

The Union notes that the parties agree that the yearly salary should be divided by 2,080 to determine an hourly rate and the Regional's proposal recognizes 2,080 as the appropriate divisor. Additionally, the Union notes that both parties agree that the yearly salary includes base salary plus longevity. The Union also proposes that any other items that are paid on a bi-weekly basis should be included for the purposes of determining an hourly rate.

Addressing the financial impact of the proposals on the residents and taxpayers of the participating municipalities as well as on the Regional, the Regional maintains that the Union's proposals are merely a collaboration of the highest level of salaries and economic benefits from each of the municipal firefighter contracts. According to the Regional, no other firefighters' union receives salaries and benefits similar to the provisions proposed by the Union. For example, the Regional points out that the Union's base salary proposal is from the Union City contract because the Union City firefighters received the highest base salary. Likewise, the Regional notes that the Union's proposal for

longevity pay is from the Union City contract because that agreement included the highest longevity pay. The Regional maintains that it could not pay the amount necessary to raise all firefighters' salaries and benefits to the levels proposed by the Union. In such a situation, the Regional asserts, the burden of paying the cost of implementing the Union's proposals would fall to the individual municipalities, and ultimately the taxpayers, and would completely negate the objective of regionalization.

The Regional calculates that the difference between the current base salary received by its firefighters and the Union's proposed base salaries for July 1, 1999 amounts to an increase of well over \$700,000.00 for that year alone, without consideration of retroactive base salary increases. Specifically, the Regional calculates that there are approximately five firefighters receiving a 1999 annual base salary of \$54,038.96 who would automatically be increased to an annual base salary of \$58,757.00 for an additional cost of \$23,590.20 to be assumed by the Regional. The Regional calculates further that there are approximately 30 firefighters receiving a 1999 annual base salary of \$55,957.38 who would automatically be increased to an annual base salary of \$58,757.00 for an additional \$83,988.60 to be assumed by the Regional. Likewise, there are approximately ten firefighters receiving a 1999 annual base salary of \$55,083.00 who would automatically be increased to an annual base salary of \$58,757.00, for an additional \$36,740.60 to be assumed by the Regional. Similarly, there are approximately 50 firefighters receiving a 1999 annual base salary of \$53,623.27

who would automatically be increased to an annual base salary of \$58,757.00 for an additional \$256,686.50 to be assumed by the Regional. Continuing, the Regional calculates that there are approximately eight firefighters receiving a 1999 annual base salary of \$55,063.00 who would be increased to an annual base salary of \$58,757.00 for an additional \$29,552.00 to be assumed by the Regional. The Regional also calculates that there are approximately 16 firefighters receiving a 1999 annual base salary of \$55,045.00 who would be increased to an annual base salary of \$58,757.00 for an additional \$59,392.00 to be borne by the Regional. Additionally, the Regional calculates that there are approximately 14 firefighters receiving a 1999 annual base salary of \$44,746.30 who would automatically be increased to an annual base salary of \$46,983.00, for an additional \$31,313.80 for it to bear. Continuing, the Regional calculates that there are approximately ten firefighters receiving a 1999 annual base salary of \$41,169.96 who would be increased to an annual base salary of \$46,983.00 for an additional \$58,130.40 to be assumed by the Regional. According to the Regional, there are approximately four firefighters receiving a 1999 annual base salary of \$38,797.00 who would be increased to an annual base salary of \$46,983.00 for an additional \$32,744.00 for it to bear. The Regional continues, calculating that there are approximately two firefighters receiving a 1999 annual base salary of \$39,236.50 who would be increased to an annual base salary of \$46,983.00 for an additional \$15,493.00 to be borne by the Regional. The Regional calculates further that there are approximately eight firefighters receiving a 1999 annual base salary of \$33,391.00 who would automatically be

increased to an annual base salary of \$41,101.00 for an additional \$61,680.00 to be assumed by the Regional. Finally, the Regional calculates that there are approximately three firefighters receiving a 1999 annual base salary of \$26,633.00 who would automatically be increased to an annual base salary of \$27,965.00 for an additional \$3,996.00 to be assumed by the Regional. Accordingly, the Regional calculates that in total, the Union's base salary proposal for 1999 would cost the Regional approximately \$700,000.

The Regional emphasizes that this \$700,000 increase for 1999 alone in firefighter base salaries does not include the cost of implementing the Union's other proposals such as retroactive and annual base salary increases, service differential, longevity pay, holiday pay, and overtime.

The Regional maintains that the Union's salary proposal would increase the base salary for Regional firefighters by approximately \$9,735,051. The Regional reaches this conclusion by using an example of a 3.5% retroactive base salary increase awarded on top of the Union's base salary proposal. Under this assumption, the Regional calculates that it would incur an additional \$350,000 for that year. The Regional continues its calculation of a 3.5% increase for the following year, costing the Regional an additional \$355,000.00. The Regional also calculates that the Union's longevity proposal would cost the Regional an additional \$500,000 in longevity pay for 1999. The Regional also calculates that the difference between the current amount of service differential pay received by

its firefighters and the Union's proposal for service differential pay amounts to an increase of over \$300,000 for 1999.

The Regional points out that in 1999, it paid approximately \$900,000 in overtime and in 2000, the total amount of overtime was approximately \$2,400,000. The Regional cites Director DeOrio's testimony that the overtime costs it incurred almost tripled from 1999 to 2000. With this backdrop, the Regional emphasizes that under the Union's proposal, it would also be obligated to pay the cost of education incentive, holiday pay, vacations, convention leave, insurance, and other benefits. The Regional also notes that it will have to assume the costs of implementing the union's proposals in the companion fire officer interest arbitration.

To illustrate the high costs of implementing the Union's proposals, the Regional points specific examples of how the Union's proposal would impact firefighters' salaries: According to the Regional, ten year firefighter from Union City received a base salary of \$55,957 in 1999, plus \$6155 in longevity pay, and \$3344 in holiday pay for a total of \$65,456 in salary for 1999. The Regional calculates that under the Union's proposals, that firefighter would receive a base salary of \$59,227, plus \$7699 in longevity pay, \$2008 in service differential, and \$4772 in holiday pay, for a total of \$73,706. The Regional emphasizes that the under the Union's proposal, the firefighter's 1999 salary would increase by

approximately \$8500, without considering educational incentive, health insurance and other benefits.

As a second example, the Regional points to a 20 year firefighter from Union City who received a base salary of \$55,957 in 1999, plus \$11,191 in longevity pay, and \$3616 in holiday pay. The Regional calculates that this firefighter received \$70,764 in salary for 1999. According to the Regional, under the Union's proposals, this firefighter would receive a base salary of \$59,227, plus \$13,030 in longevity pay, \$5,058 in service differential, and \$5,352 in holiday pay, for a total of \$82,667. The Regional calculates that the Union's proposal would increase this firefighter's salary for 1999 by approximately \$11,900, exclusive of educational incentive, health insurance, and other benefits received by Regional firefighters.

Next, the Regional considers a ten-year firefighter from Weehawken who received a base salary of \$53,531 in 1999, plus \$500 in clothing allowance, \$2161 in longevity pay, and \$3512 in holiday pay for a total of \$59,704. The Regional calculates that under the Union's proposals, this firefighter would receive a base salary of \$59,227 plus \$7699 in longevity pay, \$2008 in service differential, and \$4,772 in holiday pay, for a total of \$73,706. According to the Regional, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$14,000, exclusive of educational incentive, health insurance, and other benefits received by its firefighters.

Similarly, a 20 year firefighter from Weehawken received a base salary of \$53,531 in 1999 plus \$500 in clothing allowance, \$5403 in longevity pay, and \$3692 in holiday pay for a total of \$63,126. The Regional calculates that under the Union's proposals, that firefighter would receive a base salary of \$59,227, plus \$13,030 in longevity pay, \$5,058 in service differential, and \$5,352 in holiday pay, for a total \$82,667. According to the Regional, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$19,600, exclusive of educational incentive, health insurance, and other benefits received by its firefighters.

Turning to North Bergen, the Regional analyzes the effects of the Union's proposal on a ten-year firefighter from North Bergen who received a base salary of \$53,623 in 1999. According to the Regional, that firefighter received \$3,217 in longevity pay and \$1,137 in service differential for a total of \$57,977 in salary for 1999. The Regional calculates that under the Union's proposals the firefighter would receive a base salary of \$59,227 plus \$7,699 in longevity pay, \$2,008 in service differential, and \$4,772 in holiday pay, which totals \$73,706. Indeed, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$15,700 exclusive of educational incentive, health insurance, and other benefits received by Regional firefighters.

A twenty-year firefighter from North Bergen received a base salary of \$53,623 in 1999. In addition, that firefighter received \$6,435 in longevity pay and \$3,603 in service differential. Thus, that firefighter received \$63,661 in salary for 1999. Under the Union's proposals, said firefighter would receive a base salary of \$59,227. In addition, said firefighter would receive \$13,030 in longevity pay, \$5058 in service differential, and \$5352 in holiday pay, which totals \$82,667. According to the Regional, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$19,000, exclusive of educational incentive, health insurance, and other benefits.

Turning to West New York and Guttenberg, the Regional analyzes the effects of the Union's proposal on a ten-year firefighter from West New York and Guttenberg who received a base salary of \$51,726 in 1999. According to the Regional, that firefighter received \$3,104 in longevity pay and \$3,149 in holiday pay for a total of \$57,979 in salary for 1999. The Regional calculates that under the Union's proposals, that firefighter would receive a base salary of \$59,227 plus \$7,699 in longevity pay, \$2,008 in service differential, and \$4,772 in holiday pay, for a total of \$73,706. According to the Regional, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$15,720 exclusive of educational incentive, health insurance, and other benefits.

The Regional also considers a 20 year firefighter from West New York and Guttenberg who received a base salary of \$51,726 plus \$5173 in longevity pay

and \$3268 in holiday pay for a total salary of \$60,176 in 1999. The Regional calculates that under the Union's proposals, this firefighter would receive a base salary of \$59,227 plus \$13,030 in longevity pay, \$5,058 in service differential, and \$5,352 in holiday pay, for a total of \$82,667. According to the Regional, the Union's proposal would increase this firefighter's salary for 1999 by approximately \$24,000, exclusive of educational incentive, health insurance, and other benefits.

The Regional emphasizes that these calculations do not include the cost of implementing the Union's proposals in the companion fire officer case or the cost of retroactive pay raises. According to the Regional, these calculations simply demonstrate the cost to the Regional of providing every firefighter with the Union's proposed 1999 salary rates. The Regional maintains that when the effect of adding an annual salary increase that will be applied retroactively to 2000 and 2001 is considered, it is obvious that it cannot afford the Union's proposals. Acknowledging that in 2000 it received \$396,625.00 from the State of New Jersey, the Regional emphasizes that State financial aid is not guaranteed each fiscal year. The Regional also emphasizes that its revenue is based solely upon contributions from the participating municipalities and that these municipalities have other financial obligations, including paying back debt and operating their municipalities.

Furthermore, the Regional compares Mr. Foti's testimony that the surplus or free balance that would be appropriate for the Regional would be a two payroll surplus with Mr. Pianese's explanation that the Regional's operating fund for the year 2000 had an open balance of \$215,155.17. the Regional notes that Mr. Pianese testified that a two payroll surplus would be approximately \$1,500,000. The Regional also points out that it anticipates a surplus of less than \$100,000 for 2001, if it is able to maintain a surplus at all. For these reasons, the Regional asserts that a review of its financial documents shows that it can not afford to implement the Union's proposals. In support of its contention that it can not afford to pay the costs of the Union's proposals, the Regional cites the interest arbitration award issued by Arbitrator Brent in the Town of West New York and Local 361. According to the Regional, in that case, the arbitrator concluded that the financial impact on West New York, of above-average, across-the-board wage increases could not be justified in light of the fact that the cost of living had remained stable, and that the current wage and benefit package provided continuity and stability of employment. Additionally, the Regional notes that the arbitrator found that West New York was in the middle of the salary range in Hudson County, so a large award was not warranted. The Regional points out that in West New York, the arbitrator gave great weight to the financial condition of the Town and awarded a wage freeze followed by modest increases, along with give backs and reduction in vacation time and an increase in prescription co-pay.

The Regional also cites Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 86 (1994), where the Court found that Section 16(g)(6) does not equate with the municipality's ability to pay. Instead, the Regional contends that the financial impact criterion requires consideration of the governing body's ability to maintain existing local programs and services, and to initiate new programs and services. According to the Regional, under its proposal, its firefighters would be among the highest compensated fire fighting unit in the United States. In contrast, the Regional asserts that the "outrageously high wages and benefits" included in the Union's proposal, are not supported by any of the statutory criteria. The Regional maintains that the Union did not provide credible evidence in support of its proposals, but simply relied upon the four municipal contracts. Specifically, the Regional asserts that the Union selected provisions from the four municipal contracts that would provide the greatest economic benefit for the firefighters, without regard to the average salaries of municipal firefighters or the impact its demands on the Regional and the municipal taxpayers.

The Regional reiterates that it does not have the ability to raise revenue by taxing residents of the participating municipalities, but receives its revenue is from contributions from the participating municipalities. The Regional points out that the municipalities do not have unlimited revenues because they must also appropriate money for the operation of its government, insurance, public safety, public works, health and welfare, recreation and education, construction, and utilities. Additionally, the Regional notes that the individual municipalities are

obligated to pay for the enhanced pension opportunities for the firefighters and fire officers who retired upon the formation of the Regional resulting in a tremendous financial obligation of approximately \$14 million to be repaid by the municipalities. According to the Regional, the municipalities may elect between various payment options, all of which include a significant amount of interest. Specifically, under the five-year option, the municipalities would be liable for approximately \$4,000,000 a year; under the ten-year option, the municipalities would be liable for approximately \$2,500,000 a year; and under the 15 year option, the municipalities would be liable for approximately \$1,900,000 a year.

Furthermore, the Regional points to the payments that the municipalities must make payments on the Lease Revenue Bonds. According to the Regional, the first semi-annual payment under the Series 1999A Lease Revenue Bonds, due on September 1, 2001, amounts to \$187,910.63 and the first semi-annual payment under the Series 1999B Lease Revenue Bonds, also due on September 1, 2001, amounts to an additional \$579,044.75. The Regional calculates that over the next year, payments made under these bond issues will total \$1,533,916.76 and the last payment under the bond issues is due March 1, 2024.

The Regional reasons that the Union's proposal affects the Regional's ability to provide fire and rescue services because it would require that the municipalities contribute more money which would, in turn, have a severe negative impact on the citizens and taxpayers of those municipalities. For

example, the Regional reviews the financial condition of Union City, with the State Division of Local Government Services, has determined to be a distressed city in need of financial aid. The Regional notes that Union City is also faced with severe budget deficits which significantly affect its ability to pay. According to the Regional, Union City cannot afford large across-the board wage increases because it does not have the unreserved funds to support a large increase for the cost of fire and rescue services.

The Regional also asserts that the residents of the municipalities also face financial difficulties. According to the Regional, the per capita income for Union City residents is \$11,089, for West New York residents the per capita income is \$12,047. Similarly, the Regional notes that the per capita income for North Bergen residents is \$15,744 and is \$17,363 for Weehawken residents. The Regional maintains that these residents are already paying high taxes and cannot afford to pay higher taxes. Additionally, the Regional contends that the residents of the municipalities understand that the Regionalization Statute was not a law designed to increase salaries or mandate enhanced benefits through the interlocking of several towns into one entity, where before, each town had its own salary and benefits program.

According to the Regional, analysis of the financial impact on the Regional, its residents, and taxpayers demonstrates that the impact would be too great if the Union's proposals are awarded. In contrast, the Regional maintains

that its proposal reflects a fair salary for the firefighters. Moreover, the Regional asserts that a reasonable salary increase over the course of the contract would not unduly burden the Regional, its residents, and taxpayers and would continue to keep the salaries of its firefighters more than competitive with other firefighters throughout the State and the country.

Turning to the lawful authority of the employer, the Regional emphasizes the policy statement accompanying the legislation establishing the lawful authority of the employer which provides as follows:

It is hereby declared the policy of the Legislature that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads.

At the same time the Legislature recognizes that local government cannot be constrained to the point that it is impossible to provide necessary services to its residents.

N.J.S.A. 40A:4-45.1 (emphasis added). According to the Regional, the individual municipalities would be unable to lawfully increase their budgets to accommodate the cost of implementing the Union's proposal. The Regional acknowledges that its budget does not fall within the dictates of the CAP law. However, the Regional emphasizes that the five municipalities' budgets are constrained by the CAP law and the Regional's financing comes directly from the five municipalities.

Since the Regional Authority's creation, the participating municipalities have designated contributed their share of the costs for providing fire and rescue services. Specifically, the Regional points out that during the nine months that the Regional was operational in 1999, North Bergen paid \$4,412,169; Union City paid \$5,633,100; Weehawken paid \$2,497,428; West New York paid \$4,297,653; and Guttenberg paid \$1,375,000 to the Regional. Similarly, the Regional notes that in 2000, North Bergen paid \$5,588,747; Union City paid \$7,135,260; Weehawken paid \$3,163,409; West New York paid \$5,443,694; and Guttenberg paid \$1,500,000 to the Regional. Continuing, the Regional recounts that for 2001, North Bergen will pay \$5,882,892; Union City will pay \$7,510,800; Weehawken will pay \$3,329,904; West New York will pay \$5,730,204; and Guttenberg will pay \$1,500,000 to the Regional.

The Regional compares these sums to the individual municipal budgets. Specifically, for Fiscal Year 2000, North Bergen appropriated \$38,648,803.00 for items covered under the CAP law. Since North Bergen has a 3.5% cap, for FY 2001, the Regional calculates that the Township would be permitted to raise its appropriations by 3.5%, or by \$1,352,708.11. Similarly, for Fiscal Year 2000, Weehawken appropriated \$14,029,412.00 for items covered under the CAP law. Since Weehawken has a 3.5% cap, for FY 2001, the Township would be permitted to raise its appropriations by 3.5%, or by \$701,470.60. For Fiscal Year 2000, Guttenberg appropriated \$4,736,270.00 for items covered under the CAP law. Therefore, the Regional calculates that for FY 2001, the Township would be

permitted to raise its appropriations by 3.5%, or by \$165,769.45. For Fiscal Year 1999, Union City appropriated \$50,796,715.03 for items covered under the CAP law. Therefore, the Regional calculates that for FY 2000, the City would be permitted to raise its appropriations by 3.0%, or by \$1,523,901.00.

The Regional compares these calculations with its calculations that the difference in base salary alone for 1999 under the Union's proposal is over \$700,000 for that year. The Regional reiterates that its calculation of the increase in base salaries under the Union's proposal does not take into consideration the cost of implementing the Union's other proposals including annual retroactive and current base salary increases, service differential, longevity pay, and holiday pay. The Regional also reiterates that the difference between the current amount of longevity pay received by its firefighters and the Union's proposal for longevity pay totals over \$500,000.00 for 1999. Likewise, the Regional reiterates that the additional cost of the Union's service differential pay proposal totals over \$300,000.00 for 1999. The Regional also points out that these calculations do not take into effect the cost of overtime. According to the Regional, in 1999, it paid approximately \$900,000 in overtime and in 2000, the total amount of overtime was approximately \$2,400,000. The Regional emphasizes Director DeOrio's testimony that overtime costs incurred by the Regional almost tripled from 1999 to 2000. Finally, the Regional notes that its calculations do not take into consideration the cost of implementing the Union's proposals in the companion fire officer case.

