

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**TOWN OF WESTFIELD**

"Town,"

- and -

**WESTFIELD FMBA, LOCAL 30**

"Union."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2004-090

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Town:**

Frederick T. Danser, III, Esq.  
Apruzzese, McDermott, Mastro & Murphy

**For the Union:**

David I. Fox, Esq.  
Fox & Fox

This interest arbitration proceeding concerns the Town of Westfield [the "Town"] and the Westfield FMBA Branch 30 [the "FMBA"]. They are parties to a collective negotiations agreement [the "Agreement"] that expired on December 31, 2003. The negotiating unit consists of all members of the fire department of the Town excluding the Chief and Deputy Chief. This includes the titles of Firefighter, Lieutenant and Captain.

The Town and the FMBA have been at impasse for a lengthy period of time. Attempts to resolve the impasse through direct negotiations were not successful. Several pre-interest arbitration mediation sessions were held. Although these efforts narrowed the differences between the parties, the impasse remained despite the good faith efforts of the Town and the FMBA. On two occasions, negotiations resulted in terms that were reviewed but not accepted during the FMBA ratification process. These terms were not reviewed by the Town for purposes of ratification in the absence of ratification by the FMBA. The continuing impasse necessitated the convening of a formal interest arbitration hearing. The record was closed upon receipt of post-hearing briefs on or about March 1, 2006. Testimony, documentary evidence and argument were expertly advanced by counsel that allowed for a full record upon which a reasonable determination of the issues can be made.

As required by the governing statute, the Town and the FMBA submitted final offers reflecting their positions on the outstanding issues. They are as follows:

**FINAL OFFERS OF THE PARTIES**

**Town of Westfield**

1. Term of Contract – four (4) year contract from January 1, 2004 through December 31, 2007

2. Salaries

a) Effective first pay period January 2004, there shall be a new salary guide as follows:

Captain	\$82,341
Lieutenant	75,557
Firemen at Maximum	67,724
Firemen at Grade 6	65,482
Firemen at Grade 5	60,298
Firemen at Grade 4	53,599
Firemen at Grade 3	46,895
Firemen at Grade 2	40,196
Firemen at Grade 1	35,695
Firemen in probationary period for 1 year	30,050

b) Effective first pay period January 2005, there shall be a new salary guide as follows:

Captain – Maximum	\$85,223
Captain 1 <sup>st</sup> Step	81,712
Lieutenant – Maximum	78,201
Lieutenant – 1 <sup>st</sup> Step	74,174
Firemen at Maximum	70,146
Firemen at Grade 6	67,446
Firemen at Grade 5	62,107
Firemen at Grade 4	55,207
Firemen at Grade 3	48,302
Firemen at Grade 2	41,402

Firemen at Grade 1	36,766
Firemen in probationary period for 1 year	30,952

- c) Effective first pay period January 2006, the salary guide shall provide for a 3.5% increase at the maximum rates for Captain, Lieutenant and Firefighter and a 3% increase for all steps in the guide.
- d) Effective first pay period in January 2007, the salary guide shall provide for a 3.5% increase at the maximum rates for Captain, Lieutenant and Firefighter and a 3% increase for all steps on the guide.

3. Hours of Work

- a) Effective 1/1/06 modify Section 1, subparagraph 2, Vacation to provide:

The levels of vacation entitlement shall be converted to hours as follows:

<u>Years of Service</u>	<u>Vacation Entitlement</u>
1 to completion of 5 years	60 hours
6 to completion of 10 years	84 hours
11 to completion of 15 years	108 hours
16 to completion of 22 years	132 hours
23+ years	156 hours

- b) Modify Section 1, subparagraph 3 to provide that, consistent with applicable law, the Chief may request a doctor's note in the case of leave requested to care for a sick member of the immediate family living in the household of the employee.
- c) Effective 1/1/06 modify Section 3 to provide:

In the event that an employee is required to report to duty because of a recall, he shall be entitled to a minimum of two (2) hours' pay at time and one-half (1 ½) his regular hourly rate. Only one two (2) hour minimum during a 24 hour shift will be provided when the recall is for firefighters and fire officers who are EMT certified and are recalled due to a medical emergency. If an EMT certified firefighter or fire officer is recalled for a medical emergency a second time during a 24-hour shift, such firefighter or fire

officer shall be compensated on an hour-for-hour basis with a minimum guarantee of one (1) hour.

4. Insurance – Effective 1/1/06 modify Article XIV, Section 1 to provide that the traditional coverage currently being offered by the Town will be replaced with a preferred provider organization (PPO) plan, and employees will be required to contribute to the cost of health insurance as follows:

Single -	\$20.00 per month
Parent/Child -	\$40.00 per month
Family -	\$60.00 per month

5. Leaves – Modify Section 1, subparagraph (b) to provide:

- b) The request for the exchange of days must be made at least seventy-two (72) hours in advance of the day the substitution is to become effective, and there shall be a limit of four (4) substitutions per employee per year.

Modify Section 2 to provide that, in his discretion, the Chief may require a doctor's note for every day of requested sick leave.

6. Emergency Medical Response – Eliminate existing article and replace with the following:

The Town continues in its current determination that it will assign firefighter and fire officers to Emergency Medical Services (EMS) duties in addition to all regular duties currently performed by employees covered under this Agreement. So long as the Town continues to exercise its discretion to make these EMS assignments, the agreement negotiated between the Town and the FMBA will be maintained, the terms of which are as follows:

Firefighters and fire officers who are certified EMTs shall perform emergency medical services as directed and shall receive an annual stipend in the amount of \$750.00. These stipends shall not be adjusted by any general wage increases but shall be added to base pay after the general increases are applied. The Town reserves the right to remove the EMS duties, which are in addition to first responder duties, in which case the stipends will also be eliminated.

Effective 1/1/07 the stipend provided for herein shall be increased to \$1000.00.

**The FMBA**

1. **Duration or Terms of Contract.** Five-year contract effective January 1, 2004 through December 31, 2008.
2. **Salary Increase.** The following increases are sought for each year of the respective contract:

6% effective January 1, 2004;  
6% effective January 1, 2005;  
6% effective January 1, 2006;  
6% effective January 1, 2007; and  
6% effective January 1, 2008

The FMBA is seeking the above salary increases to be applied to all steps in the firefighter salary guide as set forth in Salary Schedule A of the current Agreement.

3. **Holiday Pay.** The FMBA is seeking to include Holiday Pay in base pay without reduction.
4. **Emergency Medical Technician Increase.** The FMBA is seeking the following increases:

January 1, 2004 – additional \$1,000  
January 1, 2005 – additional \$1,250  
January 1, 2006 – additional \$1,500  
January 1, 2007 – additional \$1,750  
January 1, 2008 – additional \$2,000

5. **Acting Pay.** The FMBA proposes that when an employee is required to serve in an acting capacity and a higher rank for a period of one day, the employee should receive the prevailing rate of pay for that rank.
6. **Educational Incentive.** The FMBA proposes that members should be provided an educational incentive of 1% for an Associate's Degree, 2% for a Bachelor's Degree, and 3% for a Master's Degree.
7. **Eye Care Plan.** The FMBA is seeking to implement an eye care plan for its members.

8. **Compensatory Time.** The FMBA proposes that there should be a choice of compensatory time or payment for mandatory live burn training and necessary course participation for certification and re-certification included courses required for promotion.
9. **Compensatory Time Requests.** The FMBA proposes that requests for compensatory time should be reduced to twenty-four (24) hours in advance with a minimum block of one (1) hour requests.
10. **Vacation Schedule.** The current vacation schedule should be revised as follows:

1 – 5 years:	5 days
6 – 10 years:	7 days
11 – 15 years:	9 days
16 – 20 years:	11 days
21 – 25 years:	13 days
11. **Fire Inspector Differential.** The language in Schedule C, Guide Governing Fire Inspectors, Section 1, concerning the \$2,500 differential for a superior officer who becomes a Fire Inspector, should be removed from Schedule C and placed in the Salary Guide, stating that the Fire Inspector will receive a differential of \$2,500 over a top rate Lieutenant.
12. **Sick Notice.** Article XIV, Leaves, Section 2, should be revised so that a doctor's note is not required unless justified abuse is found.
13. **Clarification of Article XVI, Retention of Existing Benefits.** The language in Section 2 of this provision should be clarified so as to reflect the definition of the PBA's bereavement leave policy.
14. **Health Benefits.** As will be explained in greater detail subsequently in this brief, the FMBA pioneered the concept of all Town Unions moving to the PPO to save money for the Town, and based upon this, the PBA accepted this request to change health benefits in its collective bargaining agreement. The FMBA does not now agree to this change in health benefits. However, the FMBA would so agree to change health benefits if the new program was explained to

the members, in connection with other requests made for parity.