The Regional emphasizes that in addition to providing funding for the Regional, the participating municipalities have other general government expenses including the costs of the office of mayor and council, clerk's office, attorney, prosecutor, director of finance, tax assessor, public safety, police department, fire inspector, department of public works, vehicle maintenance, division of health traffic control, recreation, planning board, and insurance. The Regional emphasizes further that all of these expenses must be funded with the dictates of the CAP law.

Accordingly, the Regional argues that in light of the foregoing, the individual municipalities would be unable to lawfully increase their budgets to accommodate the cost of implementing the Union's proposal.

Addressing the cost of living criterion, the Regional asserts that all of the on this issue shows that the cost of living has continued on an extremely restricted rate of increase for over a decade. The Regional emphasizes that inflation and the cost of living have remained at historic lows, and there are no indications that this trend will change. The Regional argues that there is no relevant evidence that would justify the 5% annual increase proposed by the Union. According to the Regional, for 1998, the CPI-U rose only 1.6%; this compares to a 1.7% increase in 1997 and was the smallest annual increase since a 1.1% increase in 1986. The Regional also points out that in April 1999,

the CPI-U rose only 0.7% the largest monthly gain since October 1990, and in November, 1999, it rose a mere 0.1%. The Regional quotes one economist's statement that "Inflation is dead," and quotes a U.S. Labor Department, Bureau of Labor Statistics statement that "Inflation is behaving congenially as a church mouse."

Citing City of Bogota, Docket No. IA-97-8, P.E.R.C. No. 99-20, the Regional argues that the cost of living must be considered even when it has remained at historic and stable lows. The Regional urges that the cost of living be as a serious factor in these proceedings particularly in light of the issue of skyrocketing property taxes. The Regional also emphasizes that its firefighters are insulated increases in the cost of medical care that is a major component of cost of living increases. The Regional reiterate that it proposes to continue to provide firefighters with full health benefits, including eye and dental, through the life of the contract. Accordingly, the Regional argues that the cost of living increases compel only modest wage increases. The Regional compares the 5% per year salary increases proposed by the Union to the minimal cost of living increases seen in recent years and urges that the increases proposed by the Union be rejected.

The Regional addresses the continuity and stability of employment asserting that the substantial credible evidence in the record indicates that the Regional's proposed overall compensation of its firefighters, including level of

benefits and salary, has been, and will remain, an inducement to remain in the long-term employ of the Regional. The Regional asserts that its proposed salaries and benefits are comparable to other similar fire departments throughout the State and the country.

The Regional points out that under its proposal, firefighters would receive a maximum base salary of \$49,023 for 1999. According to the Regional, its proposed salary guide would not reduce any firefighters' base salary compensation. Instead, the Regional proposes that the firefighters' current rate of pay be red-circled until the rates provided on the proposed schedule become equal to or greater than the firefighters' current base salary. In addition, the Regional notes that its proposal would provide a maximum longevity payment in the amount of \$5,000 per year as well as 120 hours of sick time, up to nine 24 hour tours off for vacation for line firefighters and up to 27 eight-hour shifts off for vacation for staff firefighters, a generous clothing and maintenance allowance, monetary educational incentives and full major medical and dental benefits.

The Regional maintains that employees in the private sector do not receive all of these benefits. The Regional reiterates that the average number of paid holidays in the private sector is 7.6 and private sector employees receive an average of eight paid sick days after one year of service. According to the Regional, 69% of private sector employees contributed to the cost of their health benefits while under its proposal, Regional firefighters would receive all these

benefits. Additionally, the Regional asserts that its firefighters do not experience the job instability and stagnant wages experienced by private sector employees. Instead, the Regional asserts that its firefighters enjoy stability, longevity payments up to \$5,000 per year, generous vacation and sick time and great benefits. The Regional maintains that these benefits enhance the continuity and stability of the firefighters' employment.

Furthermore, the Regional points out that no firefighter was laid off while the State had a 5.4% unemployment rate in 1997 resulting in 245,800 people in New Jersey were unemployed as of July 1997. Acknowledging that these rates have decreased in the recent years, the Regional asserts that there is no evidence to suggest that Regional firefighters need to be concerned with unemployment rates. The Regional asserts that the record also demonstrate how stable the employment of the union's membership is compared with the 6.4 million workers unemployed nationwide. The Regional compares the unemployment rate in New Jersey in 1995 of approximately 6% with the 1,113 mass layoffs, totaling 110,267 people in June 1997 alone. The Regional also points out that in March 1999, there were 799 mass layoffs totaling 84,719 workers laid off while Regional firefighters have not faced the possibility of layoffs or downsizing.

The Regional reiterates that its proposal calls for full major medical and dental benefits compared with the private sector where, more often than not,

employees are required to contribute to the cost of their medical benefits. The Regional notes that in 1997, approximately 43.4 million persons in the United States were without health care, which is a 1.7 million person increase from the previous year. The Regional also points out that employees of firms with fewer than 25 employees were less likely to have employer health insurance policies.

The Regional reiterates that salaries and benefits it proposed are extremely comparable to other fire departments. According to the Regional, the record indicates that the overall compensation of its firefighters, including their level of benefits and salary, has been an inducement to remain in the Regional's employ. The Regional maintains that the salary schedule it proposes, combined with clothing allowance, sick leave, holidays, vacations, personal days and longevity demonstrate that its compensation and benefits would place its firefighters on a par with all other firefighters. The Regional points out that the Union did not present evidence that any firefighter was laid off or that the Regional has had any difficulty in hiring officers. In sum, the Regional asserts that its firefighters enjoy remarkable stability of employment and are not plagued with the obstacles and the uncertainties that other employees face.

The Union addresses the statutory criteria beginning with the interest and welfare of the public. According to the Union, this criterion addresses the tension between providing essential services at a low cost versus the employees' morale. The Union maintains that the firefighters' morale is significant because the public

demands the highest quality of service from firefighters to insure against loss of property and to protect the citizens from injury and possible death. Balancing the goal of saving money against the goal of properly compensating the firefighters, the Union points out that one goal of a Regional Fire Department is to create opportunities for improved efficiency and effectiveness. On the other hand, the Union points to the Legislature's recognition that where bargaining units which have contracts with individual municipalities are merged, the terms and conditions of the existing contract shall apply to the rights of the members of the respective units until a new contract is negotiated. N.J.S.A. 40:48B-4.2. According to the Union, the legislature recognized the need and importance of stable labor relations even where there is a clear policy to promote regionalized government services.

The Union asserts that whether or not a regionalized department is successful in creating economies and efficiencies is at issue in balancing the cost saving goals with the employees' morale. The Union points out that the Regional contract created a cash infusion to the five municipalities. Specifically, the Union notes that the sale of property, fire apparatus and equipment, provided the five municipalities with a windfall of millions of dollars. The Union relies upon the Audit Report for December 31, 1999, to show Guttenberg received \$996,000; North Bergen received \$4,458,000; Weehawken received \$1,662,200; West New York received \$3,396,000; and Union City received \$4,613,000. The Union notes that the municipalities also received state aid through the REAP and REDI

programs. According to the Union, the receipt of this state aid resulted in taxpayers receiving tax credits. Specifically, the Union asserts that in West New York alone, the REAP Program resulted in a tax refund of approximately \$400 per taxpayer for a total of \$1.4 million.

The Union also points out that the municipalities as well as the Regional saved \$4,756,764 in salary due to the retirement of 59 firefighters and fire officers. According to the Regional, by inducing 59 of the highest paid firefighters and fire officers who were at the top step of their salary guides as well as the top longevity step, saved several million dollars. The Union calculates that these 59 firefighters and fire officers represent 17% of the Regional's work force earning the most money. The Union maintains that this cost saving must be balanced by the firefighters' morale. The Union asserts that the goal of a newly hired firefighter is to reach the same wages and other terms and conditions of employment as received by fellow firefighters that the firefighter works along side. Accordingly, the Union points out that its goal is to have uniform wages and other conditions of employment as contemplated by the statute. According to the Union, the need for uniformity of wages and terms and conditions of employment is to insure stability in labor relations. The Union emphasizes that paying firefighters varying amounts and having different levels of benefits for people who work side by side cannot be tolerated. The Union contends that in a profession where one's safety is called into question each time the bell rings, the very least that a firefighter can expect in return for risking his life is that he will be treated

the same as fellow firefighters with similar experience. The Union argues that the Regional's proposals reflect a "slash and burn approach" and present an inaccurate picture of dire financial condition. According to the Union the interest and welfare of the public requires a finding in favor of its proposals and of its goal of uniform wages and other terms and conditions of employment, in light of the sums of money held by the Regional.

Turning the comparability criterion, the Union asserts at the outset that there are no employees anywhere who provide a similar service to the public. The Union emphasizes that every time a firefighter is asked to enter a burning structure, he puts his life at risk and unfortunately, the consequences of taking that risk are realized too often. Accordingly, the Union argues that it is not possible to compare the duties of firefighters with any other profession and to find that any similarity of function. The Union maintains that firefighters are true heroes. Specifically, the Union states that:

They [Firefighters] are the sole protectors of the citizens of the municipalities they serve against loss, injury, and death caused by fire, as well as floods, motor vehicle accidents, terrorist attacks and other natural disasters. Firefighters respond to each and every emergency in our society.

Emphasizing that fire fighting is a very hazardous profession, the Union points out that in 1997, firefighters had the highest rate of job-related injuries of all occupations. Specifically, the Union points out that in 1997, more than 40% of all firefighters suffered a job-related injury. The Union underscores these sober

statistics noting that in that same year 26 professional firefighters were killed and that their average age at the time of their death was 39 years old. The Union reports that in 1999, there were 112 firefighter deaths, the highest total since 1989. Emphasizing that the risk of death or injury is very real for firefighters, the Union also highlights other, more subtle risks, such as exposure to contaminants from firefighter gear. The Union cites the Manufacturer User Information Guide where the manufacturers recommend that station-wear should be turned inside out and washed separately from other garments. The Union notes that Manufacturer User Information Guide also cautions firefighters against the use of home washing machines to avoid and prevent the spread of contaminants to other laundry.

The Union asserts that comparison with wages paid to private sector employees supports its proposals. Specifically, the Union relies upon the studies provided by PERC, as well as the government income reports and asserts that the data in these reports support its final offer. The Union points to the private sector wage information compiled by PERC, which indicates that from 1996 to 1997 wages increased by almost 5% and for the same period, the percentage increase for Hudson County is 5.2%. The Union also emphasizes that the State of New Jersey has the second highest per capita income in the nation and that in 1999, the average annual income was \$35,551 in New Jersey. The Union highlights that the percentage increase in per capita income for 1995 through 1998 increased by over 5% statewide. Likewise, the Union points out that overall

annual wages for all current workers increased over 5.3% from 1997 to 1998 with an annual average salary exceeding \$39,000. The Union notes that the annual average percentage increase from 1997/1998 increased 5.7% on a statewide basis and 4.3% in the County of Hudson.

Examining public employment in general and in public employment in similar and comparable jurisdictions, the Union asserts that the evidence it has provided supports its Final Offer. Specifically, the Union asserts that the evidence of comparability it supplied demonstrates that wages and benefits received by the firefighters in the Regionalized Department are below those wages and terms and conditions received by other firefighters in the County and the State.

The Union reviews the documentary evidence that supports its final offer. Specifically, the Union points to the sums each municipality received for transferring its property and fire fighting apparatus to the Regional. Those values as follows:

Guttenberg	\$ 996,000
North Bergen	\$4,458,000
Weehawken	\$1,642,200
West New York	\$3,369,000
Union City	\$4,613,000
Total	<u>\$15,078,200</u>

Next, the Union cites an article titled "Fire Companies Blaze the Way to Regionalization", which indicates that the Regional is now the fifth largest fire

department in New Jersey and that savings to a taxpayer could be \$2.5 to \$5 million dollars, annually. The Union points out that this article bases its cost savings conclusions on the assumption that staffing will be reduced by 18 officers and six firefighters. However, the Union points out that the Regional Department lost 59 fire personnel to retirement at a cost savings of \$4,756,764. Additionally, the Union points to the infusion of cash to municipalities as a result of the sale of the land, apparatus and equipment. The Union concludes that the creation of the Regional has provided an ongoing source of cash savings to the respective municipalities that will provide cash savings for years to come.

The Union relies upon the total salaries for the Regionalized Department in April 1999 and September 2000, which shows that considering only firefighters on the payroll, the Department saved approximately \$3.5 million dollars. Examining staffing levels, the Union emphasizes that in April 1999 there were 332 fire personnel, including 226 firefighters and in May 1999, after retirements, promotions and the hiring of some new firefighters, the total staffing was 286 fire personnel, resulting in a reduction of 46 employees. Specifically, the Union notes that in May of 1999, there were only 191 firefighters, a decrease of 35 firefighters, and the work previously performed by 332 fire personnel was being performed by 286. Relying upon the Regional's established minimum manning requirements, the Union asserts that the Department needs to hire 25 new firefighters. The Union points out that the work of those firefighters is now being

performed by the currently employed firefighters. According to the Union, the fewer men on the job means greater risk on the job.

Examining base salaries on a State-wide basis using the Union City top salary of \$55,957, the Union points out that the firefighters in Edison, Paterson, Englewood, Camden, Rahway, Hackensack, Newark, and Union, all earn more than a Union City firefighter, while Atlantic City and Trenton firefighters earn approximately \$2,000 less than a Union City firefighter and Elizabeth firefighters earn approximately \$400 less than Union City firefighters. According to the Union, comparison with other Hudson County municipalities shows that Hoboken firefighters are paid similarly to Union City firefighters and that Jersey City firefighters are higher paid. Reviewing the information compiled by PERC, the Union emphasizes that analysis of both interest arbitration awards and the voluntary settlements indicates increases for police and fire employees in excess of 4% in 1999.

Addressing the overall compensation received by the employees, the Union asserts that the range in terms and conditions including wages, salary, vacations, holidays, excused leave, insurance and medical hospitalization benefits and all of the economic benefits are within the usual range of benefits for firefighters. The Union notes that these firefighters do not receive unusual benefits that are not received by other firefighters nor by employees of public employment generally.

Continuing its review of the statutory criteria, the Union points to the stipulations on selected contract language that have been discussed herein. Addressing the lawful authority of the employer, the Union emphasizes the testimony of municipal finance expert Vincent Foti that the cap law does not apply to a joint meeting such as the North Hudson Regional Fire & Rescue. Accordingly, the Union asserts that the Cap Law does not apply to the Regional in this instance and there is no limitation imposed by the cap law. Accordingly, the Union asserts that the lawful authority criterion is not relevant in this dispute.

Turning to the financial impact on the governing unit, its residents and taxpayers, the Union explains that this criterion requires consideration, to the extent that evidence is submitted, of how the award will affect local property taxes as well as comparison of the percentage of the municipal purposes element required to fund the employee's contract in the preceding local budget year with that required by the award for the current local budget year and the impact of the award on each income sector of the property tax of the local unit; and the effect of the award on the governing body's ability to maintain existing local programs and/or to expand those programs and to initiate new programs. According to the Union, the Regional did not submit evidence on the impact the award may have on these statutory concerns. The Union maintains that this information, if available, would have had to come from the municipalities since the Regionalized Department does not have taxing authority nor are there other

programs unrelated to the firefighters which is the responsibility of the Regionalized Department.

However, the Union contends that there is a significant financial impact on the governing unit because the Regional has saved money from the fire fighting costs to the five municipalities and their residents have received tax credits. Accordingly, the Union argues that this factor favors its final offer. The Union points out that the 2000 Budget for the Regional does not identify any great cost increases and the difference between the 2000 budget and the 2001 budget is approximately \$800,000 or a 3.3% increase. The Union also points out that the municipal contributions increased from \$22.8 million to \$23.9 million or approximately \$1.1 million. The Union reiterates that the December 31, 1999 audit shows disbursements to the five municipalities of over \$15 million. According to the Union, the increase in the contributions from the municipalities has been offset by the sale of property and equipment and an award of its final offer will have no impact upon the taxpayers in the respective municipalities.

The salary structures used in the municipal fire departments are relevant in determining the salaries and salary structure for the Regional's firefighters. The firefighters are providing the same service in the same environments and have been living under a status quo in terms and conditions of employment based upon the prior agreements. Each of the municipal departments that compose the Regional had at least two salary schedules depending upon the

firefighters' date of hire although, for all practical purposes, virtually all employees are now placed on steps contained in the last negotiated salary schedules. Accordingly, review of the salary structure in each municipality before regionalization sets an appropriate starting point for review of the salary issue.

In Weehawken the last contract as of January 1, 1999, the basic salary scale provided a top step salary of \$53,516. In Weehawken, those firefighters hired on or after July 1, 1994 were placed on a seven step salary guide with an entry level salary of \$23,928 and a top step salary of \$53,516 at the end of the sixth year after receiving a salary increase effective January 1, 1999. That salary schedule provided as follows:

Schedule C (Firefighters hired on or after July 1, 1994)

	1/1/99
Entry Level	23,928
End of 1 st year	28,862
End of 2 nd year	33,795
End of 3 rd year	38,728
End of 4 th year	43,662
End of 5 th year	48,595
End of 6 th year	53,516

In Weehawken, the base hourly rate for employees is calculated by adding the firefighter's yearly base salary and his annual longevity payment and then dividing that sum by 2184 hours. Article VII, Section A provided for overtime pay for work in excess of the normal workday or workweek. Article VII, Section C

provided an additional payment of 4 hours per pay period, or two hours per week “in recognition of the average 42 hour workweek of the fire department.” Section C further states that this compensation be paid in the regular periodic paycheck and be considered part of annual base salary “upon completion of 19 years of service.”

In North Bergen, as of January 1, 1998, the basic salary scale provided a top step salary of \$52,701 for firefighters hired prior to April 1, 1994. That salary increased to \$53,623 effective January 1, 1999. Firefighters hired between April 1, 1994 and October 17, 1997 reached the same top step salaries on a five step salary guide which provided as follows:

	1998	1999
1 st year	33,128	33,707
2 nd year	43,994	44,763
3 rd year	47,073	47,896
4 th year	50,017	50,892
5 th year	52,701	53,623

Firefighters hired in North Bergen after October 17, 1997 were placed on a six-step guide with a starting salary of \$25,000 effective January 1, 1998, increasing by 1.75% to \$25,437 effective January 1, 1999. That salary guide provided as follows:

	Jan.1, 1998	Jan 1, 1999
1 st year	25,000	25,437
2 nd year	30,540	31,074
3 rd year	36,080	36,711
4 th year	41,621	42,349
5 th year	47,161	47,986
6 th year	52,701	53,623

Pursuant to Article VII, Section A(1), the firefighters receive one hour compensation at straight time pay in consideration for the two hours over forty worked by firefighters each week. This payment is "included in base pay."

In West New York, firefighters hired before January 1, 1999 earned \$53,358 after their sixth year, and \$53,377 after their eighth year and thereafter their salary increased by minute amounts to the 25th year where the salary was increased to \$53,450.