15. **Parity for those Employees without EMT Certification.** As noted in the "Introductory Remarks and Background" of the FMBA's final position, dated August 8, 2005 [FMBA Exhibit 14], the FMBA does not believe that the proposals of the Town are consistent with parity, especially since the Town is attempting to add an additional three steps at the bottom of the grades. The Town is also seeking an additional step for the ranks of Lieutenant and Captain. None of these steps are present in the PBA's collective bargaining agreement. Further, EMT pay, as noted above, in the concept of parity means that it should be continued and provided to all FMBA members so that the FMBA will receive "parity" across-the-board. Namely, the EMT pay should be provided to those rank-and-file firefighters and the fire officers who are not EMT certified to maintain peer parity. Therefore, these members should be provided the same adjustment as those with the EMT certification, especially since the PBA in its most recent collective bargaining agreement, received special pay adjustments because the FMBA receives EMT pay.

### **BACKGROUND**

The Town is located in Union County. It has approximately 30,000 residents, a decline of 12% from 1970. Approximately 13% of the residents are over the age of 65. The Town has a high socio-economic profile. In 2000, the median household income was \$98,390, the mean family income was \$112,145 and the per capita income was \$47,187. Notwithstanding these figures, 20% of the Town's families had income ranging between \$35,000 and \$75,000.



The Town is primarily residential in nature. Ninety-three percent (93%) of its property units are residential yielding eighty-eight percent (88%) of its real property valuation.

Although the Town is primarily residential in nature, it has an active town business center with businesses in retail trade, professional and technical services, finance and insurance as well as healthcare among others. The average assessed home pays approximately \$10,600 in property taxes. Of this amount, only sixteen percent (16%) of each dollar collected is devoted towards the municipal budget, twenty-one percent (21%) towards Union County and sixty-three percent (63%) for public education purposes. The Town has experienced a 42.3% increase in its general tax rate between 1997 and 2004 although its effective tax rate is the fifth lowest in the County.

There are forty-one (41) employees in the FMBA bargaining unit. This includes four (4) Captains, eight (8) Lieutenants and twenty-nine (29) Fire Fighters. This averages to one (1) fire fighter for every 741 residents, and average ratio that is similar to the municipalities of Cranford, Roselle and Springfield. In this category, Westfield ranks third in the County.

There is no dispute that the fire department operates at a professional and productive level. In years 2001, 2003 and 2004, the total calls received in each

year approximated 1,650. An average of 22 of these calls were structural in nature.

Prior to this arbitration, the Town and the FMBA engaged in extensive negotiations. In their respective submissions in this proceeding, the parties characterize those negotiations differently. The Town asserts that the negotiating teams had twice come to tentative agreements incorporated in memoranda of understanding that were not ratified by the FMBA. The FMBA characterizes the same set of terms as being settlement proposals of the Town that were unacceptable to the FMBA.

Against this general backdrop, the Town and the FMBA offer the following positions in support of their respective final offers. I summarize these positions with some inclusion of written arguments since they are the most accurate reflection of the positions advanced by the Town and the FMBA.

## **POSITIONS OF THE PARTIES**

### **The FMBA**

The FMBA's proposals are mostly economic in nature. The FMBA's core theme is one it defines as achieving "peer parity" with the Town's contract terms that exist with its police department, hereinafter, the "PBA Agreement." The PBA and the Town concluded an agreement for contract years 2002, 2003, 2004 and 2005. The first two years of the PBA agreement, in 2002 and 2003, coincide with

the last two years of the FMBA agreement. The first two years of the new, and yet to be determined, FMBA agreement, 2004 and 2005, will correspond to the last two years of the PBA agreement. The FMBA proposes an additional three years beyond 2005 while the Town proposes an additional two. In the FMBA's view, the initial part of its proposals are designed to achieve "peer parity" status with the PBA.

This view is clearly and concisely set forth in its post-hearing written statement summarizing this position:

The contract for the Westfield's Firemen's Mutual Benevolent Association ("FMBA") expired on December 31, 2003. Therefore, the new contract period will be from January 1, 2004 through, hopefully, a five-year period of time, namely December 31, 2008, given the late nature of the Interest Arbitration.

The parity situation in its essence is quite simple. The police reached a settlement. It was for four (4) years covering 2002, 2003, 2004 and 2005. The settlement is clear cut. It matches payments which were incorporated off base for Firemen, for such things as Special Emergency Medical Technician pay and the like, and puts them in base for the Police employees. Therefore, the Police Salary schedule, which included the special EMT pay, for 2004 and 2005 is as follows:

	<b>Effective 1/1/04</b>	<b>Effective 1/1/05</b>
Captain of Police	\$91,177	\$94,824
Lieutenant-Detective of Police	\$87,297	\$90,789
Lieutenant of Police	\$84,373	\$87,747
Sergeant-Detective of Police	\$81,000	\$84,240
Sergeant of Police	\$77,557	\$80,659
Detective of Police	\$77,557	\$80,659
Detective of Police – Second Grade	\$72,295	\$75,187
Police Officer for the seventh year and all subsequent years from the date of appointment	\$69,734	\$72,524

Police Officer for the sixth year and all subsequent years from the date of appointment	\$64,149	\$66,715
Police Officer for the fifth year and all subsequent years from the date of appointment	\$58,751	\$61,102
Police Officer for the fourth year and all subsequent years from the date of appointment	\$53,343	\$55,476
Police Officer for the third year and all subsequent years from the date of appointment	\$47,937	\$49,855
Police Officer for the second year and all subsequent years from the date of appointment	\$41,128	\$42,773
Police Officer for the first year and all subsequent years from the date of appointment	\$31,998	\$33,277

The Fire salary schedule would be as follows on the peer parity issues for that period of time if parity is followed:

	Effective 1/1/04	Effective 1/1/05
Captain of the Fire Department	\$91,177	\$94,824
Lieutenant of Fire Department	\$84,373	\$87,747
Firefighter at Maximum	\$69,734	\$72,524
Firefighter at Grade 5	\$64,149	\$66,716
Firefighter at Grade 4	\$58,751	\$61,102
Firefighter at Grade 3	\$53,343	\$55,476
Firefighter at Grade 2	\$47,937	\$49,855
Firefighter at Grade 1	\$41,128	\$42,773
Firefighter in the probationary period of one year	\$31,998	\$33,277

However, as set forth below, the Westfield FMBA is seeking additional compensation beyond parity for reasons which will be set forth in great detail below.

The basic problem is that the Town has offered, in its last position and discussions between the parties, as follows: Under the Town's salary

proposals is asking for an award effective January 1, 2004 through December 31, 2007. The Town is also seeking to add additional steps to the salary guide. Specifically, the Town is requesting the following raises to commence the first pay period of January 1, 2004: 3 ½% - Captain, Lieutenant and Firefighters at Maximum, and 3% for all Firefighters at Grades 1-6 and probation firefighters. It should be noted that the Town is asking for the addition of a Grade, namely Grade 6. The Town is requesting the following percentage increase for the pay period commencing January 1, 2005: 3 ½% - Captain-Maximum, Captain-First Step, Lieutenant-Maximum, Lieutenant-First Step, and Firefighter-Maximum, and 3% for Firemen at Grades 1-6 and probationary firefighters. It should also be noted that the Town is asking to add two additional steps, namely Lieutenant-First Step and Captain-First Step. In addition, the Town is asking for a 3.5% increase at the Maximum rate for Captain, Lieutenant, and Firefighter and a 3% increase for all other steps, effective January 1, 2006. The Town is also requesting a 3.5% increase at Maximum rate for Captain, Lieutenant and Firefighter and a 3% increase for all other Grades, effective January 1, 2007.

For this period, namely, 2004 and 2005, although parity is approached, it is not reached because there is no 4% across-the-board payment in all respects in the steps, and the parity which should be an entitlement of these employees, is not reached except at maximum as set forth in the Town proposal.

In other words, if there were to be peer parity, as has been the pattern in Westfield, the 2004-2005 payments would not have a freeze in any steps, and there would be an across-the-board payment that would reach parity in the beginning of the contract without adding steps. To meet this peer parity concept the FMBA would have to be provided additional benefits into base pay, namely the EMT stipend in addition to the inclusion of numerous proposals, which are set forth at great length below, and which are currently provided to the PBA and other Fire Departments throughout the State.

...

The PBA ... received a substantially greater percentage increase. Obviously, the Town is attempting to "break parity" by instituting different wage percentage increases between the FMBA and PBA. Namely, the PBA, in its successor Collective Bargaining Agreement, which is effective January 1, 2002 through December 31, 2005, received an across-the-board salary increase of 4% for all patrol officers and superior officers. Even more egregious is the Town's current attempt to add additional steps to the salary guide, steps which are not included in the PBA collective bargaining agreement. Specifically, the Town did not implement a new PBA step scale for newly promoted employees to the rank of Lieutenant and Captain. However, the Town is currently seeking to add additional salary steps to the FMBA wage scale for newly promoted Lieutenants and Captains. Additionally, no new steps were

added for the Town's patrolman. The Town is seeking to include a new salary step for the FMBA's rank-and-file firefighters.

Clearly, the Town has tried to break parity by instituting different wage percentage increases for the FMBA and the PBA. In fact, the Town's Administrator James Gildea, as recently as January 7, 2005 admitted the following in breaking parity in the steps, when he stated:

"With a number of Firemen retiring over the past few years, the Department is younger and thus most members are covered within the contract salary guides. The new steps would increase the amount of time it would take the members to reach the maximum on the salary guide."

Mr. Gildea, establishes that parity will be broken since it will take additional steps to reach maximum pay for firefighters, whereas it will not take members of the PBA additional time to reach maximum pay on the salary guide, since the PBA does not have three (3) additional steps in its salary guide.

At this juncture, it is critical to note that in the PBA's most recently collective bargaining agreement, the PBA reached parity with the FMBA by incorporating into base pay, payments made to firefighters for specialized work and training involving ambulance and Emergency Medical Technician ("EMT") certifications. These payments were provided to the PBA even though the members of the PBA do not perform this work. This work is performed by the FMBA. In spite of this, the Town is seeking an award for the FMBA that is substantially smaller, as it relates to salary and benefits, in addition to seeking numerous give-backs that were not requested of the PBA.

Therefore, in order to maintain parity, the FMBA is seeking an across-the-board increase of 6% per calendar year, in addition to other benefits, which will be set forth in great length below.

...

It is equally important to note that the PBA, in its most recent contract effective January 1, 2002 through December 31, 2005, received numerous benefits currently not enjoyed by the FMBA. These benefits include the following: (1) A 4% across-the-board increase; (2) Special pay raises as follows: January 1, 2002 - \$750, January 1, 2003 - \$250, January 1, 2004 - \$500; (3) uniform allowance increase amounting to \$625 in 2005 (consisting of \$50 per year increase for each respective year of the four (4) year contract; (4) Employees in the Detective Bureau received a clothing allowance of \$275 per year, with a \$300 additional clothing allowance; (5) The PBA received a \$75 eye glass voucher; (6) Members in the Traffic Division of the PBA received a special payment of \$1,000 as well as \$500 stipend for those officers who are plain clothes police officers; (7) Educational Stipends and (8) Four compensatory days,

to name a few. The FMBA receives non of these special payments or additional benefits.

The FMBA further contends that its 6% wage proposal is justified due to the greater number of hours firefighters work per year, 2,148, compared to the 1,950 worked by police officers.

The FMBA also asserts that its proposal is also justified by comparing the "norm" of negotiated and/or awarded increases for police and fire employees inside and outside of Union County. The FMBA submits a 2003 comparison of wages (including longevity, holiday pay and stipends) of municipalities throughout New Jersey in comparison with wages in Westfield:

<b>Municipality</b>	<b>2003 Base + Longevity and Other Stipends</b>
Union	\$91,768
Newark	\$96,506
Springfield	\$85,573.20
Linden	\$79,266
Teaneck	\$84,444
Summit	\$80,915
Cranford	\$73,249.65
Elizabeth	\$77,179
Passaic	\$81,487
Westfield	\$69,249.92

\*Longevity for a firefighter with 28 years of service is 14%

\*\* Base salary and longevity was calculated as of 7/1/02.

The FMBA also makes the same comparability arguments on behalf of for Lieutenants and Captains:

[T]here is a substantial discrepancy in salary between Fire Captains in Westfield in comparison with Fire Captains throughout the State of New

Jersey, including Fire Captains in Union County. A chart establishing a sample of these disparities is provided below:

Union	\$22,418
Springfield	\$16,436
Elizabeth	\$14,748
Teaneck	\$7,468
Linden	\$7,055
Newark	\$6,799
Trenton	\$4,919

Moreover, there is a substantial salary discrepancy between the Westfield Lieutenants and Lieutenants throughout the State of New Jersey, including Lieutenants in Union County. As it relates to Lieutenants, the Westfield Lieutenants are also at a large disadvantage as it relates to salaries. For instance, Lieutenants in Union receive \$28,105 more a year than Westfield Firefighters. In addition, Teaneck receives \$9,431 more a year than Westfield Firefighters.

The FMBA has additional economic proposals. It seeks to include holiday pay in base pay without any reduction in the value of the holiday pay. According to the FMBA, the adoption of this proposal would be an enormous benefit for the firefighters' at a minimal expense to the Town. It points out that many municipalities include holiday pay in base pay including the municipalities of Union, Roselle and Springfield. The FMBA seeks an increase in the Emergency Medical Technician [EMT] annual stipend. The current level of the stipend is \$750. The FMBA proposes that the payment be increased by \$250 per year for each of five (5) years commencing January 1, 2004. This would increase the stipend to \$2,000 annually on January 1, 2008. According to the FMBA, all Union County firefighters receive a stipend and the one received in Westfield is one of the lowest stipends in the County. The FMBA submits a chart reflecting higher EMT stipends in many municipalities ranging to a 6% differential for Hillside firefighters who maintain an EMT certification and work on an



ambulance. The FMBA further points out that the PBA received "special pay raises" of \$750 on January 1, 2002, an additional \$250 on January 1, 2003 and an additional \$500 on January 1, 2004. These increases are said to be equivalent payments made to the PBA because of the EMT stipend in the FMBA Agreement.

The FMBA seeks an improvement in its "acting pay" provision. Article VIII, Section 2 now provides acting pay commencing on the eighth (8<sup>th</sup>) consecutive calendar day for service in an acting capacity. The FMBA proposes that acting pay be implemented if an employee is required to serve in an acting capacity for a period of one day. In support of this proposal, the FMBA points to various fire departments throughout the State who receive a greater acting pay benefit.

The FMBA also proposes an educational incentive in an amount of 1% for an Associates' degree, 2% for a Bachelors' degree and 3% for a Masters degree. The FMBA acknowledges that it currently receives course reimbursement but that the Town would benefit by having a greater incentive for the receipt of degrees in fire science and other areas of expertise. According to the FMBA, educational stipends for completing courses and obtaining degrees exist in many fire departments including Linden, Elizabeth and Clifton.

The FMBA proposes an eye care plan, a benefit not currently provided. The FMBA points to the PBA Agreement that provides for \$80 for one vision

coupon/voucher during the term of the FMBA Agreement. The FMBA further points out the existence of a similar benefit in fire departments such as Roselle and New Brunswick.