Current Firefighters	1/1/99
1 st year Firefighter	\$27,139
2 nd year Firefighter	\$32,380
3 rd year Firefighter	\$38,798
4 th year Firefighter	\$42,913
5 th year Firefighter	\$48,106
6 th year Firefighter	\$53,358
8 th year Firefighter	\$53,377
12 th to 15 th year Firefighter	\$53,395
16 th to 19 th year Firefighter	\$53,414
20 th to 24 th year Firefighter	\$53,432
25 th year Firefighter	\$53,450

The West New York salary schedule was reduced to eight steps of firefighters hired after January 1, 1999 with a starting salary of \$24,500 and an eighth year salary of \$53,377. That salary schedule provided as follows:

1 st year Firefighter	\$24,500
2 nd year Firefighter	\$27,500
3 rd year Firefighter	\$29,327
4 th year Firefighter	\$32,500
5 th year Firefighter	\$34,154
6 th year Firefighter	\$38,981
7 th year Firefighter	\$43,808
8 th year Firefighter	\$53,377

In West New York, pursuant to Article XII, Sections 1 and 3, firefighters also received one and one-quarter (1 ¼) hours pay per week in addition to their annual salary. The basic weekly salary was calculated by dividing the annual salary by 52 and adding one and one quarter (1 ¼) hours of pay per week. The hourly rate was computed by adding the firefighter's base salary to his longevity pay and dividing by 1950. Effective January 1, 1999, the hourly rate was computed by adding the firefighter's base salary to his longevity pay and dividing by 2080.

In Union City, firefighters hired before July 1, 1993 earned a top step salary of \$55,957.38 effective July 1, 1998. Employees hired on or after July 1, 1998 earned a starting salary of \$26,633.38 in their first year and a top step salary of \$55,957.38 in their sixth year of service. The Union City salary schedule for those employees hired on or after July 1, 1993 is as follows:

	7/1/98
1 st Yr	\$26,633.38
2 nd Yr	\$33,535.23
3 rd Yr	\$39,144.35
4 th Yr	\$44,746.30
5 th Yr	\$50,352.46
6 th Yr	\$55,957.38

In Union City, the hourly rate is calculated as the sum of a firefighter's annual compensation, including base salary, longevity and education incentive, divided by 2080 hours. There is no contractual reference to any additional hours of pay added to salary in consideration for work performed on a normal average workweek for 42 hours.

Firefighters employed prior to regionalization were hired and paid pursuant to labor agreements negotiated in each of the municipalities. Those agreements reflect a long history of negotiations. Those negotiations included new salary guides for new hires, different levels of salaries, various treatments of non-overtime hours worked between 40 and 42 during the normal workweek, various treatments concerning compensation roll-ins to base salary and different methods of calculating hourly rates for purposes such as overtime. A direct comparison of the various salary guides cannot be made with precision because of all of the various factors which may effect the salaries which appear in the salary guide. In addition to the above considerations, other significant factors bear upon direct comparison above and beyond base salary. These include non-base salary compensations such as holiday pay, clothing allowance, longevity

pay and service differentials. The record does not reflect a single rate of hourly pay which encompasses all forms of compensation.

I conclude that the interests of the Regional and these employees are best served by the establishment of a single salary guide for all current employees who were employed by the individual municipalities prior to regionalization. This would accomplish a merger or unification of base salaries at a point in the near future. In doing so, there will be individual effects which will cause some employees to receive more base salary compensation than others during this contract term in order to achieve a unification in base pay. To the extent that this occurs, I do not consider these individual effects as causing inequities between and among the firefighters but rather the inevitable consequence of creating an equitable salary system. Other non-base salary compensations which are dealt with separately in this award may not achieve the same merger or unification during this contract term because of longstanding and significant differences in these non-base salary compensations some of which can more equitably be dealt with over the passage of time. There may also be instances where, as in clothing allowance, I have awarded a sum as a new benefit regardless of whether any such prior allowance had previously been incorporated into base salary as reflected in the salary schedules.

As a first step towards a unified salary system is the creation of a new salary schedule. I base this system principally upon the Union City salary

schedule which is the highest schedule among the municipalities. I am not persuaded that the Regional's proposal for red-circling the salaries for firefighters previously employed by the municipalities is reasonable in that a dramatic gap would be created between their salaries and firefighters working in neighboring communities and because there would be a virtual salary freeze for these firefighters. I am also not persuaded that the Union's proposal is reasonable because it proposes higher than average increases which do not include the costs of unification.

Union City firefighters have the highest salary schedule among the municipalities. An award of a 3% annual adjustment on this schedule effective July 1, 1999 would yield the following increases and salary schedule for Union City firefighters through June 30, 2004.

	7/1/99	7/1/00	7/1/01	7/1/02	7/1/03
Step 1	27,432	28,255	29,103	29,976	30,875
Step 2	34,541	35,578	36,645	37,744	38,877
Step 3	40,319	41,528	42,774	44,057	45,379
Step 4	46,089	47,471	48,895	50,362	51,873
Step 5	51,865	53,419	55,021	56,672	58,372
Step 6	57,635	59,365	61,145	62,980	64,870

In varying degrees, the prior salary schedules in Weehawken, West New York and North Bergen contain lesser amounts on each salary step with the salary maximum step being the most relevant step because the vast majority of firefighters in these departments would have reached their maximum salary step on those guides by the end of this agreement. I then apply the same 3% across-

the-board in each of the five contract years, effective July 1 in each contract year for each firefighter in these departments based upon their existing salary schedules. At maximum step, effective July 1, 2003, the individual levels of salaries for those employees employed by the individual municipalities will reflect the following.

	Maximum Step July 1, 2003
North Bergen	62,163
Weehawken	62,039
West New York	61,878
Union City	64,870

I conclude that there should be a unification of salaries but that unification be achieved in a manner causing reasonable financial impact on the Regional. Unification will be achieved on January 1, 2004 by advancing the salary maximums for North Bergen, Weehawken and West New York to the level of Union City. This will require a salary rate annual adjustment in North Bergen of an additional \$2,707 or 4.35% at a six month cost of \$1,353.50 for each firefighter at maximum. This will require a salary rate annual adjustment in Weehawken of an additional \$2,831 or 4.56% at a six month cost of \$1,415.50 for each firefighter at maximum. This will require a salary rate annual adjustment in West New York of an additional \$2,992 or 4.83% at a six month cost of \$1,496. The average annual adjustment for each firefighter at maximum is \$2,843.33 at an average six month cost of \$1,421.66. The annual cost of this adjustment averages 4.58% for those firefighters receiving the adjustment at a six month

cost of 2.29%. The total net economic change averaged over the five year period for those firefighters receiving this adjustment is .091% and a total economic change averaged over the five year period for the six month cost of this adjustment amounting to .0455%. This method of adjustment is more reasonable than having an adjustment transition throughout the five year period because the latter method would cause cumulative costs throughout the five years well in excess of implementing the adjustment on January 1, 2004.

Firefighters formally employed by Union City shall receive a \$1,000 one-time cash payment not added to base simultaneous with the unification of salaries effective January 1, 2004 based upon equitable considerations. Although the vast majority of firefighters previously employed by the individual municipalities will be at the salary maximum in the final contract year, the sole salary guide for all of these firefighters shall be reflected by the former six step Union City salary schedule now adjusted to cover "all firefighters employed by the NHFRD who were previously employed by the municipalities of Union City, Weehawken, West New York, North Bergen and Guttenberg at the time of regionalization." For those firefighters who do not achieve the salary maximum step previously set forth in their old salary schedules effective July 1, 2003, they shall move to the new salary maximums in accordance with their normal step movement at the end of the quarter following the firefighter's anniversary date.

Other salary issues remain. One concerns the calculation of an hourly rate which varied in the prior agreements. The Regional and the Union each

agree to calculate an hourly rate based upon taking an employees annual compensation divided by 2080 hours. They also agree to incorporate other types of compensation into the calculation of annual compensation. The Regional's proposal is limited to the inclusion of longevity while the Union's propose to include "all items." The additional proposals deal with payroll administration.

The prior agreements calculated hourly rates ranging from 1950 hours to 2184 hours. The 2184 hours is based upon the number of hours yielded by the normal work schedule of the 24 on and 72 off. Consistent with the parties' positions, I award an hourly rate based upon 2080 hours, the same standard which existed in West New York and Union City. With respect to the determination of an employee's annual compensation, I award the inclusion of base salary, longevity, holiday pay, educational incentive pay and, if applicable, service differential. These items added to base salary shall be considered part of base salary and paid on a periodic basis.

With respect to the Union's proposal to receive three hours per week in addition to base salary because firefighters work a 42 hour week, I note the following based upon a reading of clear contract terms. Previously, North Bergen included one hour of straight time pay in its salary schedule for the purpose the Union now proposes. In West New York, the basic weekly salary was calculated by adding 1.25 hours of pay per week to weekly pay as determined by the salary schedule divided by 52. In Weehawken, employees received 2 hours compensation per week (4 per pay period) but not as part of base salary until

completion of 19 years of service. This pay was not reflected in the salary schedule. The Union City agreement contains no reference to the inclusion of additional base pay in the salary schedule or the addition of any additional compensation for hours of work included in the normal workweek. The average 42 hour workweek is based upon the normal workweek proposed by the Union and awarded herein. The normal workweek is derived by the 24 hours on and 72 hours off work schedule which averages to 2184 or an average 42 hour workweek. None of the hours in the normal work schedule require overtime payments as mandated by law. Because I have awarded the unification of salaries for North Bergen, West New York and Weehawken to the level of Union City, there is little support for now adding additional hours of pay for work performed pursuant to a normal workweek where overtime is not compelled by the Fair Labor Standards Act given the absence of any prior payment in Union City. Further, the vast majority of agreements in evidence in other municipal agreements do not provide for additional salary added to base pay for hours performed during the normal work week for firefighters on a 24 hours on and 72 hours off work schedule. This result is reasonable given the absence of such payment in Union City, the inclusion of this payment in the salary schedule in at least the prior North Bergen agreement and the unification of salaries at the percentage levels in North Bergen, West New York and Weehawken of 4.35%, 4.83% and 4.56% respectively. Accordingly, I deny the Union's proposal on this issue but award a continuation of the additions to base pay provisions in the prior agreements through January 1, 2004, the date of salary unification.

I award the Union's proposals with respect to payroll administration. The record reflects that these proposals are reflective of current practices. They include the following:

1. Salary will be paid in regular bi-weekly installments on the Wednesday of each week. If a holiday falls on a Wednesday, then the pay will be distributed on the Tuesday of said week.
2. The Department shall establish direct deposit and every effort shall be made to have checks available at 8:00 a.m. on payday.

I next turn to the issue of salaries for firefighters employed by the NHFRD after regionalization. Although I agree with NHFRD's contention that there should be a new salary schedule for firefighters employed by the NHFRD after regionalization, the arguments advanced by the Union in support of the avoidance of a salary disparity at salary maximum are more persuasive than the Regional's position that there should be a permanent difference in salary maximums regardless of the length of employment of these firefighters. A comparative analysis of firefighters in all of the municipal jurisdictions in northern and central New Jersey reflect that the salary maximums awarded herein are reasonable in comparison, while the adoption of salary maximums at a permanent disparate level would result in unfavorable comparisons for these firefighters who must perform firefighting services in highly urbanized and densely populated jurisdictions. However, I also conclude that a salary guide

which provides for a greater length of time between hiring and reaching salary maximum is warranted for firefighters hired by the Regional as well as some modifications in certain benefit levels such as longevity and terminal leave which are dealt with separately in other sections of the award. A greater length of time between hiring and salary maximum step but the ability to reach maximum step will ensure comparable and unified salaries ultimately for all firefighters, while also insuring cost savings to the Regional for these firefighters when a comparison is made between the cumulative costs of their progression through the awarded salary schedule when compared with the prior salary schedules which existed in each municipality.

The Regional's salary guide for new hires effective July 1, 1999 provided the following salary schedule which it proposes in this proceeding:

NHFRD	Eff 7/1/99
New Hire during training	25,000
New Hire after training	29,000
Step 1	32,337
Step 2	35,674
Step 3	39,011
Step 4	42,348
Step 5	45,685
Step 6	49,023

I adopt this schedule and award the same 3% across-the-board increases to the above guide for each of the following four contractual years effective July 1, 2000. In addition, the new hire salary schedule shall contain two additional

steps beyond that proposed by the Regional which will result in equalization of salary for all firefighters employed by the Regional. All steps shall provide for step movement at the end of each quarter following each firefighter's anniversary date. Step 1 shall commence no later than the end of the quarter following each firefighter's first full year of employment. The new hire salary schedule shall read:

NHFRD	Eff 7/1/99	7/1/00	7/1/01	7/1/02	7/1/03
New Hire during training	25,000	25,750	26,523	27,318	28,138
New Hire after training	29,000	29,870	30,766	31,689	32,640
Step 1	32,337	33,307	34,306	35,336	36,396
Step 2	35,674	36,744	37,847	38,982	40,151
Step 3	39,011	40,181	41,387	42,628	43,907
Step 4	42,348	43,618	44,927	46,275	47,663
Step 5	45,685	47,056	48,467	49,921	51,419
Step 6	49,023	50,494	52,009	53,569	55,176
Step 7	51,863	53,419	55,021	56,672	58,372
Step 8	57,636	59,365	61,145	62,980	64,870

Consideration must be given to the financial impact of the terms of the award as well as the lawful authority of the employer. On this latter point, the Regional, as a joint meeting, does not have a municipal cap limitation. However, this fact does not render statutory spending limitations irrelevant because the Regional must receive funding from the five municipalities who are subject to statutory spending limitations. The record does not reflect that the costs of the award would compel any of the municipalities to exceed its statutory spending limitation.

I also conclude that this award can be funded without adverse financial impact on the municipalities, the Regional or the taxpayers from the five municipalities. The record reflects that regionalization has lowered the costs of providing fire services and that the municipalities and taxpayers have benefited financially by regionalization. These conclusions do not automatically weigh against the Regional's arguments on financial issues because it is inherent in the policy issues promoting regionalization that efficiencies are intended to be advanced by a regionalized approach to providing services. However, to the extent that savings have been realized during the term of the first agreement, these savings must be considered when assessing the impact of costs.

Regionalization has resulted in a reduction of staffing. Prior to regionalization there were 332 fire personnel, 226 of whom were firefighters. The staff rosters submitted in both cases reflect a reduction in fire personnel to 286, of whom 191 were firefighters. The retirement of 59 officers and firefighters caused a reduction of over \$4 million in payroll costs and the Regional is now operating with 35 fewer firefighting personnel. Most of these retirements come under an early retirement incentive program designed for the Regional. The Regional was provided incentive assistance from the State to support the costs of the early retirement program. An audit of the Regional's financial statements reflect that the Regional was awarded Regional Efficiency Development Incentive Assistance from the State of New Jersey in the amount of \$4,000,000.00. A portion of the grant in the amount of \$1,700,000.00 was to be used for the Early

Retirement Incentive Program of the North Bergen Regional Fire and Rescue Joint Meeting. These grant funds were disbursed evenly to the municipalities in which the retirees originated. The four municipalities of Weehawken, West New York, Union City, and North Bergen received \$425,000.00 each to aid in the additional pension costs which paid for the retired firefighters and fire officers. The municipalities also did not have to include pension contributions in the amount of \$6 million as a result of S-1961 which provided relief in this area.

New firefighters are being hired as evidenced by the hiring of 13 firefighters on May 17, 2000 although the Regional is still operating with some 25 fewer firefighters than prior to regionalization. The savings from a reduction in personnel will result in less cost to the municipalities compared to their obligations necessary to fund the pre-existing table of organization. As a result of this award, funding from the member municipalities to support the terms and conditions of employment for new firefighters will be less per firefighter than the funding required for firefighters each municipality had previously employed. There will also be long-term savings resulting from the awarding of modified benefits for new firefighters including but not limited to a lower and longer salary guide, a reduction in terminal leave and longevity which will promote long-term cost offsets.

I also note that the member municipalities who have benefited financially from the regionalization of fire services have been aware of their continued

obligation to provide annual funding to the Regional to support the costs of receiving fire services from the Regional. I presume that those municipalities are cognizant of the Regional's statutory obligation to maintain enforce a status quo in terms and conditions of employment upon regionalization as well as the Regional's obligation to engage in negotiations for changes to the status quo after the Regional has assumed the negotiations obligation previously borne by the municipalities. Simply put, the municipalities are aware that the Regional's obligation in this proceeding includes costs retroactive to the time of regionalization as well as costs going forward to the expiration date of this contract and beyond. In this respect, it is reasonable for the Regional to anticipate that the municipalities are required to fund the terms of this award in the same manner in which they would have been obligated to fund the terms of new labor agreements had the municipalities continued to employ the firefighters.

Although the five municipalities will have to contribute funds to the Regional to support the cost of the award, it is relevant that these municipalities have benefited significantly from the regionalization of the fire departments since April 1, 1999. The sale or lease of property and apparatus by the municipalities to the Regional through the Hudson County Improvement Authority has resulted in disbursements to the five municipalities in the amount of \$15,078,200. These transactions were entered into pursuant to the Consolidated Municipal Service Act (N.J.S.A. 40:40b-e1 et sec.).

The municipalities also realized additional financial benefits by the application of the Regional Efficiency Aid Program (REAP) which provided more than \$2 million in tax credits to property owners in the five municipalities which created the Regional and by way of example, \$1.4 million to West New York.

The Regional also received \$1,085,828.43 from the member municipalities under retained earnings from the prior year's budget reserves as reflected in the Regional's Report of Audit for the Year Ending December 31, 1999.

Substantial evidence was submitted into the record with respect to comparisons of base salaries for firefighters in municipalities in both Hudson County and throughout the State of New Jersey. Most of the comparables involve, as here, urban departments. Thorough review of these comparables reflect salary increases between 3.0% and 4.0% during the relevant contract term with sporadic increases in excess of 4.0%. The averages fall between 3.5% and 4.0%. When costs of these settlements are compared with the costs of this award, the costs of the first four years of the award are less than the averages of the comparable settlements. Because of this fact, the cumulative costs of the comparable settlements are in excess of the costs of this award. I have taken this into consideration in fashioning the terms of this award which, mainly due to unification, include higher than average costs towards the end of the five years. When the costs of this award are then apportioned over the five year period and beyond, these costs clearly fall within the range of settlements for virtually all

paid firefighter contracts within the State of New Jersey. A relevant factor in balancing the existing costs of this award are the elements of the award which lower the cost for firefighters the Regional has hired and will hire in the future.

It is difficult to calculate the precise costs of the award due to the unique circumstances of merging several prior labor agreements and a new hire package into one single agreement. However, the parties have provided cost analysis which have served as useful guides.