The FMBA proposes changes to compensatory time provisions. Pointing to Article XI, Section 8, firefighters receive compensatory time at the rate of time and one-half for time spent at live burn training. The FMBA proposes that there be a choice of compensatory time or payment for mandatory live burn training and necessary course participation for certification and re-certification, including courses required for promotion. The FMBA also proposes that requests for compensatory time be reduced to 24 hours in advance with a minimum block of one (1) hour requests. This would modify Article IX, Section 4 that requests for compensatory time off be made at least 72 hours in advance and that there be a minimum block of four (4) hours. Pointing to the PBA Agreement, the FMBA asserts that there is no requirement to request compensatory time within a specified number of hours or that a minimum block of time be taken. The FMBA also believes that overtime would be reduced by reducing the minimum block of four (4) hours to one (1) hour.

The FMBA seeks a modification to its current vacation schedule. According to the FMBA, the PBA receives a much greater vacation benefit in the amount of an additional ten (10) hours of vacation time up to an additional sixty-eight (68) hours of vacation time depending upon years of continuous service.

The FMBA also points to other fire departments who receive greater vacation benefits than Westfield including Jersey City and Newark.

The FMBA seeks to change the manner in which the fire inspector differential is paid. Currently, there is a \$2,500 differential for a superior officer who becomes a Fire Inspector. The FMBA proposes the removal of the differential from Schedule C with the like amount being placed in the salary guide. The salary guide would state that the Fire Inspector receive a differential of \$2,500 over a top rate Lieutenant. The FMBA views this proposal as merely a clarification of an existing benefit and one that would not cost the Town any additional money.

The FMBA further proposes a change in sick leave notice that is currently set forth in Article XIV, Section 2. The FMBA proposes that the Town not be allowed to require a doctor's note unless justified abuse is found. The FMBA views the current provision that allows for a doctor's note for a single day's absence to be overly restrictive and more burdensome than most similar provisions in fire departments. The FMBA asserts that its current provision is much more restrictive than the provision that exists in the PBA Agreement. That Agreement requires a doctor's note for sickness that goes beyond three days.

The FMBA proposes a modification to Article XVI, Section 2, a section that provides Bereavement Leave benefits. The FMBA compares and contrasts its

provision with the one that exists in the PBA agreement and concludes that the PBA provision contains a broader benefit that should, in the interests of parity between public safety groups, be awarded to the FMBA.

The FMBA explains its position regarding Health Benefits. It asserts that it would have agreed to move its members to a PPO to help the Town's financial obligations with respect to health insurance. However, it now disagrees with its inclusion in the new agreement due to the Town's lack of agreement with the FMBA's position seeking economic parity with the PBA.

The FMBA contends that the Town is in excellent shape and has the financial capacity to fund its proposals. Pointing to official budget documents, the FMBA, in its financial report, makes the following observations which I have summarized.

The FMBA points out that the Town has consistently regenerated surplus in excess of \$3 million over the last several years. Because the Town realizes budget revenues well above that which is anticipated, the Town has generated revenues as well as canceling unexpended appropriation reserves into surplus. The Town has maintained a healthy fund balance (\$5,640,965 in 2004) that allows it to utilize a significant portion of the balance (\$3.5 million in 2004) to use as revenue in the budget for the purpose of reducing its tax levy. The FMBA further points out that the Town's ratable base has continued to grow and the

municipal tax rate, while it has increased in each of the last five years, has only risen at a reasonable and "fairly flat" manner.

Further evidence of the Town's financial posture include increased property values, a high rate of tax collection (99.14%) and a debt service well below the statutory debt limit. The FMBA contends that an award of its proposals will not result in the Town having to exceed its Cap limitations. According to the FMBA, the Town is below Cap by \$636,693 in 2004 and \$446,055 in 2005.

### The Town

The Town urges rejection of all of the FMBA's proposals for many reasons as well as acceptance of its own proposals. First, it asserts that the FMBA is attempting to receive higher percentage salary increases than that received by other Town employees, a result that it claims is not in the public interest. The Town further asserts that the FMBA is ignoring the Town's efforts hold down costs given economic difficulties it faces as well, the financial difficulties the State is experiencing in addition to higher unemployment rates and its receipt of lower revenues. On this latter point, the Town points to staid aid figures that show that state aid has remained flat.

The Town also points out that the FMBA has focused only on the PBA agreement while ignoring the Town's contracts with the CWA and the Teamsters.

The Town acknowledges that its offer is ½% lower than the PBA in 2004 and 2005 but explains that:

Part of the reason for this minor moderation in the final offer is that by the time these formal proceedings commenced economic conditions had become more difficult for the Town due to items like increased cost of health insurance and pension payments, and the trend of wage increases had decelerated. Nonetheless, as discussed herein, the Town's offer is very reasonable when viewed in the light of these current trends and the other statutory criteria.

The Town argues that its salary proposal is more reasonable than the FMBA's when compared to private sector increases and those received in government generally. It points to an exhibit showing that unit employees received an average of 12.1% more than nationwide median private sector wage increases during the time period of 1993 to 2002. The Town also points to various economic reports for the purpose of wage comparison. In pertinent part, the report states:

"Despite the improving economy, employers remain cautious in setting pay increase budgets ...

U.S. employers plan to grant pay increases averaging 3.3% in 2004, and raises likely will average 3.5% in 2005, according to the survey based on responses from nearly 1,600 employers."

Further evidence of moderating wage trends is set forth in T-33 where the summary report states:

"The all-settlements average first year wage increase under contracts negotiated in first-half 2005 was 3 percent, compared with 3.4 percent reported in first-half 2004."

Even more instructive is the public sector portion of this report which provides:

"State and local government contracts reported in first-half 2005 provided an average first year increase of 2.9

percent compared with 2.8 percent reported in first half 2004, and a medium increase of 3 percent, the same increase reported a year ago.”

Thus, the Town concludes that its “proposed increase of 3.5% to the rate of pay for fire fighter and fire officer comports perfectly with the current trend overall in both the private and public sectors. The FMBA salary demand alone is twice the amount of the current trend and if granted would continue the substantial and now unjustifiable advantage that the FMBA enjoys over other employees in today’s work force. Such a demand is excessive, is without foundation and must be rejected.”

The Town seeks rejection of the FMBA’s demand for parity with the PBA. In its written argument, the Town sets forth its reasoning:

It has long been held that parity clauses are illegal subjects for negotiations. See City of Plainfield, 4NJPER 255 (1978). In accord, Township of Lower, 24 NJPER ¶29188 91998) and Edison Township, 24 NJPER ¶29031 (1997).

Although the FMBA is not overtly proposing the inclusion of an illegal parity clause in this contract, it is certainly trying to accomplish indirectly what it is prohibited from doing directly. To give credence to this “parity” approach may or may not be illegal, but it certainly would set a dangerous precedent for labor relations in the Town of Westfield.

What would be a legitimate argument for the FMBA to advance is the statutory criteria of internal comparability. On that front, however, their offer does not square up with the criteria. The two years that are in common between the PBA and the FMBA are 2004 and 2005 when the PBA received general wage increases of 4% and the FMBA proposes 6% for each of those two years. Even if the “extra” money or “stipend” increase is considered it shows that the PBA received \$500.00 in 2004 whereas the FMBA proposes a stipend increase of \$1,000.00; and in 2005 there is no

extra money for the PBA but the FMBA proposes an additional \$250.00 in stipend money. The results of the FMBA proposal shows a top paid firefighter in 2004 receiving \$69,411.00 without a \$1,750.00 EMT stipend vs. a top paid police officer at \$69,734.00 inclusive of the extra \$500.00. On base salary alone the police would be \$323.00 higher than the FMBA. When the stipend money is included the FMBA top paid fire fighter exceeds the top paid police by \$1,427.00.

In 2005 the top paid fire fighter would receive a base salary of \$73,576.00 under the FMBA proposal would exceed the \$72,524.00 top salary for police by \$1,052.00. When the stipend money of 2000 as proposed for 2005 is added the advantage to the firefighter swells to \$3,052.00.

Under any standard whether it be internal comparability or the arguably illegal or certainly ill-advised parity argument the FMBA proposal is off the mark and excessive. Accordingly, the arbitrator should give no credibility to the "parity" argument in reaching his final decision in this case.

The Town urges that its wage proposal be adopted asserting that it is more reasonable when the statutory criteria are applied. The Town submits that the FMBA's proposals would have adverse financial impact on the Town. The Town calculates the FMBA's base wage proposal at \$176,328, or 8.03% in 2004. If the EMT stipend were to be awarded, there would be an additional cost of \$24,000. Together, the Town calculates these demands at over \$200,000 averaging out to \$5,414 per firefighter for the unit of 37 employees. The Town engages in a similar cost analysis for 2005. It calculates the cost of the FMBA proposal at \$254,160 or 10.71% in 2005. This is without factoring in the increased costs associated with the FMBA's stipend proposal that would cost an additional \$6,000. In 2006, the Town calculates the FMBA's proposal at \$247,035 or 9.40%. This is without factoring in the increased costs associated



with the FMBA's stipend proposal that would cost an additional \$6,000. In 2007, the Town calculates the FMBA's proposal at \$248,535 or 8.65%. This is without factoring in the increased costs associated with the FMBA's stipend proposal that would cost an additional \$6,000.

The Town goes on to summarize the overall impact of the FMBA's proposal compared to its own:

... On base salaries alone the FMBA proposal results in a total cost increase of \$926,057.00 which is a 42.16% increase over the four-year term of the new contract. The cumulative effect of the proposed stipend increase is another \$42,000.00 which equates to a two hundred and thirty-three (233%) increase in 4 years. The combined increases proposed by the FMBA would result in a total increase of \$968,057.00 or \$340,228.00 more than is offered by the Town. If the total payout of this FMBA proposal were divided equally among the 37 members of this unit each man would receive a \$26,163.70 increase over 4 years. The average per annum percentage increase of the Union proposal is 10.54%. Clearly, the Union position is anything but reasonable. The cost of the base salary and stipend increases being proposed are so excessive that they should be dismissed out of hand. Moreover, any cost increases to base salary, even those proposed by the Town, have a substantial impact on other economic components of the compensation package for these employees including holiday pay (unit members are paid for 13 holidays per year), overtime rate and longevity values. Obviously, the FMBA proposal will have a much more dramatic impact on these additional economic components than the offer submitted by the Town which only makes the FMBA proposal that much more excessive and unreasonable.

The Town further contends that its proposal is more reasonable than the FMBA's when other criteria are considered. The Town submits an exhibit reflecting that between 1993 and 2003, Westfield's firefighters and fire superior officer salaries have increased 46.3% non-compounded while the CPA increased

only 27.6%. The Town points out that its final offer will continue to exceed the CPA perhaps by as much as 1% per year. The Town also contends that its proposal will further the continuity and stability of employment. The Town points out that no firefighters in Westfield have been laid off and that the Town has had the ability to retain its firefighters for their entire careers.

The Town asserts that its final offer stands favorably when viewed with comparability data in the public sector in general, the private sector and with respect to internal and external comparability. The Town submits data reflecting that unit employees averaged 12.1% more than the nationwide median private sector wage increases for the years 1993 through 2003 and 7.4% more than the overall average annual wage increases for covered workers in New Jersey during the same time period. The Town does not agree with the FMBA's comparability arguments concerning firefighters. On this point, the Town submits that:

In 2003, the last year of the now expired contract, Westfield was ahead of Cranford, Roselle and Hillside in terms of maximum base salary for fire fighters. Although Elizabeth, Linden and Summit are ranked ahead of Westfield as to maximum salaries, those three of the 5 communities with salaries higher than Westfield all have holiday pay to one or extent or another rolled into those salaries, thus distorting the comparison. Suffice it to say Westfield provides a comparable and very competitive maximum salary for its fire fighters and its final offer is not only reasonable but will maintain salary levels that are comparable to those paid by surrounding communities in Union County. Exhibit T-62.

The Town urges rejection of all of the FMBA's non-base salary economic demands including holiday roll-in, vacation improvements, optical plan, acting pay and bereavement leave. Summarizing the Town's objections, the Town contends that the proposals are either cost prohibitive and unreasonable and/or that the FMBA has not met its burden of proof to have any of these proposals awarded. With respect to its own proposals, the Town contends that they are supported by the statutory criteria, they are reasonable in nature and should be awarded, especially its proposal for employee contributions to the cost of health insurance.

### **DISCUSSION**

The Town and the FMBA have offered argument, testimony and considerable documentary evidence in support of their final offers. 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. 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.

In interest arbitration proceedings, the party seeking modifications to terms and conditions of employment has a burden to prove the basis for change. I will apply that principle as part of my analysis to each of the issues in dispute. The burden to be met must be at a level beyond merely a request for change without sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. In other words, there may be merit to awarding a single issue if it were to stand alone, but it may be denied after assessing the merits of the overall award.

### **Application of the Statutory Criteria and Decision on Unresolved Terms**

The Town and the FMBA have each addressed the statutory criteria in support of their respective positions. The criteria cannot be applied according to a mathematical calculation because, in this instance, they are all relevant and may be given different weight. One or more of the criteria may tend to support either the Town's or the FMBA's position on a particular issue but the application of any individual criterion must consider the terms that are awarded collectively. The award must represent a reasonable determination of the issues. There is a requirement that the arbitrator determine net annual economic change. The net annual economic change must also be reasonable after application of all of the statutory criteria. It is important to note that the application of one factor, standing alone, could imply a result that could widely differ from applying some other factor, standing alone. For example, if the cost of living factor were to be found controlling, it would suggest an award at or below the Town's offer while if an individual external comparable were found to be controlling (such as maximum salary for a firefighter in Union), it could suggest an award at a level sought by the FMBA. For this reason, the statute requires that all relevant factors be considered and weighed to allow for a balancing of all of the criteria towards making a reasonable determination of the disputed issues.

In this instance, the continuity and stability of employment, N.J.S.A. 34:13A-16g(8), of Westfield's firefighters is not a significant factor given the absence of layoffs and turnover of personnel in the department. The parties may differ as to the relative comparability of departmental terms and conditions of employment among county and statewide fire departments but, in general, the salaries and benefits provided to unit employees are fair and are sufficient to hire and retain firefighters. An award should be at a level that will continue to attract and retain professional firefighters to avoid disruptions to continuity and stability. This implies an award containing terms that preserve Westfield's relative standing among comparable fire departments as long as that would not cause adverse financial impact on the Town, its residents and taxpayers. Continuity and stability of employment also implicates the interests and welfare of the public, N.J.S.A. 34:13A-16g(1). The public interest is furthered by a result that maintains the excellent fire prevention, firefighting and emergency medical services that the department now provides without a loss of experience and training that could be caused by turnover resulting from a lesser overall compensation package.

The statute requires that consideration be given to the overall compensation package that is presently provided when benefits are included, N.J.S.A. 34:13A-16g(3). Here, the Town has calculated the total compensation package for a Westfield firefighter with EMT certification that includes seven elements: salary, longevity, holidays, health insurance, dental plan, overtime and

EMT stipend.<sup>1</sup> For a ten-year firefighter in 2003, the Town calculates total compensation as \$89,877 and, based upon an adoption of its final offer, this calculation would increase in 2005 to \$94,905. The overall compensation package, including benefits, is broad in scope. The record does not reflect that the scope of that package should be narrowed or broadened as a result of this award, although the Town and the PBA dispute the relative value of the overall compensation package when it is evaluated against the overall compensation packages received by firefighters in other municipalities.