The total payroll as of January 1, 2000 is reflected as \$10,707,853 for 197 firefighters. Top step pay in North Bergen was \$53,623 for 57 firefighters. Top step pay in Union City was 55,957 for 58 firefighters. Top step pay in West New York was \$53,377 for 55 firefighters. Top step pay in Weehawken was \$54,039 for 27 firefighters. One percent (1%) of total payroll equaled \$107,078. Three percent (3%) annual increases effective on July 1 for each of the five contract years reflects a net annual cost of \$321,235 effective July 1, 1999, an additional \$330,872 effective July 1, 2000, an additional \$340,798 effective July 1, 2001, an additional \$351,022 effective July 1, 2002, and an additional \$361,553 effective July 1, 2003. These calculations equate to a total new annual cost of \$1,354,458, representing a total payroll of \$12,413,333. The rate increase for equalization at 4.58% equates to \$543,703 at a six month cost of \$271,852. When the rate increases associated with regionalization are calculated on an annualized basis over the course of five years, the percentage increase averages

.091% equating to \$109,237. The clothing allowance awarded calculates to approximately an additional 1.0%.

I believe the terms of the award will promote the continuity and stability of employment for paid firefighters employed by the Regional. There is uniform salary schedule for all paid firefighters and I have attempted to merge major terms and conditions of employment to the extent which I believe feasible. The award provides reasonable and equitable terms while also rejecting the Union's main argument that all previously employed firefighters should be raised to the top level of any benefit previously received due to the excessive costs associated with implementing the Union's theory, and rejecting the Regional's main argument that the prior agreements should be given little or no weight in crafting a new agreement.

I have also considered the evidence with respect to cost of living. Increases in the consumer price index are clearly below the terms of the award but, given the entire record of this proceeding, I cannot conclude that the most weight should be given to this criteria. It is relevant and has been considered and applied. Application of this standard has weighed strongly against the costs of an award consistent with or close to the position taken by the Union in this proceeding. The Regional's arguments which rely upon financial impact and cost of living have been sustained to the extent that the terms of the award do not

reflect the substantial costs required by awarding the Union's proposals with respect to salary and other major terms and conditions of employment.

LONGEVITY

The **Regional** proposes the following contractual language:

Section 8.4: At the completion of the above pay steps to maximum an employee shall then be covered by the following longevity provision:

7 to 8 years (assuming normal pay steps)	\$1,000
9 to 11 years	1,750
12 to 14 years	2,500
15 to 19 years	3,250
20 to 22 years	4,000
at the completion of 23 years of service	5,000

The longevity payments set forth in this section of Article 8 are not cumulative.

The **Union** proposes the following contractual language:

- A. All employees of the fire department shall be compensated for the years of service within the department in accordance with the following schedule:

Years of Service:	% of Base Salary
0-3 years	2%
beginning of 4-5 years	6%
beginning of 6-8 years	10%
beginning of 9-11 years	13%
beginning of 12-14 years	17%
beginning of 15-18 years	20%
beginning of 19-22 years	22%
beginning of 23+ plus years	23%

- B. The eligibility date shall be defined as the employees' anniversary date.
- C. Longevity payments shall be included in the bi-weekly salaries and used for the purpose of calculating hourly rate.

The Regional points to Mr. Michelin's testimony that Paragraph A of the Union's proposal is based upon the Union City contract but is 2% more on each step. The Regional notes that Mr. Michelin acknowledged that his efforts to increase longevity payments by 2% in Union City during the last round of negotiations had been unsuccessful. The Regional emphasizes Mr. Michelin's testimony that during the last five years, Union City has not had difficulty recruiting qualified applicants and that no Union City firefighter resigned to take employment elsewhere. Accordingly, the Regional asserts that the current structure, salaries, and longevity has been sufficient to maintain the current work force or to recruit qualified firefighters.

Reviewing longevity benefits under the prior municipal contracts, the Regional points out that West New York firefighters received 4% longevity beginning with their fifth year of service, 6% longevity beginning with their eighth year of service, 8% longevity beginning with their 12th year of service, 10% longevity beginning with their 16th year of service, 12% longevity beginning with their 20th year of service, and 14% longevity beginning with their 25th year of service. Continuing, the Regional notes that Union City firefighters received 4% longevity during years four through five, 8% longevity during years six through eight, 11% longevity during years nine through 11, 15% longevity during years 12

through 14, 18% longevity during years 15 through 18, 20% longevity during years 19 through 22, and 21% longevity during years 23 and above. Similarly, North Bergen firefighters received 4% longevity after four years of service, 6% longevity after seven years of service, 8% longevity after 11 years of service, 10% longevity after 15 years of service, and 12% longevity after 19 years of service. The Regional continues its review of longevity benefits noting that Weehawken firefighters received 2% longevity after three years of service, 4% longevity after seven years of service, 6% longevity after 11 years of service, 8% longevity after 15 years of service, and 10% longevity after 19 years of service.

The Regional turns to Atlantic City, Elizabeth, Hoboken, Jersey City, Newark, Trenton and Patterson as sources of comparison throughout the State of New Jersey. Specifically, the Regional notes that Atlantic City firefighters receive 2% longevity during years five through nine, 4% longevity during years ten through 14, 6% longevity during years 15 through 19, and 10% longevity during years 20 and beyond. The Regional explains that Elizabeth firefighters receive 2% longevity during years five through nine, 4% longevity during years ten through 14, 6% longevity during years 15 through 19, 8% longevity during years 20 through 24, and 10% longevity during years 25 and beyond. Hoboken firefighters receive 2% longevity during years four through six, 4% longevity during years seven through nine, 6% longevity during years ten through 12, 8% longevity during years 13 through 15, 10% longevity during years 16 through 18, 12% longevity during years 19 through 21, 14% longevity during years 22

through 23, and 16% longevity during years 24 and above. Jersey City firefighters receive 2% longevity during years four through seven, 4% longevity during years eight through 11, 6% longevity during years 12 through 15, 10% longevity during years 20 through 22, 12% longevity during years 23 through 24, 14% longevity during years 25 through 27, and 16% longevity for years 28 and beyond. Newark firefighters receive 4% longevity during years 5 through 9, 6% longevity during years 10 through 14, 6% longevity during years 15 through 19, 10% longevity during years 20 through 24, 12% longevity during years 25 through 29, and 14% longevity thereafter. Paterson firefighters receive 2% longevity during years five through nine, 4% longevity during years 10 through 14, 6% longevity during years 15 through 19, 10% longevity during years 20 through 23, and 12% longevity during years 24 and above. Trenton firefighters receive 2% longevity during years five through nine, 4% longevity during years ten through 14, 6% longevity during years 15 through 19, 10% longevity during years 20 through 23, 12% longevity after year 24, and 13% longevity after year 29.

Looking nationwide, the Regional compares its firefighters to those in New York City, Phoenix and San Diego. According to the Regional, New York City firefighters receive \$2000 for longevity during years five through nine, \$3,000 for longevity during years ten through 14, \$4,000 for longevity during years 15 through 19, and \$5,000 for longevity during years 20 and beyond. Noting that Phoenix firefighters do not receive longevity pay, the Regional points out that

San Diego firefighters receive \$80 for each full year of service in excess of five years up to maximum of \$4,000.

The Regional reiterates that its firefighters will enjoy both extremely competitive salaries and other favorable benefits under its proposal. The Regional emphasizes its longevity proposal which includes \$1,000 annual payments during years seven through eight of service with the Regional; \$1,750 during years nine through 11 of service with the Regional; \$2,500 during years 12 through 14 of service with the Regional; \$3,250 during years 15 through 19 of service with the Regional; \$4,000 during years 20 through 22 of their service with the Regional; and \$5,000 at the completion of the 23rd year of service with the Regional. According to the Regional, its longevity proposal compares favorably with longevity payments received by firefighters throughout the United States. The Regional contrasts its proposal with the Union's proposal that all firefighters be compensated for the years of service within the department at rates ranging from 6% to 23%. Noting that the Union asserts that its proposal is based upon the Union City contract, the Regional points out that the Union's proposal is actually 2% greater than the Union City contract on each step. The Regional asserts that the percentages proposed by the Union exceed longevity payments received by any other firefighter in the United States.

The Regional contends that a flat longevity rate is the best method to reward a firefighter for his years of service with the fire department. The

Regional maintains that a longevity percentage, as proposed by the Union, has a compounding effect which would disproportionately reward firefighters for their years of service. According to the Regional, a longevity percentage results in giving firefighters an additional annual raise. The Regional illustrates the compounding effect of a percentage longevity rate by reference to a ten year firefighter earning a base salary of \$59,227 in 1999 plus a 13% longevity payment, which amounts to \$7,700. The Regional calculates that totaling base salary and longevity, this firefighter would receive \$66,927. The Regional calculates further that under the Union's proposals, this same firefighter would receive a base salary of \$62,188 plus a 13% longevity payment of \$8,084, for a total base salary and longevity of \$70,272. According to the Union, this firefighter would receive an additional \$384 in 2000 though he remains in the same longevity bracket. According to the Regional, this example demonstrates that this firefighter is not only receiving his annual base salary increase, but also receiving an increased longevity payment that varies with annual base salary.

The Regional characterizes the increase in longevity as a "hidden" salary increase in addition to his reward for time of service with the department. The Regional maintains that the Union has not offered testimony justifying two annual salary increases for its firefighters. The Regional urges adoption of a flat dollar rate in recognition of years of service, as is used in New York City, as a more reasonable approach. However, if a percentage rate longevity clause is awarded, the Regional urges rejection of the longevity percentages proposed by

the Union because they exceed longevity percentages received by other New Jersey firefighters. The Regional calculates that under the Union's proposal, firefighters could receive as much as \$17,030 in longevity in today's dollars.

Accordingly, the Regional seeks an award of flat rate longevity proposal offered and denial of the percentage rate longevity proposal offered by the Union.

The Union notes that both parties propose the payment of longevity and points out that its is modeled upon the Union City contract. According to the Union the steps, or years of service, included in its proposal are identical to the current Union City schedule and the percentage of base salary at each step has been increased by 2% per year. According to the Union the proposed increase in longevity is justified because the longevity guide has not been changed for many years. In contrast, the Union points out that the Regional's proposal would change the years of service and would provide significantly lower dollar amounts rather than a percentage of base salaries. Emphasizing that the burden to change an existing benefit falls on the party seeking that change, the Union asserts that the Regional has offered no rationale as to why the years of service should be changed. The Union contends further that the Regional has not offered rationale or evidentiary support justifying its proposed change to dollar amounts instead of a percentage of base salary. The Union asserts that its would maintain consistency while under the Regional's proposal, every employee would suffer a reduction in his/her longevity. The Union acknowledges that

under its proposal, some firefighters would receive an increase. Additionally, the Union seeks to maintain the current practice of including longevity payments in the bi-weekly salary for purposes of calculating the hourly rate as well as regarding the eligibility date for an increase in longevity.

The parties have both proposed longevity schedules. The Regional's proposal would provide fixed sum longevity payments, while the Union's would provide longevity as a percentage of salary. The previous agreements in each of the municipalities provided longevity benefits as a percentage of salary. However, some of the agreements included two longevity schedules based upon the firefighter's date of hire. Review of the longevity benefits provided under the predecessor agreements follows.

In Weehawken, firefighters received longevity of 4% commencing after four years of service with the top benefit of 12% of base pay after nineteen years of service. For Weehawken firefighters the longevity benefit provided as follows:

After four (4) years of completed service	4%
After seven (7) years of completed service	6%
After eleven (11) years of completed service	8%
After fifteen (15) years of completed service	10%
After nineteen (19) years of completed service	12%

In Weehawken, longevity is calculated and added to base salary and paid twice a year, in March and in September.

In North Bergen, firefighters hired before April 1, 1994 receive longevity of 2% commencing after three years of service, with the top benefit of 12% of base pay after twenty years of service. For North Bergen firefighters, hired before April 1, 1994. The longevity benefit provided as follows:

After three (3) years of service	2%
After six (6) years of service	4%
After nine (9) years of service	6%
After twelve (12) years of service	8%
After fifteen (15) years of service	10%
After twenty (20) years of service	12%

North Bergen firefighters hired after April 1, 1994 began receiving longevity after five years of service with a top benefit of 10% of base pay after 24 years of service. The longevity benefit provided to North Bergen firefighters hired after April 1, 1994 is as follows:

Zero (0) to five years completed service	0%
Completion of five (5) years through completion of ten (10) years	2%
Completion of ten (10) years through completion of fifteen (15) years	4%
Completion of fifteen (15) years through completion of twenty (20) years	6%
Completion of twenty (20) years through completion of twenty-four (24) years	8%
Completion of Twenty-four (24) years	10%

In West New York, firefighters receive 4% of base annual salary beginning with the fifth year of service and beginning with the 25th year of service received a top longevity benefit of 14% of base annual salary. The longevity benefit provided to West New York firefighters is as follows:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

In Union City, firefighters receive 4% of base pay beginning with the fourth year of service and beginning with the 23rd year of service received a top longevity benefit of 21% of base annual salary. The longevity benefit provided to Union City firefighters is as follows:

<u>Years of Service</u>	<u>% of Base Salary</u>
0-3 years	0%
4-5 years	4%
6-8 years	8%
9-11 years	11%
12-14 years	15%
15-18 years	18%
19-22 years	20%
23+ years	21%

In Union City, longevity increments are paid bi-weekly, along with salaries.

On the issue of longevity for firefighters previously employed by the municipalities, I conclude that a unification on this issue should be achieved. Because salaries have been unified, it is reasonable to also unify longevity benefits but in a manner which does not produce harsh inequities or windfalls to employees.

The labor agreements in the member municipalities varied widely on the issue of longevity benefits. Based on those labor agreements noted above, the longevity scheme in Weehawken range from 2% to 10% for years of service between 3 and 19. The longevity scheme in North Bergen ranges from 2% to 12% for years of service between 3 to 20. The longevity scheme in West New York ranges from 4% to 14% for years of service between 5 and 25. The longevity scheme in Union City ranges from 3% to 21% for years of service between 3 to 23. A retention of the specific longevity programs previously enjoyed would result in substantial disparities in compensation inconsistent with having a single new employer.

The adoption of a longevity scheme reflecting the schedule of years of service and percentage of longevity pay as now provided in the West New York agreement represents the most feasible longevity program for firefighters employed by the Regional who were previously employed by the member municipalities. That program provided:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

This schedule shall be effective January 1, 2003 for service accruing through December 31, 2002. Employees shall receive longevity pursuant to their

prior schedules through December 31, 2002. This schedule will provide more than currently provided in Weehawken and North Bergen, the same as in West New York, but less than provided in Union City. Firefighters previously employed by Union City who are receiving 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they currently enjoy but the percentage received will not increase pursuant to the former schedule. The net effect of the new program is to provide the same maximum longevity for firefighters previously employed by West New York, an increase in maximum longevity for firefighters previously employed by Weehawken and North Bergen of 4% and 2% respectively and less maximum longevity than that provided for firefighters previously employed by Union City. However, no firefighter who has or will have earned 14% through December 31, 2002 will lose any longevity benefit which they have currently earned. Firefighters who have or will earn less than 14% through December 31, 2002 shall be pegged at the new longevity schedule and receive longevity benefits pursuant to the years of service set by that schedule.

For firefighters employed by the Regional on or after regionalization, I note that they were not covered under any of the previous longevity programs. This issue is one in which weight must be given to the Regional's ability to negotiate a longevity program reflective of its unique character without having that benefit tied to previous agreements made by individual municipalities over the course of time. I award a new longevity program which modifies each party's proposals.

The program will be reflected as percentage rather than dollar amounts but at time sequences proposed by the Regional. I award a longevity program for firefighters hired by the Regional on or after the commencement of regionalization which provides a maximum percentage of 7%. That schedule will read:

7 to 8 years	2% of base annual salary
9 to 11 years	3% of base annual salary
12 to 14 years	4% of base annual salary
15 to 19 years	5% of base annual salary
20 to 22 years	6% of base annual salary
at the completion of 23 years of service	7% of base annual salary

I also award a continuation of the inclusion of longevity benefits as added to base salary.

Accordingly, I award the following longevity provision:

Firefighters previously employed by member municipalities shall receive the following longevity schedule effective January 1, 2003 for service accruing through December 31, 2002:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

Firefighters previously employed by Union City who are receiving or will have earned 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they would enjoy at that time but the percentage received will not increase pursuant to the former schedule. I also award a continuation of the inclusion of longevity benefits as added to base salary.

Firefighters employed by the Regional on or after regionalization shall be covered by the following longevity provision:

7 to 8 years	2% of base annual salary
9 to 11 years	3% of base annual salary
12 to 14 years	4% of base annual salary
15 to 19 years	5% of base annual salary
20 to 22 years	6% of base annual salary
at the completion of 23 years of service	7% of base annual salary

The longevity payments set forth in this section are not cumulative and shall be included for the purpose of base pay.

SERVICE DIFFERENTIAL

The **Union** proposes the following contractual language:

- A. All firefighters shall receive a service differential pursuant to the following schedule:
- | | |
|-------------------------------------|-------------------|
| 0-5 years of service | 1% of base salary |
| Beginning of 6-10 years of service | 3% of base salary |
| Beginning of 11-15 years of service | 5% of base salary |
| Over 15 years of service | 7% of base salary |
- B. The eligibility date shall be defined as the anniversary date.
- C. Service differential payments shall be included in the bi-weekly salaries and used for the purpose of calculating hourly rate.

The Regional reviews Mr. Michelin's testimony that the Union's proposal for service differential is based upon the North Bergen contract, except that the it includes a one percent increase at each step across the board. The Regional emphasizes Mr. Michelin's explanation that the Union had sought the increase in the past but was unsuccessful. The Regional points out that none of the other three municipal contracts provide for "service differential."

The Regional urges rejection of the Union's proposal because the only justification provided is that it is included in the North Bergen agreement⁴. The Regional contends that such justification is invalid because the new collective bargaining agreement should not be based on benefits that firefighters received from the participating municipalities. The Regional reiterates that the North Bergen contract was negotiated and specifically designed for that Town and its fire department, which no longer exists. The Regional argues that the service differential is a perfect example of the Union's position the most financially beneficial provisions from each of the contracts be included in the new collective bargaining agreement without additional rationale for its inclusion in the new collective bargaining agreement. According to the Regional these proposals ignore the fact that it does not have unlimited resources and is unable to generate revenue by raising taxes. The Regional reiterates that its sole source of revenue is the contributions made by the participating municipalities, within their financial constraints.

The Regional asserts that it has fashioned an extremely lucrative package that compares favorably with the larger fire departments throughout the State and the Country. Under this package, the Regional contends, its firefighters would not be at a financial disadvantage by not having a service differential in their economic package.

The Union asserts that the proposed service differential is modeled upon the North Bergen contract with a 1% increase in each of the percentages payable at each step. The Union challenges the Regional's proposal to delete this entire benefit. The Union asserts that the Regional would eliminate the service differential without explanation or evidence. The Union reiterates that absent a compelling reason set forth in the record, that a current benefit should not be extinguished. Accordingly, the Union asserts that this benefit enjoyed by the firefighters must be continued, increased and expanded to all firefighters. The Union notes that the service differential is paid on the anniversary date and is payable bi-weekly and should be used for the purposes of calculating overtime.