The Town and the FMBA have submitted a substantial number of firefighter contracts in other municipalities for the purpose of comparing the total overall compensation including benefits of unit employees with other firefighters, N.J.S.A. 34:13A-16g(2). A review of these contracts reflects that Westfield's firefighters are below, similar to, or higher than other firefighter departments depending upon the individual compensation or benefit level that is subject to the comparison. Some comparisons are complex. For example, longevity is received by all employees in certain departments but in others including Westfield some employees hired after a given calendar year receive no longevity. Westfield is similar to Springfield, Plainfield, and Linden in that firefighters hired after a certain date receive no longevity. In some departments, unlike Westfield,

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<sup>1</sup> The Town's calculation of total compensation could vary depending upon whether a firefighter receives longevity, the precise health insurance plan selected, the actual overtime an individual firefighter receives as well as whether that fire fighter is eligible for an EMT stipend. The Town's calculation does not include the value of paid time off including holidays, vacation, sick leave or costs to the Employer for such items as Medicare and pension, Social Security and Worker's Compensation contributions.



base pay has been augmented by the inclusion of holiday pay and clothing or uniform allowance such as in Summit, Linden and Elizabeth. Thus, for example, base pay in Elizabeth for 2003 is approximately \$550 higher than Westfield but the base pay includes 24 hours of holiday time and \$700 in clothing allowance. In 2003, Westfield ranked above Cranford, Roselle and Hillside in maximum salary but ranked less than Union, Summit, Springfield, Linden and Elizabeth. The department with the greatest variance is Union where a firefighter's maximum salary in 2003 was \$11,000 more than Westfield, although three additional years are required in Union to reach salary maximum. In their respective arguments, the FMBA emphasizes unfavorable comparisons with Union's maximum salary with Roselle's or Hillside's EMT payments while the Town emphasizes comparisons that are favorable to Westfield. Based upon the relevant comparisons, the Town's salary offer would cause Westfield's firefighters to slip below the comparisons while the FMBA's final offer would dramatically improve its relative standing. Increases within the County show Cranford receiving 3.75% in 2004 and 4% in 2005, Linden receiving 4.0% in 2004 and Summit receiving 4% in 2004, 4.8% in 2005 and 3.85% in 2006 and Roselle averaging 3.75% during this time period.

Comparability criteria under the statute is not limited to comparison among firefighters. It includes internal comparisons, such as those including Westfield's non-public safety employees and its police department and comparisons with public employees generally and private sector employees. The presentations of

the parties widely differ on how these comparisons are applied and weighed. The Town acknowledges that its salary offer in the first two years is 0.5% less than what the PBA received during 2004 and 2005 but justifies this difference based upon the passage of time and increased costs in areas such as health insurance and pension plans. Citing wage data, the Town contends that the FMBA has received more than 10% above average wage increases received by federal, state and local government employees between 1993 and 2003. The Town further points out that FMBA salaries have increased an average of 7.4% more than private sector employees in New Jersey during the same time period and that wage projections for the private sector are 3.3% in 2004 and 3.5% in 2005.

The FMBA seeks greater weight to be applied to comparisons in other fire departments and emphasis on internal comparisons with the PBA contract. It defines this latter point as achieving "peer parity." In the FMBA's view, its fringe benefit proposals such as increased paid vacation time, holiday pay roll-in and additional EMT payments are justified by comparisons with other fire departments as well as above average wage proposals it sees as necessary to ease disparities in compensation in communities such as Union, Springfield and Summit. Despite the FMBA's strong arguments on this latter point, it focuses mainly on internal comparisons with the Westfield PBA. The FMBA notes that the PBA received 4% increases in 2004 and 2005 along with adjustments and without an increase in steps in the salary schedule. The FMBA also points out

unfavorable relative comparisons in absolute pay between the two departments. For example, the FMBA calculates that in 2003, the difference between Captains was \$8,398, \$8,311 between Lieutenants, and \$1,164 between patrol officers and firefighters.

The cost of living criterion, N.J.S.A. 34:13A-16g(7), clearly favors the Town's final offer. At 3.5%, the Town's offer is at or slightly above the CPI data while the FMBA's proposal of 6% is well in excess of that data. In addition, the record reflects that FMBA salaries have exceeded the CPI by 18.8% between 1993 and 2003. However, the FMBA points out that the CPI has recently surged and, for the first three months in 2005, the annual rate has exceeded 4%.

The statutory criteria requires consideration of financial data. This includes the lawful authority of the employer, N.J.S.A. 34:13A-16g(5). Viewed narrowly, the impact of an award should not compel the Town to exceed its lawful spending cap and viewed more broadly, an award cannot effect its other municipal budget items in a manner that would interfere with its ability to fund other budgetary items that are necessary to provide services to the public. In this instance, the Town's budget has significantly been below the cap. Its lawful spending authority would not appear to be jeopardized by an award of either party's final offer, although an award of the FMBA's proposals on salary and benefits would have a significant impact on the amount of funds that are available within the cap because they calculate to a level exceeding 10% per

year. The award must also take into consideration the financial impact the municipality, its residents and taxpayers, N.J.S.A. 34:13A-16g(6). In evaluating this standard, I must consider the Town's financial resources and posture against the overall costs of the parties' proposals. The record reflects an annual difference in positions of \$304,227 between 2004 and 2007 and a four-year total difference of \$621,829.

The interests and welfare of the public is a criterion that, by necessity, implicates many of the other criteria and must be embraced by an evaluation of all of the criteria that are deemed relevant. The sum total of the award has impact on the Town's decision-making on policy and its treatment of its other employees. The award cannot cause financial distress or unlawful expenditures. The public has an interest in effective fire prevention and firefighting and the Town must reward its firefighters in a manner that maintains competitiveness within its marketplace so that it can attract and retain competent and experienced professional firefighters. This is particularly important in Westfield where there is an active business center that is the hub of the community.

That statutory criteria, under N.J.S.A. 34:13A-16g(8), also allows for "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." One such factor is the factual

history of negotiations between the Town and FMBA. In this instance there is mutual reference to two sets of terms arrived at through negotiations that did not result in ratification. The FMBA refers to these terms as "settlement offers" from the Town while the Town refers to them as "Memoranda of Agreement [MOA]", or terms that were satisfactory to the negotiating terms although not binding on either without mutual ratification.

The Town and the FMBA dispute the meaning and the weight to be given to the "settlement offers" or the "MOA". Neither characterization of terms is especially meaningful given the fact that neither of the two sets of terms are binding. Nor can the terms be defined as "settlement offers" made by the Town because the record reflects that the terms were not unilaterally developed and proposed. Consideration must be given to these set of terms despite the fact that the final offers of both parties now deviate from that which is reflected in their history of negotiations.

There is no dispute that the parties did negotiate over the terms over a lengthy period of time. They represent, at minimum, a bargaining history that would ordinarily or traditionally be considered in the determination of wages, hours and conditions of employment through collective negotiations.

In rendering a decision on the disputed issues, I find that the most significant weight to be given to the relevant factors deal with the evidence that

relates to internal comparability with the PBA, external comparability with other municipal fire departments, the financial impact of the terms of the Award on the governing body, its residents and taxpayers and the history of negotiations between the parties. As a corollary, I must also consider the reasonableness of the total net annual economic changes caused by an award.

I first address contract duration. The Town proposes a four (4) year Agreement while the FMBA has proposed a five (5) year Agreement. I conclude that a five (5) year rather than a four (4) year contract would better serve the interests and welfare of the parties and the public. The prior agreement expired on December 31, 2003. This proceeding did not close until March 1, 2006. At this point, a four year agreement would have only one remaining year by the time the award is implemented. Stability and economy require a greater period of time until contract expiration. The record developed at hearing is sufficient upon which to render an award covering the next two full years. Thus, I award a contract duration of five (5) years.