The Union has not established a basis for the inclusion of service differential for either employees who do not currently enjoy this benefit pursuant to a prior labor agreement or an increase in the amount of the service differential for those who currently receive it. However, this benefit currently exists in North Bergen and Weehawken and is a benefit which those employees who began to receive this benefit had a reasonable expectation for continuation. I conclude that there should be no expansion of service differential to firefighters who are employed in those municipal departments whose agreements contain no service differential and for firefighters hired by the Regional. I also conclude that this benefit shall not be awarded for those employees in North Bergen and Weehawken who did not earn a service differential benefit or would not have earned a service differential benefit as of December 31, 2002. For those

⁴ A review of the agreements reflects the existence of the service differential in Weehawken.

firefighters previously employed in North Bergen and Weehawken who are presently receiving the service differential or would earn a service differential as of December 31, 2002, I award a retention of that service differential at the level earned by that date (including its addition to those employee's base pay) but I do not award a continuation of that benefit at a higher percentage beyond that which was earned as of December 31, 2002. Except for these employees, reference to service differential shall be deleted from the agreement.

Accordingly, I award the following service differential provision:

For those firefighters previously employed by North Bergen and/or Weehawken who are presently receiving the service differential or would earn a different service differential as of December 31, 2002, I award a retention of that service differential at the percentage level earned by that date but I do not award a continuation of that benefit at any higher percentage beyond that which was earned as of December 31, 2002. For those employees eligible for service differential, the amounts shall be in addition to base pay.

I do not award an expansion of service differential to firefighters who were employed in those municipal departments whose agreements contain no service differential, for those firefighters hired on or after regionalization, nor award this benefit for those employees in North Bergen and Weehawken who will not have earned a service differential benefit as of December 31, 2002. Except for those firefighters who are presently receiving the service differential or would earn a service differential as of December 31, 2002, reference to service differential shall be deleted from the agreement.

INSURANCE

The **Regional** proposes the following contractual language:

HEALTH INSURANCE

Section 11.0: The Employer will provide health-care insurance protection, however, this statement, or any other contract language, is not to be construed as limiting the Employer's sole authority to change insurance carriers or coverage, if equivalent or a net improved coverage can be obtained. The Regional reserves the right and has the sole authority to change health care plans to be self-insured, fixed premium, preferred provider organization or HMO's or to offer a choice or combination of such programs. The basic program and coverage for each covered employee shall be:

Section 11.1: Group Hospitalization and Diagnostic, X-Ray, Laboratory, and Major Medical with the employer paying the full premium for each active employee and for each PFRS retired member, and in cases were applicable, 75% of the premium associated with family plan insurance covering dependents.

Section 11.2: The Employer will provide a Prescription Drug Program which shall require a five dollar co-payment.

Section 11.3: The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Section 11.4: The Employer will provide a Dental Plan for all employees covered by this Agreement and their dependents. This Plan will have a deductible of \$25 for individuals, \$75 maximum deductible for family coverage and cover 80% of U.C.R. up to \$1000. Per calendar year for all eligible charges. There will be 100% coverage up to \$800. Per lifetime for orthodontia.

PRESCRIPTION EYE GLASS

Section 11.5: The Employer agrees to provide a Prescription Eye Glass Plan for employees covered by this Agreement and their dependents up to a maximum benefit of \$125. Per year per employee.

RETIREE COVERAGE

Section 11.6: Medical coverage (including dependents) for employees retiring subsequent to the signing of this Agreement shall be provided as follows:

- a. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
- b. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
- c. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

Section 11.7: The Employer may change insurance plans and/or carriers or self insure so long as in the aggregate each plan is substantially similar to the plan or program in existence at the expiration of this Agreement.

Section 11.8: The Employer shall have the right to adopt health care cost-containment measures and cost management techniques, including but not limited to:

- a. requirement of pre-admission certification;
- b. mandatory second surgical opinions;
- c. limitations on diagnostic and in-hospital testing;
- d. restrictions on day of admission;
- e. peer review.

The **Union** proposes the following contractual language:

- A. The employer shall continue to provide and pay for comprehensive health insurance coverage for the employee, spouse and dependents. The coverage shall include the following options:
 1. Traditional indemnity with a deductible of \$100/\$200 and co-insurance of 80% of \$2,000.00.

2. A preferred provider option (PPO) with a co-pay of \$5.00 per office visit.
 3. Health Maintenance Organization (HMO), with a co-pay of \$5.00.
- B. The employer shall continue to provide and pay for dental insurance for the employee, spouse and dependents with an annual cap of \$2,000.00 per covered individual per year and a lifetime cap of \$3,000.00 for orthodontics for each covered individual.
- C. The employer shall continue to provide and pay for a prescription drug policy for the employee, spouse and dependents. The employee co-pay shall be as follows:
1. \$5.00 for brand name drugs
 2. \$0.00 for generic drugs
 3. \$0.00 for mail order
- D. The employer shall continue to provide and pay for prescription eyeglass plan in the amount of 80% of the submitted bills per covered individual. Covered bills shall mean an annual eye examination including glaucoma tests, and the cost of glasses and/or contacts.
- E. With respect to each of these coverage's outlined in A through D above, a dependent child shall mean up to the age of 23 unless the child is not emancipated due to a mental or physical disability.
- F. The employer shall continue to provide for the reimbursement of the guaranteed term life (GTL).
- G. The employer agrees effective November 1, 1999 and thereafter to provide and pay for each firefighter, spouse and dependents lifetime health insurance and prescription drug coverage at the level of benefits and co-payment levels that the active employees enjoy at the time of the member's retirement for each firefighter. To be eligible to receive retiree's insurance, the member:
1. Must retire on a disability pension, or

2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

All members who retired prior to November 1, 1999 shall continue to receive retiree health insurance and other insurance coverage's pursuant to the appropriate Municipal collective bargaining agreements.

The **Union** also proposes the following contractual language:

In December of each year every firefighter will be given the opportunity to chose any one of the Health Plans that the five (5) former municipalities are enrolled in at that time. Any firefighter not notifying the department of his wishes to change health plans is automatically carried in his existing plan for the next year.

The following are the four (4) health plans that are currently in place that each member is in, depending on the former fire department he was employed by. These are the plans that each member can choose from.

Weehawken:	The State Health Plan
West New York:	Horizon BC/BS
Union City:	Horizon BC/BS PACE
North Bergen:	Horizon BC/BS PACE

The employer, upon forty-five (45) days prior notice and mutual agreement of the employee organization, which agreement shall not be unreasonably withheld, may elect to change insurance carriers for the programs referenced herein provided equal or better benefits are provided.

With regard to Paragraph (B) of the Union's proposal covering dental insurance, the Regional contends that the Union did not offer any evidence

justifying such a proposal. Additionally, the Regional points out that the North Bergen and Union City contracts did not provide for such a provision. Accordingly, the Regional urges the rejection of this proposal.

The Regional contends that the Union did not offer justification supporting the award of Paragraphs (C) and (D). The Regional notes that these proposals expand on the benefits that were granted under the municipal contracts and that the Union's proposals be denied.

The Regional highlights that its initial proposal includes a comprehensive health-care insurance protection plan. The basic program and coverage for each covered employee is for Group Hospitalization and Diagnostic, X-Ray, Laboratory, and Major Medical with the Regional paying the full premium for each active firefighter and for each PFRS retired firefighter, and in cases were applicable, 75% of the premium associated with family plan insurance covering dependents.

The Regional notes that its plan also provides a Prescription Drug Program which shall require a \$5.00 co-payment. According to the Regional, it will make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty. For purposes of comparison, the Regional points out that under the individual municipal contracts, Union City provided for a \$5.00 co-

payment for brand name drugs and \$0.00 for generic drugs. The West New York contract provided for \$5.00 co-payment brand name drugs and \$3.00 for generic drugs. The North Bergen contract provides for a \$5.00 co-payment, and the Weehawken contract provided for a \$5.00 co-payment for brand name drugs and \$1.00 for generic drugs.

The Regional explains that its proposal provides for a Dental Plan for firefighters and their dependents. According to the Regional, this Plan will have a deductible of \$25.00 for individuals, \$75.00 maximum deductible for family coverage and cover 80% of U.C.R. up to \$1000.00 per calendar year for all eligible charges. There will be 100% coverage up to \$800.00 per lifetime for orthodontia. For purposes of comparison, the Regional notes that under the individual municipal contracts, West New York provided a dental plan under Blue Cross/Blue Shield, while North Bergen and Weehawken provided for a dental plan with no listed amount, and Union City provided coverage already existing from the Delta Insurance Company.

The Regional points out that its proposal includes a Prescription Eye Glass Plan for employees covered by this Agreement and their dependents up to a maximum benefit of \$125.00 per year per firefighter. Under the municipal contracts, Union City provided for an optical plan through Traveler's and North Bergen provided for an optical plan with a maximum benefit of \$125.00 per member, while West New York and Weehawken did not provide an optical plan.

At the February 12, 2001 arbitration hearing, the Regional discussed that it is striving for a single program. The Regional proposed to implement the State health benefits plan implemented, because, according to Director Welz:

. . . the plans that are presently in Union City, West New York and North Bergen are covered under the state health benefits plan which encompasses an option choice for the individual. When you sign up for state plan you have an option, each employee gets to select one of 13 different programs within that. So if we offered a state plan to [everyone], each individual employee decides whether its traditional, whether its plus, whether its one of the HMOs. Then the only thing that would be an add-on . . . would be . . . dental and eyeglasses . . .

The Regional points out that implementing the State Health Benefits Plan would also resolve one element of the retirement benefits as it would mean that all would be included for at least the prescription program. The Regional maintains that the State Health Plan compares favorably with the benefits that were received prior to regionalization and should be implemented.

Both the Regional and the Union propose a dental plan. The West New York contract provided for a dental plan under Blue Cross/Blue Shield. The North Bergen and Weehawken contracts provided for a dental plan with no listed amount. Union City provided coverage already existing from the Delta Insurance Company.

The Regional notes that none of the municipal contracts provided for a provision similar to the Union's proposed Paragraph (F), whereby the employer would continue to provide for the reimbursement of the guaranteed term life (GTL).

The Regional compares its proposed Section 11.6 and Paragraph G of the Union's proposal regarding coverage for employees who retire after November 1, 1999 with the West New York contract. According to the Regional, that agreement provides for continuous coverage if not covered by another program. Additionally, the Regional points out that the Union City contract provides that the retiree's coverage would continue and the North Bergen contract provided continuous coverage to a member who has 25 years of continuous service and/or retires within the meaning of the police and fire retirement system excluding deferred retirement; and the Weehawken contract provided for continuous coverage after retirement.

Addressing the Union's proposal for continuous coverage for firefighters who retired before November 1, 1999, the Regional notes that only the West New York agreement contains a similar provision.

The Union notes that both parties have proposed health insurance, prescription drug programs, dental insurance, vision care and retiree coverage. The Union maintains that the Regional's explanation of its health care insurance

program is vague and it is difficult to understand the details of the plan. For example, the Union points out that there is no mention of deductibles and Company-insurance. Additionally, the Union adamantly urges rejection of what it characterizes as the Regional's "radical" proposal that firefighters be responsible for 25% percent of the premium associated with the family plan insurance covering dependents. The Union emphasizes that no firefighter in any of the municipalities contributed in this manner and urges rejection of this proposal.

Explaining that the Regional's proposal is vague in part because there are currently four separate health insurance plans, the Union acknowledges the need for some continuity. In order to achieve that continuity, the Union proposes that the Regional maintain each of the four plans and that each firefighter be given the opportunity to choose one of the four existing plans. The Union maintains that this would insure some level of continuity until future negotiations can resolve this complicated issue.

With regard to the prescription and drug program, the Union notes that both parties propose a \$5.00 co-pay. The Union would limit the \$5.00 co-pay to brand name drugs, with no co-pay for generic and mail order drugs. The Union points out that the Regional's proposal fails to make such a distinction and therefore provides no incentive to the firefighters to choose generic alternatives or to receive their drugs through mail order. The Union maintains that these options are likely to result in cost savings to the Regional.

Addressing dental insurance, the Union notes that Regional proposes a \$1,000.00 calendar year maximum, while it proposes a \$2,000.00 annual cap. The Union also points out that both parties include an orthodontia program, but the Regional's lifetime limit is \$800.00, while the Union's is \$3,000.00. Given the cost of dental care, the Union maintains that its proposal is more reasonable and must be granted if this benefit is to have any meaning.

With regard to vision care, the Union points out that the Regional proposes a maximum benefit of \$125.00 per year while it proposes 80% percent reimbursement. The Union compares the \$125 reimbursement under the North Bergen with the 80% reimbursement provided through Travelers in Union City. The Union urges the adoption of the Union City plan as the appropriate benefit level.

The Union also proposes that dependent children be covered up to age 23 unless the child is not emancipated due to a mental or physical disability and the Regional provided no such proposal. The Union proposed further a reimbursement for the guaranteed term life insurance and seeks to have the Regional pay for the cost of this benefit currently enjoyed by North Bergen firefighters.

Turning to retiree coverage, the Union points out that the Regional's proposal appears to be modeled after the Union City contract, which provides for medical insurance including health insurance, prescription/drug plan, optic plan and a dental plan. The Union notes that the Union City agreement also provides that medical coverage for employees retiring shall be as set forth in subsection A(1), the aforementioned medical insurance protection. The Union agrees and adopts that proposal as its own and that certain retirees shall be entitled to all coverage that they received while they were active.

However, the Union notes that its proposal differs from the eligibility requirements for retiree coverage proposed by the Regional. According to the Union, it relies upon N.J.S.A. 40A:10-23, which contains the identical language its proposal, except that the 20 years of service with the Regional includes the time the firefighters were employed by their municipality in addition to their time with the regionalized department. In contrast, the Union points out that the Regional seeks to modify the statutory language by requiring different time periods based upon occupational and non-occupational disabilities. The Union maintains that there is no reason to distinguish between these two categories since a disabled firefighter in either situation suffers the tremendous loss of his employment. Accordingly, the Union asserts that the eligibility rules it proposes are more reasonable than those proposed by the Regional.

The Union notes that each municipal contract provides for retiree coverage and it proposes to continue coverage for current retirees and future retirees without a reduction.

Health insurance is a major term and condition of employment with significant implications for each party. Administration, costs and benefit levels are paramount considerations. This benefit is one which should be merged or unified for all employees of the Regional. The testimony of Director Welz must be credited in this regard. The interests of the Regional and all of its employees will be served by a single contract providing comprehensive health insurance benefits all of its firefighting personnel regardless of unit placement. The Union's plea for a continuation of health insurance programs based upon individual prior contracts and arrangements with each municipality is simply not feasible. This conclusion, of course, does not resolve the issues of levels of benefits or co-payment for dependents as the Regional has proposed. Those issues must be examined independently from the conclusion that a unified health insurance program would serve the public interest, the Regional and the firefighters.

Under the circumstances previously outlined, the Regional's argument that the New Jersey State Health Benefits Program (SHBP) serves the purpose of providing comprehensive health insurance benefits under a single contract is persuasive. Weehawken currently receives coverage under this plan. The SHBP provides employee choice for selection of programs including Traditional,

Point of Service and HMO. Thus, the employee has the ability to tailor his or her selection based upon his or her individualized needs and desires. However, the Regional's proposal is not awarded to the extent that it does not name the specific health insurance carrier and provides for unilateral determinations by itself to change health care plans which include the ability to change the plan to various kinds of programs such as HMOs or PPOs. Under those circumstances, employee choice and the Regional's negotiations obligations would be negated. The Regional shall select the SHBP or select a carrier who meets the standard of "equal or better" benefits to the SHBP. I have awarded that standard below. The Regional's proposal is also not awarded to the extent that it proposes the payment of premiums (at a 75% level) by employees for family plan insurance which covers dependents. None of the previous insurance plans provided for co-payments and none are awarded herein. The Regional's insurance plan shall extend to all members of the bargaining unit.

The Union has also contended that the Regional's proposal is vague because it does not set the level of any deductibles. There is merit to the Union's argument that ambiguities on this issue should be at a minimum. This arbitrator takes notice that the New Jersey State Health Benefits Program publishes a Comparison Chart summarizing how a specific service or level of benefit is covered including the level of deductibles for each of the insurance selections the employee may make. The last such publication was effective January 1, 2002. I award, in the event of any ambiguity or disagreement, that the standards set forth

in that publication shall prevail. The Regional's obligation to provide health benefits under the SHBP program or one "equal or better" to that plan shall commence no earlier than January 1, 2003.

The Regional and the Union have both proposed dental insurance and a prescription eyeglass plan. The testimony of Director Welz reflects an understanding that insurance for eyeglass and dental coverage are add-ons if and when the Regional joins the SHBP. Similar to my conclusion with respect to health insurance, any such dental or prescription eyeglass plan should be unified for all unit employees and effective no earlier than January 1, 2003.

Each proposal provides for a dental plan for all unit employees and their dependents. Based upon the respective positions of the parties, and in consideration of the prior individual coverages for dental insurance, I award the following. Effective January 1, 2003, the Regional shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

Based upon the respective submissions of the parties, I award an employer-provided prescription eyeglass plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

Each party also proposes a prescription drug program. The differences between their proposals are not substantial. There is merit in the Union's argument that there should be a differential between generic and brand name drugs. The Regional proposes a \$5 co-payment while the Union proposes \$5 for brand name drugs and \$0 co-pay for generic drugs and for mail order. Any prescription drug program should provide a unified program for all unit employees unless the co-payments are set at a different level in the insurance program selected by the employee. I award the following program effective January 1, 2003. The Regional shall provide a prescription drug program for unit employees and their dependents. The employee co-payment shall be \$5 for brand name drugs, \$3 for generic drugs and \$0 for mail order unless set otherwise by an employee's selection of insurance program.

Proposals have been submitted with respect to when coverage for dependent children expires. With respect to the aforementioned coverages, a dependent child shall mean up to the age of 23.

The Union has proposed a continuation of a program where the employer reimburses an employee for life insurance coverage. The agreements do not reflect this benefit. However, to the extent that such coverage is currently provided, I award a continuation, but no expansion, of any such programs.

The Regional's proposal to adopt health care cost containment measures and cost management techniques is not awarded due to the awarding of the State Health Benefits Plan which provides internal regulations with respect to such issues.

The Regional has proposed the ability to change health insurance plans and/or carriers or to provide for self insurance. The Regional proposes that a standard of "substantially similar" be adopted in relation to its ability to change. The Union does not oppose the Regional's ability to change but proposes that any such change provide 45 days prior notice and the mutual agreement of the Union which it shall not unreasonably withhold. The Union also proposes that any change provide "equal or better benefits than previously provided."

I conclude that a notice provision is reasonable but that the days of prior notice be set at 60 days because of the complexity of any issue which might arise. Any such change shall not require the mutual agreement of the Union but must meet the standard awarded herein. I award the Union's proposal that any such change provide "equal or better" benefits because the primary objective of

any change should be directed towards cost savings rather than a reduction in coverage. This conclusion does not require that any change provide identical benefits or coverage. There should be some recognition that any proposed change could involve some differences but the adoption of the "equal or better" standard allows for the presumption and guarantee that any new insurance plan provide equal or better benefits in the aggregate and that no major element of medical coverage be reduced or eliminated.

I next turn to the issue of Retiree Coverage. There are two prongs to this issue. The Regional and the Union both propose Retiree Coverage for those already retired and for unit members who will retire in the future. Their proposals for each differ as previously outlined.