Careful review of the record reveals that parties did intend to address internal and external comparability in their negotiations history notwithstanding their inability to come to a final agreement. The record contains evidence on the comparability of the FMBA's first two years (2004 and 2005) with the last two years of the PBA agreement (2004 and 2005) as well as the comparability in the overall terms of the respective agreement. The PBA agreement provided for

increases of 4% in 2004 and 2005. The Town now proposes less while the FMBA proposes more. The PBA and FMBA agreements do cover employees whose mission is to provide public safety. This suggests that comparisons between the two departments are appropriate. Notwithstanding this observation, the functions and duties involved in discharging their respective responsibilities differ. While they differ, one department's responsibility is not greater than the other. The differences are reflected in the terms and conditions of employment set forth in the respective collective bargaining agreements. These include, but are not limited to, hours of work, length of each work shift, training, the manner in which employees receive paid time off and the stipends each receive. Comparability, or reasonable consistency, is an appropriate topic for consideration and indeed are topics consistent with the parties' own negotiating history in these set of negotiations. The FMBA's demand for parity cannot be awarded and enforced given the aforementioned differences and the fact that the duration and effective dates of the respective agreements, while overlapping, have differed. This causes the "out" years of one agreement to extend beyond the expired terms of the other agreement. This gives rise to the legitimate pursuit of reasonable consistency but the terms that are set in the present for one group, while serving as a necessary guidepost and perhaps compelling, cannot bind the other group's terms to be set in the future.

The terms of the second "settlement offer" or "MOA", however they are characterized, represent a reasonable foundation for the terms of this award.

They are a reflection of the parties' negotiations history and equally significant, they are consistent with the statutory criteria. The first two years provide for 4% increases at maximum and for superior officers, as did the PBA agreement for the same two years, 2004 and 2005. To award a lower amount, as proposed by the Town, or a higher amount, as proposed by the FMBA, has not been justified by either. The FMBA's contention that these increases need augmentation in light of the adjustments that were made in the PBA agreement, has merit. Reasonable consistency is met by adding \$750 to the existing \$750 EMT stipend for a total of \$1,500.00 to the base rates for the Probation Step through Grade 6. The appropriate amount for the firefighters' maximum step and for Lieutenant and Captain would be an additional \$883.00 on top of the existing \$750 EMT stipend. Because these additional payments are added to base pay, the FMBA salary schedules at maximum will reach the same level, \$69,734 for 2004 and \$72,524 for 2005, as exists in the PBA agreement. The across-the-board increases and the additional costs of the increased stipend warrant the cost offsets provided to the Town by the modest restructuring of the salary schedules contained in the "settlement offer" or "MOA" as well as the October 1, 2004 effective date of the adjustments. These include 3% increases from the Probation Step through Grades 1 and 2 and an additional pay grade in 2004 for firefighters created by horizontal movement of the maximum rate in 2003 to a new Grade 6 in the 2004 salary schedule followed by a new maximum step.



For contract years 2006 and 2007, the unratified terms set forth in the "settlement offer" or "MOA" also represent a reasonable foundation for the terms of the Award for those years, but with the modifications caused by the FMBA having met its burden for terms that represent modest improvements. Those terms had been pegged at 3.5% for 2006 and 2007. The FMBA has established that a salary increase beyond 3.5% for 2007 will maintain a more competitive relationship with increases that have been provided in other agreements where comparability exists with the Westfield Fire Department. A 4% adjustment at firefighter maximum for Grades 3 through 6 for 2007 preceded by a 3.5% increase in 2006 represent a 3.75% average for those 2 years. These terms are consistent with comparables and can be achieved without causing adverse financial impact on the Town, its residents and taxpayers. The Probation Step and Grades 1 and 2, as in 2004 and 2005, will receive 3% increases. All normal step adjustments shall be paid in addition to the across-the-board increases. Maintaining this same structural model for 2008, I award a 3.75% increase for firefighter maximum and Grades 3 through 6, along with 3% increases to the Probation Step and Grades 1 and 2.

These terms shall be accompanied by the creation of new salary grade for the ranks of Lieutenant and Captain which shall be set at 50% of the difference between the maximum rate of Firefighter and Lieutenant and 50% of the difference between the rank of Lieutenant and Captain. This shall be effective upon the date of the issuance of this award. Salary schedule movements shall

be for a period of one year with movement to the maximum rates on the anniversary dates of promotion to those positions.

The salary portion of the Award shall cause new salary schedules reflected below:

**Salary Schedule Without EMT in Base.**

	2004	2005	2006	2007	2008
Captain Grade 2	\$82,739	\$86,049	\$89,060	\$92,622	\$96,096
Captain Grade 1	--	--	\$85,392	\$88,808	\$92,138
Lieutenant Grade 2	\$75,922	\$78,959	\$81,722	\$84,991	\$88,178
Lieutenant Grade 1	--	--	\$77,513	\$80,614	\$83,637
Max	\$68,101	\$70,825	\$73,304	\$76,236	\$79,095
Grade 6	\$65,482	\$68,101	\$70,485	\$73,304	\$76,053
Grade 5	\$60,884	\$63,319	\$65,536	\$68,157	\$70,713
Grade 4	\$54,120	\$56,285	\$58,255	\$60,585	\$62,857
Grade 3	\$47,350	\$49,244	\$50,968	\$53,007	\$54,994
Grade 2	\$40,196	\$41,402	\$42,644	\$43,923	\$45,241
Grade 1	\$35,695	\$36,766	\$37,869	\$39,005	\$40,175
Probation	\$30,050	\$30,952	\$31,880	\$32,837	\$33,822

**Salary Schedule With EMT in Base**

	1/1/2004	10/1/2004	2005	2006	2007	2008
Captain Grade 2	\$82,739	\$84,372	\$87,747	\$90,818	\$94,451	\$97,993
Captain Grade 1	--	--	--	\$87,149	\$90,635	\$94,034
Lieutenant Grade 2	\$75,922	\$77,555	\$80,657	\$83,480	\$86,819	\$90,075
Lieutenant Grade 1	--	--	--	\$79,270	\$82,441	\$85,532
Max	\$68,101	\$69,734	\$72,523	\$75,062	\$78,064	\$80,992
Grade 6	\$65,482	\$66,982	\$69,661	\$72,099	\$74,983	\$77,795
Grade 5	\$60,884	\$62,384	\$64,879	\$67,150	\$69,836	\$72,455
Grade 4	\$54,120	\$55,620	\$57,845	\$59,869	\$62,264	\$64,599
Grade 3	\$47,350	\$48,850	\$50,804	\$52,582	\$54,685	\$56,736
Grade 2	\$40,196	\$41,696	\$42,947	\$44,235	\$45,562	\$46,929
Grade 1	\$35,695	\$37,195	\$38,331	\$39,460	\$40,644	\$41,863
Probation	\$30,050	\$31,550	\$32,497	\$33,471	\$34,476	\$35,509

The issue of health insurance was included in the "settlement offer" or the "MOA". It provided that the traditional coverage currently being offered by the

Town will be replaced with a preferred provider organization (PPO) plan. With the exception of the effective date, these terms are awarded without the adoption of the Town's proposal for employee health care contributions. This shall be effective as soon as is practicable with no less than thirty (30) days notice to the FMBA. The only modification to the health insurance program shall be the inclusion of the optical benefit that currently exists in the PBA agreement. The health insurance program, including the optical benefit should be consistent between the FMBA and the PBA and the inclusion of this benefit in the FMBA agreement will meet that objective. The following language shall be included in the Agreement:

The Town shall pay \$80.00 for one vision coupon/voucher during the term of this Agreement for any eligible employee. To be eligible for this benefit an employee must have worked as a full-time employee for the Town for a period of at least one (1) year and if eligible the benefit shall be available to the employee and eligible dependents.

The benefits of this plan are provided by General Vision and the Town shall only be responsible for payments as the benefit is used.

When all of the above issues are considered and their costs calculated, the net annual changes in the Award include EMT stipend increases to base of \$750 or \$866 (depending on eligibility) effective October 1, 2004 and across-the-board increases of 4.0%, 4.0%, 3.5%, 4.0% and 3.75% for contract years 2004, 2005, 2006, 2007 and 2008 exclusive of the stipend increases, this represents an average increase of 3.85%. The costs of step movement in each of the five years shall be in addition. An additional cost is borne by the inclusion of the

optical plan. The costs of the Award will have offsets caused by the additional step added to the firefighter agreement in 2004, the differentiated increases for the Probation Step and Grades 1 and 2, the additional one-year step for newly promoted Lieutenants and Captains, and the conversion to a fully paid PPO health insurance plan.