The SHBP provides health care benefits upon retirement and also includes a retiree prescription drug benefit. The SHBP also provides that retiree prescription coverage have a co-payment and an annual ceiling on co-payment. The SHBP also provides retiree health care benefits with a schedule for deductibles and ceiling on out-of-pocket costs for retirees and dependents. Effective no earlier than January 1, 2003, I award retiree coverage for each firefighter (including dependents) employer-paid health insurance who retires subsequent to the change in health insurance carrier and also prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage which they are currently receiving at a level appropriate to the municipal collective negotiations agreements in effect prior to the issuance of this award. This aspect of the award is necessary through the term of this new Agreement because of legal uncertainties on retiree health coverage which cannot be resolved based upon the record developed at hearing. The time period between the issuance of this Award and the expiration of this Agreement will allow for further research and preparation on this issue for negotiations of the next Agreement and provide a basis for the parties to negotiate over any modifications which either party seeks to make with respect to this issue.

The remaining issue on retiree coverage concerns eligibility. I award the following. For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered

time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

- a. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS. An employee with less than five (5) years may make application for waiver of this provision to the Regional.
- b. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
- c. For all retirees with at least twenty-five years of credited service in PFRS.

The insurance provisions of the agreement shall read as follows:

Effective January 1, 2003, the Employer will provide health-care insurance protection under the New Jersey State Health Benefits Program (SHBP) for all unit employees and their dependents or a health insurance plan providing benefits equal to or better than the NJSHBP.

Effective January 1, 2003, the Employer will provide a Prescription Drug Program for all unit employees and their dependents which shall require a five dollar (\$5.00) co-payment for brand name drugs, a three dollar (\$3.00) co-payment for generic drugs and zero (\$0) co-payment for mail order drugs.

The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Effective January 1, 2003, the Employer shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

PRESCRIPTION EYEGLASS

The Employer agrees to provide a Prescription Eyeglass Plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

RETIREE COVERAGE

Effective January 1, 2003, firefighters (including dependents) who retire subsequent to the change in health insurance carrier employer-paid health insurance and prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage which they are currently receiving at a level pursuant to the appropriate to the municipal collective negotiations agreements in effect prior to the issuance of this award.

For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that

members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

1. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
2. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
3. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

The Employer may change insurance plans and/or carriers or self insure upon sixty (60) days prior notice to the Union so long as the new plan provides equal or better benefits than the plan or program in existence at the expiration of this Agreement.

The Regional shall continue to provide reimbursement for guaranteed term life insurance only to those employees who are receiving this reimbursement as of the date of this award.

PENSIONS AND RETIREMENT BENEFITS

The **Regional** proposes the following contractual language:

Section 12.0: The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.

Section 12.1: Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment,

is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.

Section 12.2: The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

The **Union** proposes the following contractual language:

- A. The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the statutes and laws of the State of New Jersey.
- B. Employees who retire between the twenty-fifth (25th) and twenty-six (26th) year of continuous service shall receive an additional \$7,000.00 compensation.
- C. Pension coverage shall be the same for an employee who is injured or killed while rendering aid to a neighboring community—as though the injury or death occurred within the territorial limits of the NHRF&R Department.

The Regional asserts that its proposal is based upon all four municipal contracts. The Regional points out that under its proposal it provide to pension retirement benefits to employees covered by the agreement pursuant to the statutes and laws of the State of New Jersey. The Regional highlights Director DeOrio testimony that the Regional's and the Union's proposals are similar except that the Union's proposal references a \$7,000.00 bump in the 26th year of service. According to the Regional, this provision has its genesis in the North Bergen contract and was a retirement incentive for firefighters to retire between the 25th and 26th) year of continuous service. The Regional emphasizes Director DeOrio's testimony that the provision benefited both North Bergen and its firefighters because the retiring firefighter would receive monetary compensation

and North Bergen would save money because it could hire a new firefighter at a lower salary. However the Regional also emphasizes that the provision in the North Bergen contract would sunset at the end of the contract and that firefighters would not receive their payment until a new contract containing that same provision was negotiated and ratified. The Regional points out that Mr. Michelin acknowledged that the Union's proposal omits the "sunset." The Regional notes that none of the other three municipal contracts include a similar provision.

The Regional's proposal also includes a pension plan that would provide pension retirement benefits to firefighters pursuant to provisions of the statutes and laws of the State of New Jersey. The Regional notes that its proposal also states that pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional. Finally, the Regional points out that under its proposal, it would continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though the firefighter remained on active duty.

The Union highlights that both parties agree that the Regional must provide pension benefits pursuant to the laws of the State of New Jersey.

Additionally, the Union emphasizes that both parties agree that if a firefighter is killed or injured while rendering aid to the neighboring community, it shall be considered as though the injury or death occurred within the territory limits of the Regional Department. The Union emphasizes an additional provision contained in its proposal for an additional \$7,000.00 in compensation for firefighters retiring between the 25th and 26th year. The Union maintains that providing this incentive for higher paid employee to retire results in his replacement with an employee at a starting salary rather than paying an employee at the top end of the wage scale. The Union asserts that this proposal, which was included in the North Bergen agreement, would reduce the Regional's costs.

The Regional's proposal in Section 12.0 is similar to the Union's proposal in Paragraph A but is more comprehensive. The Regional's proposal is awarded. The Regional's proposal in Section 12.1 is similar to the Union's proposal in Paragraph C. One significant difference is that the Regional's proposal contains language "while acting within the scope of his employment is rendering aid to a neighboring community" while the Union's proposal "while rendering aid to a neighboring community." If a situation occurs in which a firefighter is killed while rendering aid to a neighboring community, it would indeed be unfortunate if litigation arose as to whether that employee was acting "within the scope of his employment." I award the Regional's proposal with the clarification that "within the scope of his employment" is intended to mean being involved in rendering aid to a neighboring community while performing a function within the scope of

functions and duties which are reasonably within the scope of what that employee would perform while acting as a firefighter for the NHRF&R Department.

The remaining issue is the Union's proposal to provide an additional \$7,000 in compensation for an employee who retires between the 25th and 26th year of continuous service. That proposal exists in North Bergen but nowhere else. In addition, the provision in the North Bergen contract was stated to sunset at the end of that contract. The Union's stated intention for this provision is to provide an incentive to retire between his or her 25th or 26th year. The fact that this proposal existed in North Bergen is an insufficient basis to award it in the Regional's first agreement. Although I do not award this proposal, it would be inequitable to fail to make this provision accessible to North Bergen firefighters nearing completion of their careers who anticipated taking advantage of this benefit. Accordingly, I award a continuation of this benefit solely to North Bergen firefighters who accrued 20 or more years of continuous service at the time of regionalization and that any reference to this provision be deleted from the Agreement after it is no longer operational.

The pension and retirement provision of the agreement shall read as follows:

The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the

statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.

Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.

The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

Employees who retire between the twenty-fifth (25th) and twenty-six (26th) year of continuous service shall receive an additional \$7,000.00 compensation. Sole eligibility for this benefit shall be for North Bergen firefighters who accrued 20 or more years of continuous service at the time of regionalization and that any reference to this provision shall be deleted from the Agreement after it is no longer operational.

AWARD

All proposals by the Regional and the Union not awarded herein shall be denied and dismissed. Any tentative agreements not reflected in this award shall be incorporated by reference herein.

DURATION

There shall be a five year agreement effective July 1, 1999 through June 30, 2004.

PREAMBLE

This Agreement by and between North Hudson Regional Fire & Rescue, (also referred to as "Employer" or "Regional") and the North Hudson Fire Fighters Association of the FMBA/IAFF/PFANJ, AFL-CIO-CLC (also referred to as "Association")

WITNESS TO,

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association recognize and declare their mutual aim to be the promotion of an understanding, harmonious relationship between them, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association desire that the service to the community be continuous and efficient, and

WHEREAS, North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association have carried on collective bargaining and reached certain understandings which they desire to incorporate and confirm in this Agreement, be it

RESOLVED, in consideration of the following covenants it is mutually agreed as follows:

ASSOCIATION RECOGNITION CLAUSE

1. The Employer hereby recognizes the Association as the exclusive and sole representative(s) for collective negotiations concerning salary, hours of work, fringe benefits, working conditions, safety of equipment, procedures for adjustment of disputes and grievances, all terms and conditions of employment within the limits fixed by State Law and all other related matter for all firefighters within the Fire Department of the North Hudson Regional Fire and Rescue, but excluding all other employees.
2. In the event of a conflict between the specific terms of this Agreement and the specific Rules and Regulations of the Department, then, and in that event, the terms of this Agreement shall govern.

EMPLOYEE BASIC RIGHTS

1. The Employer and the Association agree that every employee shall have the right to organize, join and support the Association for the purpose of engaging in collective negotiations or to refrain from same. The Employer and the Association undertake and agree that they shall not directly or indirectly discourage or deprive or coerce an employee in the enjoyment of any right conferred by The Employer/Employee Relations Act. NJSA 34:13A-1, et. seq.
2. The Employer and the Association further agree that they shall not discriminate against any employee with respect to hours, wages or any terms or conditions of employment by reason of his membership or non-membership in the Association, his participation or non-participation in any activities of the Association with respect to collective negotiations or his institution or failure to institute any grievance, complaint or proceeding under this Agreement.
3. In an effort to insure that departmental investigations are conducted in a manner which is conducive to good order and discipline, the following rules are hereby adopted:
 - a. The interrogation of a member of the Department shall be at a reasonable hour, preferably when the member of the force is on duty, unless the exigencies of the investigation dictate otherwise.
 - b. The interrogation shall take place at a location designated by the Fire Chief. Usually it will be at Fire Headquarters or the location where the incident allegedly occurred.
 - c. The questioning shall be reasonable in length. Time shall be provided for personal necessities, meals, telephone calls, and rest periods as are reasonably necessary.
 - d. The Department shall permit the member the opportunity to consult with an Association representative at any stage during a proceeding in which the employee reasonably believes may result in disciplinary or criminal charges against that employee upon request of the employee.

- e. Nothing herein shall be construed to deprive the employer or its employees of the ability to conduct routine and daily operations of the Department.
- f. Nothing herein shall be construed to deny or restrict either the Department or the employee such rights as they may have under the New Jersey statutes or other applicable laws and/or regulations.

RULES AND REGULATIONS

Proposed new rules or modification of the existing rules governing working conditions shall be negotiated with the majority representative before they are established. (N.J. Employer-Employee Relations Act-Chapter 303 Laws of 1968, 34:13A:5.3). The Association shall receive notice of any such rule within a reasonable period of time prior to the establishment of such rule.

MANAGEMENT RIGHTS

1. North Hudson Regional Fire & Rescue hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it prior to the signing of this Agreement by the laws and Constitutions of the State of New Jersey and of the United States, including, but not limited the following:
2. The executive management and administrative control of the Regional and its properties, facilities and activities of its employees utilizing personnel methods and means of the most appropriate and efficient manner possible as may from time to time be determined by the Regional.
3. To make rules of procedure and conduct, subject to N.J.S.A. 13A:5-1 et. sec., to use improved methods and equipment, as well as duties, to decide the number of employees needed for any particular time and to be in sole charge of the equality and quantity of the work required.
4. To hire all employees, whether permanent, temporary, or seasonal, to promote, transfer, assign or retain employees in positions within North Hudson Regional Fire & Rescue subject to Civil Service law.
5. To suspend, demote, discharge or take any other appropriate disciplinary actions against any employee.
6. To lay off employees in the event of lack of funds or under conditions where continuation of such work would be inefficient and non-productive consistent with the provisions of civil service law.
7. The exercise of the above powers, rights, authority, duties and responsibilities and the use of judgment and discretion in connection therewith, shall be limited by the terms of this Agreement and then only to the extent that such terms are in conformance with the Constitutions and laws of New Jersey and of the United States.
8. The exercise of any management rights set forth herein shall be consistent with the terms of this Agreement.

ASSOCIATION RIGHTS

1. Employees, not to exceed four (4) who are elected officers, delegates, trustees and/or alternates of the Union or who have been elected to State or international office, shall be granted time off from normal duties to attend the following designated conventions:

AFL-CIO State Convention
AFL-CIO International Convention
IAFF or FMBA International Convention
IAFF or FMBA State Convention
IAFF or FMBA District Convention

The time off granted shall not be more than the length of the convention plus, in the event that the event is outside the State of New Jersey, one calendar day before and one calendar day after, in any event, not to exceed one (1) 24-hour tour per employee. The Association will designate in writing who will attend each convention ten (10) days prior to the date of the convention. All arrangements for taking time off under this Section will be cleared with the Executive Director or his designee. Whenever a duly authorized representative of the Association exercises his right to attend such convention, the department's vacation schedule for that time period shall be adjusted to reflect such leave so as to avoid the unnecessary expenditure of overtime.

2. The Employer will permit up to three (3) authorized Association representatives reasonable time off with pay to attend to Association business, including to investigate and seek to settle grievances and to attend all meetings and conferences on collective negotiations with departmental officials provided the Association gives reasonable notice to the department in advance.
3. In the event a Firefighter or Fire Officer is killed in the line of duty, the Employer will permit at least four (4) association officers time off if they are scheduled to work to participate in the funeral services.
 - a. Subject to the availability of same the Employer will permit a fire department vehicle to be utilized by the Association for the above-referenced funeral service.

4. Authorized representatives of the Association shall be permitted to visit Fire Headquarters, Firehouses or the office of the Fire Director for the purposes of ascertaining whether or not this agreement is being observed.
5. A written list of the names of Association officers of the newly formed bargaining agent, as per PERC, will be furnished to the Employer, and the Association shall notify the Employer of any change.

OFFICE SPACE

The Employer shall provide an office for the sole and exclusive use by the Association. This office shall be of reasonable size and condition and shall be located in a Fire Department building in a location that shall not interfere with or interrupt normal fire operations.

DEDUCTION FROM SALARY

1. North Hudson Regional Fire and Rescue agrees to deduct from the salaries of its employees subject to this agreement dues for the Association. Such deduction shall be made in compliance with N.J.S.A. 52:14.9e, as amended. Such monies together with any records of corrections shall be transmitted to the Union Office.

2. Any employee in the bargaining unit on the effective date of this Agreement who does not join the Association within thirty (30) days thereafter, any new employee who does not join within thirty (30) days of initial employment within the unit, and any employee previously employed within the unit who does not join within ten (1) days of re-entry into employment with the unit shall, as a condition of employment, pay a representation fee to the Association by automatic payroll deduction.

The representation fee shall be in an amount equal to eighty-five (85%) percent or whatever is permitted by law, of the regular Association membership dues, fees and assessments as certified to the employer by the Association. The Association may revise its certification of the amount of the representation fee at any time to reflect changes in the regular Association membership dues, fees and assessments as certified to the Employer by the Association. The Association's entitlement to the representation fee shall continue beyond the termination date of this agreement, so long as the association remains the majority representative of the employees in the unit, provided that no modification is made in this provision by a successor agreement between the Association and the Employer. The Association shall establish and/or advise the Employer that it has established a demand and return system in accordance with N.J.S.A. 34:13A-5.5.

3. The Association will annually provide the necessary "check-off authorization" form and deliver the signed forms to the Executive Director. The Association shall indemnify, defend and hold the Regional harmless against any and all claims, demands, suits, or other forms of liability that shall arise out of or by reason of action taken by the Regional in reliance upon the salary deduction authorization cards submitted by the Association to North Hudson regional Fire & Rescue.

4. **Changes:**
The Association will notify the employer in writing of any changes in the list provided for in paragraph 1 above and/or the amount of the representation fee, and such changes will be reflected in any deductions made more than twenty-one (21) days after the Employer received said notice.
5. **New Employees:**
On or about the last day of each month, beginning with the month this Agreement becomes effective, the Employer will submit to the Association, a list of all employees who began their employment in a bargaining unit position during the preceding 30 day period. The list shall include name, dates of employment, their address, birth date, classification, and rate of pay. The Department will similarly notify the Association of all Employees who are terminated from the Employer's payroll.
6. The Association shall indemnify, defend and save the Department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the Department in reliance upon salary deduction authorization cards and submitted by the Association to the Department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction.
7. The Association shall establish and maintain a procedure whereby any employee can challenge the assessment as computed by the Association. This appeal procedure shall in no way involve the Department or require the Department to take any action other than to hold the fee in escrow pending resolution of the appeal.

BULLETIN BOARDS

- A. The Employer will supply one (1) bulletin board for the use of the Association to be placed in a conspicuous location at each firehouse.

- B. The bulletin board shall be for the use of the Association and for posting notes and bulletins pertaining to the Association's business activities or matters dealing with the welfare of the employee.

GRIEVANCE PROCEDURE

1. The purpose of this procedure is to secure, at the lowest possible level, an equitable solution to the problems which may arise affecting the terms and conditions of Firefighters and to resolve grievances as soon as possible so as to assure efficiency and promote employees' morale. The parties agree that this procedure shall be kept as informal as may be appropriate.
2. Nothing herein shall be construed as limiting the right of any employee having a grievance to discuss the matter informally with any appropriate member of the Department. The Union will explore voluntary resolution where appointed at the lowest level.
3. A grievance is defined as any disagreement between the firefighter and the Employer, or between the Union and the Employer, involving the interpretation, application or violation of the terms of this agreement, matters of safety affecting or impacting upon employees and administrative decisions affecting employees. Grievances concerning administrative decisions affecting employees may be filed through Step 2 (two) of the grievance procedure.
4. The grievance procedure referred to in this Article shall be in addition to and not in derogation of the Civil Service Act or remedies available to the Association or its members by virtue of any statutes of the State of New Jersey or other rules and regulations.
5. The President of the Association or his duly designated representative shall be recognized by the Chief of the Fire Department for the purpose of presenting the grievance. The grievance may be so presented with or without the presence or permission of the aggrieved person.
6. The following constitutes the sole and exclusive method for resolving differences between the parties covered by this Agreement, and shall be followed in its entirety unless any step is waived by mutual consent.

The time limits expressed herein shall be strictly adhered to. If any grievance has not been initiated within the time limits specified, then the grievance shall be deemed to have been

abandoned. If the grievance is not processed to the next succeeding step in the grievance procedure within the time limits prescribed thereunder, then the disposition of the grievance at the last preceding step shall be deemed to be conclusive. If a decision is not rendered within the time limits prescribed for decision at any step in the grievance procedure, then the grievance shall be deemed to have been denied. Nothing herein shall prevent the parties from mutually agreeing to extend or contract the time limits for processing the grievance at any step in the grievance procedure.

Step One

The aggrieved or the Association shall institute action under this provision within ten (10) calendar days after the event giving rise to the grievance has occurred and the aggrieved person knew or should have known of the event or events upon which the claim is based. An earnest effort shall be made to settle the differences between the aggrieved employee and the Battalion Chief or Line Deputy Chief for the purpose of resolving the matter informally. Such grievance must be presented within this time period or such grievance shall be deemed waived.

Step Two

If no agreement can be reached orally within five (5) calendar days of the initial discussion with the Battalion Chief or the Line Deputy Chief, the employee or the Association may present the grievance in writing within twenty-three (23) calendar days thereafter to the Executive Director or his designated representative. The written grievance at this step shall contain, without prejudice to either party, the relevant facts and a summary of the preceding oral discussion, the applicable section(s) of this contract violated, and the remedy requested.

The Executive Director shall respond, in writing, to the grievance within five (5) calendar days of the submission.

Step Three

If the grievance is not settled through Steps One or Two either party shall have the right to submit a dispute involving the interpretation, application or violation of the terms of this

agreement to binding arbitration within fifteen (15) days pursuant to the rules and regulations of the Public Employment Relations Commission. An arbitrator, who is a member of the panel of New Jersey Public Employee Relations Commission, will be mutually agreed upon by the parties. The costs for the services of the arbitrator shall be borne equally by North Hudson Regional Fire & Rescue and the North Hudson Firefighters Association.

Any other expenses, including, but not limited to, the presentation of witnesses, shall be paid by the parties incurring same.

The arbitrator shall be bound by the provisions of this Agreement and the Constitution and Laws of the State of New Jersey, and be restricted to the application of the facts presented to him involved in the grievance. The arbitrator shall not have the authority to add to, modify, detract from or alter in any way the provision of this Agreement or any amendment or supplement thereto. The decision of the arbitrator shall be final and binding upon the parties.

DISCIPLINARY ACTION

No permanent member within the bargaining unit shall be removed, dismissed, discharged, suspended, fined or reduced in rank, except for just cause. If any member is so disciplined and in the judgment of the Union the action taken by the Regional is without just cause, the Union may process this matter through the Grievance Procedure provided in Article __. In the event of major discipline, an employee, after disciplinary proceedings have been concluded, may appeal such decision to the New Jersey Department of Personnel as provided by Civil Service law. Major disciplinary actions which are under the jurisdiction of the Department of Personnel shall not be arbitrable.

RIOTS AND POLICE DUTIES

1. The Department shall provide police protection to firefighters whenever required.
2. Employees under this agreement shall not be required to perform any duties exclusively considered a police function.
3. Employees shall not be required to use hose streams on, or take any other active part in the quelling of a riot and/or mob.

SENIORITY

1. Seniority is defined to mean the accumulated length of service with North Hudson Regional Fire & Rescue and any prior accumulated service with the fire departments of the City of Union City, Township of Weehawken, Town of West New York, Township of North Bergen, and Guttenberg. Seniority is not counted for time when an employee is on a layoff. Outside the exception stated above, a resignation and rehire creates a new hiring date. An employee's length of service shall not be reduced by time lost due to an injury or illness in the line of duty.

2. Seniority principles shall apply to employees covered by this Agreement with respect to layoff and recall from layoff as prescribed by the Department of Personnel's rules and regulations in this area.

3. The seniority list shall be supplied to the Union in January of each year.

PROBATIONARY PERIOD

All employees hired or promoted during the term of the Agreement shall serve a probationary period pursuant to Department of Personnel rules and regulations. During this probationary period, the Regional reserves the right to terminate a probationary employee for any reason. An employee, if terminated, shall not have recourse through the grievance procedure set forth in this Agreement.

HOURS OF WORK

1. Work Day

- A. The workday shall consist of twenty-four (24) consecutive duty hours.
- B. The work schedule shall be twenty-four (24) hours on duty immediately followed by seventy-two (72) hours off duty, which is again followed by twenty-four (24) hours on duty, and so on.

2. Line Firefighter Starting and Leaving Times

Employees shall start the workday at 7:30 a.m. and shall leave at 7:30 a.m. the following day.

3. Meals

It shall be required of each firefighter, irrespective of whether the fire officer leaves his assigned duty station during his shift, that the firefighter contribute such sum as may be required to the organized meals which are prepared during the normal tour of duty.

4. Staff Firefighter Starting and Leave Times

The workweek for firefighters assigned to a staff position shall consist of a five (5) day week each work day consisting of the hours from 8:00 a.m. to 4:00 p.m. including a one half hour paid lunch.

EXCHANGE OF TOUR DUTY

The Executive Director, or his designee, may grant the request of any two (2) members of the Department, who have completed their probationary period, to exchange tours of duty (24 hour tours) subject to the following conditions:

- (a) Such request shall be submitted in writing by both members seventy-two (72) hours in advance, to be signed and given to the Executive Director, except in case of emergency wherein the wait procedure may be reduced.
- (b) Under no circumstances will employees be permitted to exchange tours of duty if such change would entitle either employee to receive overtime unless approved by the Executive Director.
- (c) All exchanged tours of duty must be paid back within the calendar year taken.
- (d) Because of the potential for disruption to the operation of the fire department, no employee may take more than six (6) mutual swaps during a calendar year without the express permission of the Executive Director or his designee. Each use will be considered one time for each employee.
- (e) Employees seeking or agreeing to exchange a tour of duty must be qualified to perform the duties and responsibilities of the member with whom they intend to swap tours.
- (f) Exchanges of tours of duty will neither be requested nor granted for any period of time during which either firefighter involved in the exchange is scheduled for formal training.
- (g) Exchange of tours will be for twelve (12) or twenty-four (24) hour periods, during the normal tour of duty.
- (h) Any member who is scheduled to work and makes arrangements to have another employee work on his behalf, is responsible to have the shift covered. If the time is not covered for any reason, the originally scheduled member will owe the Employer one tour of duty for each tour taken but not covered.

MILITARY LEAVE

1. All employees shall be granted all rights and privileges with respect to military leave pursuant to the provisions of State and Federal Statutes.
2. No employee shall suffer a loss in pay when required to serve his country.

FUNERAL LEAVE

1. Employees shall be granted time off with no loss of pay for the death of an immediate family member commencing from and including the date of death up to and including the day of the funeral not to exceed a maximum of two (2) consecutive twenty-four (24) hour tours.
2. Immediate family member shall be defined to include spouse, child, parents, brother, sister, father-in-law, mother-in-law, grandparents and grandchildren of the employee or other relative residing in the employee's immediate household. In the event of the death of a brother-in-law; sister-in-law, aunt, uncle, niece or nephew, or step-parent, the member shall be entitled to the day of funeral only.

COURT TIME

Court Appearances

An employee required to testify by the Employer during off-duty hours in a legal proceeding in connection with his duties as a Fire Department employee shall be compensated for the time so spent at a rate one and one-half times his normal rate for a minimum of four hours. No additional compensation shall be paid to bargaining unit members who make such appearances while on duty. If an employee is entitled to overtime shall be required to travel to and from any court or administrative bodies as noted in this Article, such travel time shall be considered and included in the computation of the amount of overtime to which the employee is entitled. Legal appearances in interest arbitrations, grievance arbitrations and Public Employment Relations Commission proceedings will not be paid except when the member's testimony is required by the Employer.

LEGAL REPRESENTATION

The Employer will defend and indemnify all employees covered by this Agreement in order to protect them from suits arising out of performance of their duties, provided the acts committed by the employees upon which the damages are based did not constitute fraud, malice, willful misconduct or an intentional wrongdoing.

SAFETY AND FACILITIES

North Hudson Regional Fire & Rescue desires to maintain a safe place of employment for all firefighters, and to that end management shall make all reasonable provisions necessary and in accordance with the laws of New Jersey for the safety of employees in the performance of their work. The Regional shall provide equipment as approved by New Jersey's statutory requirement for all fire personnel.

1. All sanitary facilities and equipment in each firehouse including, but not limited to, toilets, showers, and washbasins shall be furnished and maintained in good working order by the Department.
2. The Department agrees to provide employees with a reasonable and safe place for their work efforts and further agrees to keep all equipment in safe and good operating condition so as to insure the safety of the employees.

MEALS

Included in the Hours of Work provision.

DRUG & ALCOHOL TESTING

The Regional may administer drug and alcohol testing policy and procedures as described in Appendix A, the Attorney General's Law Enforcement Drug Testing Policy.

OUTSIDE EMPLOYMENT

1. Employees shall be entitled to engage in any lawful activity and obtain any lawful work while off-duty.
2. It is understood that full-time employees will consider their position with the Regional as their primary employment. Any outside employment or activity must not interfere with the employee's efficiency in his position with the Regional and must not constitute any conflict of interest.
3. An employee who is on sick leave or a compensable work-related injury leave may not work at any other employment during such leave.

PERSONNEL FILES

1. A separate personal history file shall be established and maintained for each employee covered by this Agreement; personal history files are confidential records and shall be maintained by the Administration.
2. Any employee in the bargaining unit may review their own personnel file provided reasonable notice by written request is made to the Regional. Each review shall be conducted in the presence of management personnel and every employee shall be required to sign an entry record on the occasion of his review.
3. Whenever a written complaint covering an employee or his actions is to be placed in his personnel file, a copy shall be given to said firefighter, and he shall be given the opportunity to rebut, if he so desires, in writing, within fifteen days and said rebuttal shall be placed in his file.
4. The parties at their discretion may mutually agree to withdraw an item from the personnel file. Any individual mutual decision to withdraw an item shall not be precedent setting.

PARKING FEES

The Regional and the Union agree that in the event the Regional or any other governmental agency requires the payment of a fee for on-street parking then the parties shall immediately negotiate over the payment of parking fees upon demand.

NON-DISCRIMINATION

In accordance with applicable state and federal law, neither the Regional nor the Association shall discriminate against any employees covered by this agreement because of race, color, sex, religion, national origin, or Association membership.

MAINTENANCE OF STANDARDS

1. All terms and conditions of employment, not specifically set forth in this Agreement nor inconsistent with its terms, which have been mutually and consistently recognized after regionalization, irrespective of prior practice at an individual municipality, will continue and shall not be changed to the detriment of employees within the Bargaining Unit until changed by negotiation with the Association.
2. The Department shall not enter into any Agreement with any employee, or groups of employees covered by this Agreement which in any way conflicts with the terms of this Agreement.
3. The Department agrees to make available to the Association a copy of all general orders issued by the Chief of the Department and/or the Director of the Department at the same time (or earlier if possible) that the general orders are issued to all firefighters.

FULLY BARGAINED PROVISIONS

This Agreement represents and incorporates the complete and final understanding and settlement by the parties on all bargainable issues which were or could have been the subject of negotiations. During the term of this Agreement, neither party will be required to negotiate with respect to any such issue, whether or not covered by this Agreement. This provision cannot be construed to waive the Association's statutory right to negotiate over issues which flow from the Regional's right to propose new rules, modifications of existing rules governing working conditions.

IDENTIFICATION CARD

Every firefighter shall, at the Department's expense, be furnished with a card valid for the purpose of identifying said firefighter as a member of the Department.

MAINTENANCE OF OPERATIONS

It is recognized that the need for continued and uninterrupted operation of the Regional is of paramount importance to the citizens of the respectively represented cities, and that there should be no interference with such operation.

The Association covenants and agrees that during the term of this Agreement neither the Association nor any person acting in its behalf will cause, authorize, or support, nor will any of its members take part in, any strike, i.e., the concerted failure to report for duty, or other concerted job actions, including willful absence of an employee from his position, or stoppage of work or abstinence in whole or in part, from the full, faithful and proper performance of the employee's duties of employment, work stoppage, slowdown, walkout or other job action against the Employer.

SEVERABILITY AND SAVINGS

If any provision of this Agreement or any application of this Agreement to any employee, member or group of employees or members is held to be invalid by operation of law, by a court, or other tribunal of competent jurisdiction, then such provision and/or its application shall be deemed inoperative; however, all other provisions and applications contained therein shall continue in full force and effect, and shall not be effected thereby.

NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

DURATION OF AGREEMENT

This agreement shall have a term from July 1, 1999 through June 30, 2004.

If the parties have not executed a successor agreement by July 1, 2004, then this Agreement shall continue in full force and effect until a successor agreement is executed.

Negotiations for a successor agreement shall be in accordance with the rules of the Public employment Relations Commission.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the day and year first above written.

MANPOWER

The Regional shall set a manpower policy and provide written notice of the manpower policy to the Union. The Regional shall also notice the Union of any changes which the Regional makes to its manpower policy.

INJURY LEAVE

An employee who is injured in the performance of duty should report, or cause to be reported, the accident to his supervisor as soon as is reasonably possible. The employee should complete a form provided for such injuries when he or his designee is able. If a member is injured on-duty and that injury is serious and/or life threatening, that member will be transported to the nearest appropriate medical facility.

1. Whenever a member of the Fire Department is incapacitated from duty because of an injury sustained in the performance of his duty, he shall be entitled to injury leave with full pay during the period in which he is unable to perform his duties. Typically, that period shall not exceed one (1) year. The time may be extended beyond one (1) year at the sole discretion of the Department.
2. To be eligible for injury leave benefits, both workers compensation benefit and the enhanced benefit to be paid by the Regional, the employee must report his injury as soon as is reasonably possible. The employer will direct the member to one of a panel of physicians to receive prompt and quality care. Any employee who was sent to the nearest appropriate medical facility must report to an approved panel physician for any further treatment or evaluation if applicable. A firefighter injured in the line of duty, reserves the right to be treated by a physician and/or surgeon of his own choice, whose fees will be paid by the Department, provided authorization is first obtained from the Department, which authorization shall not be unreasonably withheld. A firefighter who is treated by his own physician may be required to present a certificate indicating his continued inability to return to work from time to time. Nothing herein shall prevent the Regional from independently evaluating the medical condition of an employee injured in the line of duty.
3. If any member in rendering assistance in another municipality shall suffer any casualty or death, he or his designee or legal representative shall be entitled to all salary, pension rights, workmen's compensation and any other benefits as if such casualty or death occurred in the performance of his duties for the North Hudson Regional Fire and Rescue Department.

EMERGENCY LEAVE

Employees may be granted emergency leave, with or without pay, for the serious illness requiring hospitalization in the immediate family including childbirth, necessitating the employee's presence at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Paid leave shall be limited to one tour annually.

For the purposes of this Article, immediate family is defined as spouse, child, parents, brother, sister, father-in-law and mother-in-law, or any other member residing in the household.

LEAVE OF ABSENCE

An employee desiring a leave of absence from his employment shall apply for same in writing. An employee must have completed three (3) full years of service to be eligible. Such application shall provide the reason that the leave is requested. Upon a showing of good cause, a leave of absence of up to one hundred eighty (180) days may be granted at the discretion of the Executive Director, which discretion shall not be unreasonably or arbitrarily exercised. Such leave of absence shall be without pay, but the employee shall retain all seniority rights.

JURY DUTY

Employees shall be granted time necessary for Jury Duty.

PROMOTIONS, ASSIGNMENTS & TRANSFERS

PROMOTIONS

The Regional shall attempt to maintain a New Jersey Department of Personnel list from which appointment and promotional vacancies shall be filled in accordance with New Jersey Department of Personnel Rules and Regulations.

ASSIGNMENTS AND TRANSFERS

The assignment and transfer of firefighters is the responsibility of the Executive Director in accordance with DOP Rules and Regulations. It is understood that any employee may request, in writing, a transfer to a new or vacant position for which that employee is qualified.

ACTING PAY

Where a vacancy exists, the appointing of employees to higher ranks in an acting capacity shall not serve as a long-term substitute for the filling of the vacancy on a permanent basis. The Regional shall adhere to DOP Rules and Regulations with respect to the filling of vacancies.

Temporary assignments to higher rank during vacation, sick leave or other leave, shall continue to be made by the Regional in conformity with DOP Rules and Regulations.

Any qualified employee not desiring to serve in a temporary acting capacity may refuse to do so without prejudice. A qualified employee means having at least 3 years on the job from date of appointment.

When an employee is assigned by competent authority to work out of title at a rank higher than his regular rank, beyond two (2) consecutive tours, compensation shall be provided upon appointment to act in the higher rank, which compensation shall be an additional one-half (1/2) the salary rate between top-step Firefighter and Fire Officer One on the existing salary schedule.

CLOTHING, EQUIPMENT & QUARTERS

The employer agrees to pay all employees covered by this agreement the amount of six hundred and fifty (\$650.00) dollars per year as a clothing maintenance allowance. This payment is to be made on or before July 1st of each year commencing July 1, 2002.

The Employer agrees to furnish, at no cost to the employee and assure the use of, required protective clothing, and equipment as set forth in N.J.A.C. 12:100 et seq.

Employees must return all turn out gear and other equipment issued by the Regional upon retirement or termination.

If a firefighter loses equipment due to negligence, such firefighter shall be charged with the cost of replacement. Intentional damage to equipment shall result in discipline and charge for the cost of equipment.

Clothing lost, destroyed or damaged during the course of duty shall be replaced at the Department's expense. The employee, absent extenuating circumstances, must report any damaged clothing to the (Platoon Commander, his designee or fire headquarters) within twenty-four (24) hours. Employees must present damaged clothing, helmet, boots, coats or gloves in order to verify loss.

Whenever the Employer determines that it desires to change the uniform or part thereof, it shall be the employer's obligation to provide to each employee such modified or changed uniform free of charge. Utilization of this paragraph shall not diminish the clothing maintenance allowance set forth in this agreement.

MISCELLANEOUS

1. NO WAIVER

Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement or exercise one's rights pursuant thereto shall not be deemed a waiver thereof. This Agreement is not intended and shall not be construed as a waiver of any right or benefit to which the parties herein are entitled. This Agreement may only be modified or changed by a written amendment and signed by both parties.

2. OFF DUTY DEPARTMENT ACTION

Any action within the State of New Jersey taken by a member of the Department on his time off, which would have been proper action taken by the employee on active duty with the NHRF&R department, shall be considered proper Fire Department action, and the employee shall have all of the rights and benefits concerning such action as if he were then on active duty. This excludes an employee regularly performing duties as a member of a volunteer fire company.

3. ASSIGNMENTS

A. No employee of the Fire Department shall be assigned to perform any duty which is unrelated to firefighting, fire prevention, rescue, salvage, overhaul work, care and maintenance of fire fighting equipment and apparatus, or any other similarly related work.

B. No such employee shall be assigned any duty which is unrelated to the normal daily care required to maintain the quarters to which he is assigned in a clean, safe and sanitary manner.

4. PERSONNEL INFORMATION

All employees of the Department shall be required to give the Executive Director his current telephone number and address for the purpose of contacting employees in time of emergency or recall. In the event of any change of address, said employee shall notify the Executive Director within forty-

eight (48) hours. Such information shall be considered confidential unless disclosure of such is required by law.

5. COPY OF THE AGREEMENT

The Employer shall pay the cost of printing and supplying each member of the Department with a printed copy of the initial Agreement between the Regional and the Union.

6. ANNUITY PLAN

- A. The Association may establish an Annuity Program with contributions to be made through payroll deduction. The program shall be by employee only contribution at no cost to the department.
- B. The Association shall indemnify, defend and save the department harmless against any and all claims, demands, suits or other forms of liability that shall arise out of or by reason of action taken by the department in reliance upon salary deduction authorization cards and submitted by the Association to the department or in reliance upon the official notification on the letterhead of the Association and signed by the President of the Association advising of such changed deduction for participation in the Annuity Program.

SICK LEAVE

Effective January 1, 2003, sick leave may be utilized by employees when they are unable to perform their work by reason of personal illness, accident, or exposure to contagious disease. Sick leave with pay shall be accumulated as follows: Upon hire, each employee shall be entitled to a bank of 120 hours. Commencing on January 1st of the following year, the employee will be credited with an annual allotment 120 hours during a firefighters first five years of service. Thereafter, I set the following schedule based upon years of service and prior employment. After five (5) years through fifteen (15) years of service, paid sick leave shall be set at a bank of 180 hours or (7.5) 24-hour tours. After fifteen (15) years of service, firefighters shall receive a sick leave bank of 240 hours. An employee who has called in sick leave and recovers sufficient to work may be permitted to return to work after eight (8) hours. The decision to permit an employee to complete a tour of duty remains within the sole discretion of the Executive Director.

Evidence in the form of a physician's certificate shall be required as proof of illness for any sick leave paid for an absence of more than one tour of duty. Evidence in the form of a physician's certificate may be required whenever there is reason to believe that sick leave is being abused. Such certificate shall provide a date of treatment, diagnosis, and if appropriate, whether the employee is able to return to modified duty, and a date the employee is expected to be released back to his normal job responsibilities.

The Employer reserves the right to send an employee, at the Regional's expense, for a physical, neurological, psychiatric, or other examination to be performed by a physician, whenever there is a request for sick leave or a request to return from sick leave.

Employees on extended medical leave shall contact the office of the Chief on a weekly basis.

Sick Leave Use Incentive

Effective January 1, 2003, an employee who has taken no sick days during the calendar year shall receive a stipend of \$500.00 to be paid on or before February 1st of the following year.

During protracted periods of illness or disability of an employee, the Department head may require interim reports on the condition of the patient, from the attending physician and/or a Department

medical physician. When under medical care, employees are expected to conform to the instructions of the attending physician if they wish to qualify for salary payment during such period of illness or disability.

If the employee is absent from work for reasons that entitle him to sick leave, the Department head or his designee representative shall be notified as early as possible prior to the commencement of his or her tour of duty.

VACATION

Effective January 1, 2003, for firefighters working a 24 hour tour, paid vacation leave shall be as follows:

Years of Service	24 Hour Tours of Duty
1 to 5 Years	5
6 to 15 Years	7.5
16 to 20 Years	10
21 Years and above*	12*

The number of vacation days for employees after twenty years of service shall only apply to firefighters, effective January 1, 2003, who were previously employed by the municipalities prior to regionalization and who have achieved more than twenty years of service as of January 1, 2003.

For firefighters who work eight hour days, I set the following schedule of paid vacation leave.

Years of Service	8 Hour Tours of Duty
1 to 5 Years	15
6 to 15 Years	20
16 to 20 Years	25
21 Years and above	30

Vacation leave may be taken in 12 as well as 24 hour blocks except during the summer months (June, July and August) when vacation leave shall be taken in blocks of 24 hours. During the summer months, vacation use shall be limited to four (4) 24 hour tours per firefighter. The taking of a 12 hour block for vacation is contingent upon the remaining 12 hours of that firefighters tour of duty be covered on a non-overtime basis. The Executive Director or his designee retains discretion to approve a firefighter's obtaining of a vacation day from a firefighter assigned to a different company.

There will be one firefighter allowed off for vacation per company.

Members pick their days off through their company commander and only from their fire company. If two (2) members from the same company, want the same day off, the member with the most seniority would be given that day. The member who was not given

the day, has the ability to call another fire company to see if he can get the day off from their company. (If a fire company gives up a vacation day to another fire company, they are giving up the vacation day for their company. If they need the day after giving it up, they would have to get it from another fire company, they can not cancel the day they gave up). The firefighter seeking the vacation day must complete one full tour of duty prior to the taking of that vacation day and receive the approval of his or her company commander and from the company commander of the other fire company.

When conflicts arise, seniority within the fire company will prevail.

Firefighters may bid on vacation use by seniority. The Regional shall allow for vacation use throughout the year. While vacation use may cause the need for some overtime, the Regional may consider whether the granting of vacation would cause an undue or excessive amount of overtime before granting its use.

In the event an employee's sick leave and vacation time coincide, he shall be charged with sick leave only, and may take his accrued vacation time subsequently. In the event that an employee is on vacation and becomes ill, the scheduled vacation leave may not be converted to sick leave and the employee will be charged for vacation time rather than sick time for the remainder of the scheduled vacation leave.

Employees shall be permitted to exchange vacations upon approval of the company commanders whose companies are involved in the exchange. Such approval shall not be unreasonably denied.

An employee may not be recalled from vacation except for circumstances where that firefighter's absence would significantly interfere with the Regional's ability to provide firefighting services.

Vacation time earned may not be accumulated unless an employee was prevented by the Regional from taking scheduled vacation time due to departmental needs or disability. In either event, the employee may bank such vacation time for no more than one year. This provision shall not prevent the banking of vacation time for the purposes of placing such time in the terminal leave bank.

In the case of the death of a member, all vacation due him or her shall be paid to his/her estate.

Any firefighter who gets involuntarily transferred shall have the option to keep his previously approved vacation or to use any open vacation slot in the new-transferred position. If the firefighter chooses to keep his previously approved vacation period, it cannot be denied even if it creates an overtime situation.

HOLIDAYS

1. There shall be 112 hours of holiday pay per annum effective January 1, 2003.
2. Payment for all holidays shall be considered as added to an employee's base salary.

OVERTIME

Overtime Rate

Overtime shall be paid for all hours worked in addition to the employee's normal schedule hours as well as entitlements under the Fair Labor Standards Act (FLSA). The Overtime rate shall be calculated by dividing the employee's annual salary, including all payments added to base pay, by 2080 hours times one and one-half (1 ½).

Manpower Overtime

Manpower overtime will be awarded in accordance with the current system of a (seniority) list for firefighters.

Mandatory Off-Duty Detail

1. All mandatory off-duty details such as, but not limited to, parades, funerals, and special events, shall be considered as overtime.
2. It is agreed that an overtime roster will be maintained by the Association. In the event a need arises to engage an employee on an overtime basis, the Officer-in-Charge shall request the appropriate Association Official to call employees covered by this Agreement in order of seniority.
3. The overtime roster is not to be used for fires.

Off Duty Testimony

When an employee is required to testify in a legal proceeding in connection with his duties in the fire department, the employee shall be compensated for the time so spent at a rate of one and one-half times his normal rate for a minimum of four hours.

Recall Compensation

The compensation required to be paid to employees who have been recalled to duty shall be a minimum four (4) hour's overtime pay, at the rate of time and one-half (1 ½). The four (4) hour minimum shall not apply to employees held over following the termination of their regular shift.

Payment of Overtime

The Regional shall make every effort to pay overtime to the employee in the pay period immediately following the earning of such overtime.

Compensation for Off-Duty Training

When required by the Regional to attend training for the purpose of retaining certification of qualifications, or continuing education and training, employees will be compensated for off-duty training at the overtime rate. All tuition incurred in the required training programs will be paid by the Employer upon satisfactory completion of the course. The Regional retains the discretion to require training during the regularly scheduled workweek.

Holdover Pay

Where a holdover beyond an employee's regular shift extends beyond fifteen (15) minutes, such employee will be compensated at time and a half for a one (1) hour minimum and thereafter paid for actual time worked in quarterly increments at time and one half.

Early Call-In

Any employee required to report to duty prior to their assigned start time shall be guaranteed a minimum of two (2) hours at the overtime rate.

COMPENSATORY TIME

1. All the accumulated compensation time from former Municipal employment, shall be recognized by this department. When a firefighter receives monetary compensation for earned compensatory time, it shall be calculated at the hourly rate when the time was earned.
2. An employee may request that the Department grant him leave equal to back time owed to him. The Department shall notify said employee no later than seventy-two (72) hours, except in case of emergency, prior to the date the required leave is to commence as to whether said leave shall be granted.

TERMINAL LEAVE

All unused accumulated sick and vacation leave days shall be put into a bank to be used as Terminal Leave. There shall be no set limit to the number of days which an employee can accumulate in his Terminal Leave bank but he shall only be paid for the purpose of terminal leave in accordance with the caps and rate system established in this Article.

For all employees originally employed by the municipalities of Guttenberg, North Bergen, Weehawken, West New York, or Union City, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for eligible days as provided in the municipalities' collective bargaining agreements which employed that employee at the time of Regionalization. Terminal leave benefits for such employees shall be based upon leave accumulated with the Regional as well as with any predecessor department.

For all employees employed by the Regional after regionalization, upon retirement for a pension approved by the New Jersey Pension Department, an employee shall receive payment for unused accumulated sick leave and vacation days up to a maximum of \$120 per twenty-four (24) hour day up to a maximum benefit of \$15,000. Those employees who work less than a twenty-four hour day shall have a rate system adjusted proportionately in relation to the above.

EDUCATION INCENTIVE

Educational incentives shall be provided for all unit employees based upon the standards below:

1. Firefighters employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, have commenced matriculation in higher education for credit, shall retain all aspects of education incentives, if any, previously provided in the labor agreements, in those departments.
2. Firefighters employed by the Regional who were previously employed in the municipal departments and, as of the date of this award, who have not commenced matriculation in higher education for credit, shall receive education incentive in a fashion identical to firefighters hired by the Regional on or after regionalization.
3. Firefighters hired by the Regional on or after regionalization shall receive \$750 per year for an A.A. degree at an accredited institution or \$1,250 for an A.A. degree at an accredited institution for fire science or fire science technology.
4. Firefighters hired by the Regional on or after regionalization shall receive \$1,500 per year for a B.A. degree at an accredited institution or \$2,500 for a B.A. degree at an accredited institution for fire science or fire science technology.
5. Educational compensation as provided herein shall be included in base salary and paid in equal installments included in the members bi-weekly salary.

SALARIES

1. Salary will be paid in regular bi-weekly installments on the Wednesday of each week. If a holiday falls on a Wednesday, then the pay will be distributed on the Tuesday of said week.
2. The Department shall establish direct deposit and every effort shall be made to have checks available at 8:00 a.m. on payday.
3. Firefighters previously employed by Union City shall retain their prior salary schedule as adjusted by increases of 3.0% annually effective July 1, 1999, July 1, 2000, July 2, 2001, July 1, 2002, and July 1, 2003. Those adjustments reflect the following salary schedule. All increases shall be retroactive to each effective date.

	7/1/99	7/1/00	7/1/01	7/1/02	7/1/03
Step 1	27,432	28,255	29,103	29,976	30,875
Step 2	34,541	35,578	36,645	37,744	38,877
Step 3	40,319	41,528	42,774	44,057	45,379
Step 4	46,089	47,471	48,895	50,362	51,873
Step 5	51,865	53,419	55,021	56,672	58,372
Step 6	57,635	59,365	61,145	62,980	64,870

2. Firefighters previously employed by North Bergen, Weehawken (including firefighters previously employed by Guttenberg) and West New York shall also receive 3.0% increases on each step of their previously existing salary schedules effective July 1 in each contract year commencing July 1, 1999 through July 1, 2003.

At maximum step, effective July 1, 2003, the individual levels of salaries for those employees employed by the individual municipalities will reflect the following.

	Maximum Step July 1, 2003
North Bergen	62,163
Weehawken	62,039
West New York	61,878
Union City	64,870

I award a unification of salaries effective January 1, 2004 by advancing the salary maximums for North Bergen, Weehawken and West New York to the level of Union City at \$64,870. Firefighters previously employed by Union City shall receive a \$1,000 one-time cash payment not added to base simultaneous with the unification of salaries effective January 1, 2003. For those firefighters who do not achieve the salary maximum step previously set forth in their old salary schedules, they shall move to the new salary maximums in accordance with their normal step movement.

3. The new salary schedule for all of the aforementioned firefighters shall be entitled "all firefighters employed by the NHFRD who were previously employed by the municipalities of Union City, Weehawken, West New York, North Bergen and Guttenberg at the time of regionalization."
4. The following salary schedule is awarded for firefighters hired by the NHFRD on or after regionalization. All increases are retroactive to their respective effective dates.

NHFRD	Eff 7/1/99	7/1/00	7/1/01	7/1/02	7/1/03
New Hire during training	25,000	25,750	26,523	27,318	28,138
New Hire after training	29,000	29,870	30,766	31,689	32,640
Step 1	32,337	33,307	34,306	35,336	36,396
Step 2	35,674	36,744	37,847	38,982	40,151
Step 3	39,011	40,181	41,387	42,628	43,907
Step 4	42,348	43,618	44,927	46,275	47,663
Step 5	45,685	47,056	48,467	49,921	51,419
Step 6	49,023	50,494	52,009	53,569	55,176
Step 7	51,863	53,419	55,021	56,672	58,372
Step 8	57,636	59,365	61,145	62,980	64,870

5. Effective July 1, 2003, all new step movement along the guide shall take place at the end of each quarter following the firefighter's anniversary date. Step 1 shall commence at the end of the quarter following each firefighter's first full year of employment.
6. Salary will be paid in regular bi-weekly installments on the Wednesday of each week. If a holiday falls on a Wednesday, then the pay will be distributed on the Tuesday of said week.

7. The Department shall establish direct deposit and every effort shall be made to have checks available at 8:00 a.m. on payday.
8. Effective January 1, 2003, the hourly rate shall be computed by dividing the employees annual compensation by 2080 hours. Effective January 1, 2003, annual compensation for the purposes of determining the hourly rate shall include base salary, longevity, holiday pay, educational incentive and, if applicable, service differential pay. These items added to base salary shall be considered part of base salary and paid on a periodic basis.
9. Any provision in the of the prior agreements which added compensation to base pay related to the average 42 hour normal workweek or guaranteed overtime shall continue until January 1, 2004, the date of unification of salaries.

LONGEVITY

Firefighters previously employed by member municipalities shall receive the following longevity schedule effective January 1, 2003 for service accruing through December 31, 2002:

Beginning with 5 th year of Service	4% of base annual salary
Beginning with 8 th year of Service	6% of base annual salary
Beginning with 12 th year of Service	8% of base annual salary
Beginning with 16 th year of Service	10% of base annual salary
Beginning with 20 th year of Service	12% of base annual salary
Beginning with 25 th year of Service	14% of base annual salary

Firefighters previously employed by Union City who are receiving or will have earned 14% or more than 14% through December 31, 2002 shall retain the longevity percentage they would enjoy at that time but the percentage received will not increase pursuant to the former schedule. I also award a continuation of the inclusion of longevity benefits as added to base salary.

Firefighters employed by the Regional on or after regionalization shall be covered by the following longevity provision:

7 to 8 years	2% of base annual salary
9 to 11 years	3% of base annual salary
12 to 14 years	4% of base annual salary
15 to 19 years	5% of base annual salary
20 to 22 years	6% of base annual salary
at the completion of 23 years of service	7% of base annual salary

The longevity payments set forth in this section are not cumulative and shall be included for the purpose of base pay.

SERVICE DIFFERENTIAL

For those firefighters previously employed by North Bergen and/or Weehawken who are presently receiving the service differential or would earn a different service differential as of December 31, 2002, I award a retention of that service differential at the percentage level earned by that date but I do not award a continuation of that benefit at any higher percentage beyond that which was earned as of December 31, 2002. For those employees eligible for service differential, the amounts shall be in addition to base pay.

I do not award an expansion of service differential to firefighters who were employed in those municipal departments whose agreements contain no service differential, for those firefighters hired on or after regionalization, nor award this benefit for those employees in North Bergen and Weehawken who will not have earned a service differential benefit as of December 31, 2002. Except for those firefighters who are presently receiving the service differential or would earn a service differential as of December 31, 2002, reference to service differential shall be deleted from the agreement.

INSURANCE

Effective January 1, 2003, the Employer will provide health-care insurance protection under the New Jersey State Health Benefits Program (SHBP) for all unit employees and their dependents or a health insurance plan providing benefits equal to or better than the NJSHBP.

Effective January 1, 2003, the Employer will provide a Prescription Drug Program for all unit employees and their dependents which shall require a five dollar (\$5.00) co-payment for brand name drugs, a three dollar (\$3.00) co-payment for generic drugs and zero (\$0) co-payment for mail order drugs.

The Employer shall make full payment in the above health care insurance protection on behalf of all employees including those members who are on authorized sick leave and/or injured in the line of duty.

DENTAL INSURANCE

Effective January 1, 2003, the Employer shall provide a dental plan with dental insurance for all unit employees and their dependents. The Plan will have a deductible of \$25 for individuals and \$75 maximum deductible for family coverage. The Plan shall cover 80% of U.C.R. up to an annual cap of \$1,500 per covered individual per year for all eligible charges. The Plan shall also provide 100% coverage for orthodontics with a lifetime cap of \$1,500 for each covered individual.

PRESCRIPTION EYEGLASS

The Employer agrees to provide a Prescription Eyeglass Plan for unit employees and their dependents up to a maximum of \$125 per year per covered individual. Coverage shall include an annual eye examination, including glaucoma tests and the costs of glasses and/or contacts.

RETIREE COVERAGE

Effective January 1, 2003, firefighters (including dependents) who retire subsequent to the change in health insurance carrier employer-paid health insurance and prescription drug coverage as set forth in the SHBP. These retirees shall also receive the dental

and prescription eyeglass coverage in effect at the time of their retirement.

For unit employees who have retired prior to the change in health insurance carrier, I award a continuation of retiree health insurance and other insurance coverage which they are currently receiving at a level pursuant to the appropriate to the municipal collective negotiations agreements in effect prior to the issuance of this award.

For employees employed prior to the effective date of regionalization, I award the following eligibility requirements. For employees to be eligible to receive retiree insurance, the member:

1. Must retire on a disability pension, or
2. Must have 25 or more years of service credit in a State or locally administered retirement system; and
3. The employee must have a period of service up to 20 years with the employer at the time of retirement except that members who were transferred from the Municipal departments. The time the member had with the Municipal Departments shall be considered time with the North Hudson Regional Fire and Rescue as if that service was performed for this employer for the purposes of this Article.

For employees hired on or after the effective date of regionalization, I award the following eligibility requirements:

1. For retirees retiring from a job-related disability with five (5) years of credited service in PFRS.
2. For retirees retiring from a non-job related disability with twenty (20) years of credited service in PFRS.
3. For all retirees with at least twenty-five years of credited service in PFRS.

MISCELLANEOUS BENEFIT PROVISIONS

The Employer may change insurance plans and/or carriers or self insure upon sixty (60) days prior notice to the Union so long as the new plan provides equal or better benefits than the plan or program in existence at the expiration of this Agreement.

The Regional shall continue to provide reimbursement for guaranteed term life insurance only to those employees who are receiving this reimbursement as of the date of this award.

PENSIONS AND RETIREMENT BENEFITS

The Employer shall provide pension retirement benefits to employees covered by this Agreement pursuant to provisions of the statutes and laws of the State of New Jersey. The Regional shall do everything required by it, pursuant to law, to secure pensions for all qualified employees.

Pensions and insurance coverage shall be the same for an employee who is injured or killed while on duty with the Regional and who, while acting within the scope of his employment, is rendering aid to a neighboring community, as though the injury or death occurred within the territorial limits of the Regional.

The Employer shall continue to make necessary payments to, and on behalf of, an employee who is on sick leave and/or has been injured in the line of duty and within the scope of his employment as though said employee remained on active duty.

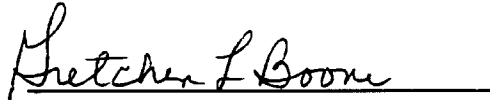
Employees who retire between the twenty-fifth (25th) and twenty-six (26th) year of continuous service shall receive an additional \$7,000.00 compensation. Sole eligibility for this benefit shall be for North Bergen firefighters who accrued 20 or more years of continuous service at the time of regionalization and that any reference to this provision shall be deleted from the Agreement after it is no longer operational.

Dated: September 30, 2002
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 30th day of September, 2002, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 8/13/2003