It is clear from the proposals of the Town and the FMBA that each seeks greater concessions and/or benefits to be added to the package beyond those that have been awarded. From the Town's view, concessions on vacations, sick leave and co-pays on health insurance would reduce the overall costs of a new agreement and be more consistent with its financial requirements. From the FMBA's view, enhancements in holiday pay, compensatory time, vacation, acting pay, educational incentive and bereavement leave would improve existing contractual terms at additional costs that are undetermined.

I have evaluated the merits of each parties' proposals individually and collectively but I am compelled to conclude that the interests and welfare of the public are best served by an award within the scope of terms that have been awarded without broadening or narrowing that scope. To broaden or narrow the scope of the issues that have been awarded would necessitate altering the terms that have been awarded in a manner that I believe would be inconsistent with the arbitrator's statutory responsibility to render a reasonable determination of the issues with due regard for the statutory criteria that are relevant for the resolution

of these negotiations. Accordingly, the Town's proposals and the FMBA's proposals that extend beyond the scope of the issues that have been awarded are respectfully denied.

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

### **AWARD**

1. All proposals by the Town and the FMBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this award.

2. **Duration**

The effective date of this Agreement shall be January 1, 2004 through December 31, 2008.

3. **Health Insurance**

The traditional health insurance coverage currently being offered by the Town shall be replaced with a preferred provider organization (PPO) plan. This shall be effective as soon as is practicable with no less than thirty (30) days notice to the FMBA. An optical benefit shall be included that currently exists in the PBA agreement. The following language shall be included in the Agreement:

The Town shall pay \$80.00 for one vision coupon/voucher during the term of this Agreement for any eligible employee. To be eligible for this benefit an employee must have worked as a full-time employee for the Town for a period of at least one (1) year and if eligible the benefit shall be available to the employee and eligible dependents.

The benefits of this plan are provided by General Vision and the Town shall only be responsible for payments as the benefit is used.

4. **EMT Stipend**

Effective October 1, 2004, there shall be a new salary guide established for those unit employees currently receiving an EMT stipend. This new salary guide will add \$750 to the existing \$750 EMT stipend for a total of \$1,500.00 which will be added to the base rates for probation through Grade 6. At the maximum for Firefighter and for Lieutenant and Captain will be \$883.00 added to the existing \$750 EMT stipend for a total of \$1,633.00 to be added to those base rates of pay.

5. **Salary**

The salary schedule shall be modified as follows:

1. Effective January 1, 2004, there shall be a 4% increase applied to the maximum pay grade for Firefighter in 2003 and a 4% increase to the 2003 pay grade for Lieutenant and for Captain. There shall be an additional pay grade established in the salary guide for firefighters by horizontal movement of the maximum rate in 2003 to the new Grade 6 of the 2004 salary schedule. There shall be a 3% increase to the probationary rate and the rates for Grades 1 and 2, and a 4% increase for Grades 3 through 5 as established in 2003.
2. Effective January 1, 2005, there shall be a 4% increase to the 2004 maximum rate and rates for Grades 3 through 6 for Firefighter and for Lieutenant and Captain and there shall be a 3% increase to the 2004 probationary rate and the rates for Grades 1 and 2 in the Firefighter's salary guide.
3. Effective January 1, 2006, there shall be a 3.5% increase to the 2005 maximum rate and rates for Grades 3 through 6 for Firefighter and for Lieutenant and Captain and there shall be a 3% increase to the 2005 probationary rate and the rate for Grades 1 and 2.
4. Effective on the date of this Award, there shall be a new salary grade added to the rank of Lieutenant which shall be 50% of the difference between the maximum rate for Firefighter and the rate for Lieutenant; and there shall be a new salary grade for Captain which shall be 50% of the difference between the maximum rate for Lieutenant and Captain. Employees promoted on or after this date shall move to Lieutenant Grade 1 or Captain Grade 1 as the case may be for a period of one year, and then shall be eligible to move to the maximum rate for Lieutenant or Captain on the anniversary date of their promotion.

5. Effective January 1, 2007, there shall be a 4.0% increase to the 2006 maximum rates and rates for Grades 3 through 6 for Firefighter, and for the maximum rates for Lieutenant and Captain. Grade 1 for Lieutenant and Captain shall continue to be calculated with the 50% formula and there shall be a 3% increase to the 2006 probationary rate and the rate for Grades 1 and 2.
6. Effective January 1, 2008, there shall be a 3.75% increase to the 2007 maximum rates and rates for Grades 3 through 6 for Firefighter, and for the maximum rates for Lieutenant and Captain. Grade 1 for Lieutenant and Captain shall continue to be calculated with the 50% formula and there shall be a 3% increase to the 2007 probationary rate and the rate for Grades 1 and 2.
7. All salaries shall be retroactive to their effective dates. All unit employees entitled to step increases in accordance with the salary schedules shall receive such step increases retroactive to their effective dates.
8. The salary schedules shall read as follows:

**Salary Schedule Without EMT in Base**

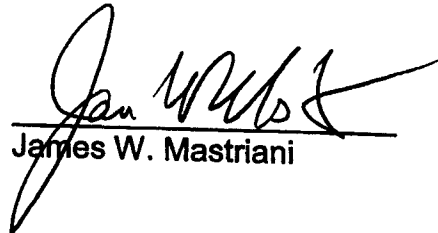
	2004	2005	2006	2007	2008
Captain Grade 2	\$82,739	\$86,049	\$89,060	\$92,622	\$96,096
Captain Grade 1	--	--	\$85,392	\$88,808	\$92,138
Lieutenant Grade 2	\$75,922	\$78,959	\$81,722	\$84,991	\$88,178
Lieutenant Grade 1	--	--	\$77,513	\$80,614	\$83,637
Max	\$68,101	\$70,825	\$73,304	\$76,236	\$79,095
Grade 6	\$65,482	\$68,101	\$70,485	\$73,304	\$76,053
Grade 5	\$60,884	\$63,319	\$65,536	\$68,157	\$70,713
Grade 4	\$54,120	\$56,285	\$58,255	\$60,585	\$62,857
Grade 3	\$47,350	\$49,244	\$50,968	\$53,007	\$54,994
Grade 2	\$40,196	\$41,402	\$42,644	\$43,923	\$45,241
Grade 1	\$35,695	\$36,766	\$37,869	\$39,005	\$40,175
Probation	\$30,050	\$30,952	\$31,880	\$32,837	\$33,822

**Salary Schedule With EMT in Base**

	1/1/2004	10/1/2004	2005	2006	2007	2008
Captain Grade 2	\$82,739	\$84,372	\$87,747	\$90,818	\$94,451	\$97,993
Captain Grade 1	--	--	--	\$87,149	\$90,635	\$94,034
Lieutenant Grade 2	\$75,922	\$77,555	\$80,657	\$83,480	\$86,819	\$90,075
Lieutenant Grade 1	--	--	--	\$79,270	\$82,441	\$85,532
Max	\$68,101	\$69,734	\$72,523	\$75,062	\$78,064	\$80,992
Grade 6	\$65,482	\$66,982	\$69,661	\$72,099	\$74,983	\$77,795
Grade 5	\$60,884	\$62,384	\$64,879	\$67,150	\$69,836	\$72,455
Grade 4	\$54,120	\$55,620	\$57,845	\$59,869	\$62,264	\$64,599

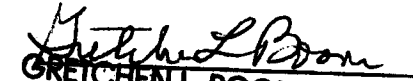
Grade 3	\$47,350	\$48,850	\$50,804	\$52,582	\$54,685	\$56,736
Grade 2	\$40,196	\$41,696	\$42,947	\$44,235	\$45,562	\$46,929
Grade 1	\$35,695	\$37,195	\$38,331	\$39,460	\$40,644	\$41,863
Probation	\$30,050	\$31,550	\$32,497	\$33,471	\$34,476	\$35,509

Dated: October 9, 2006  
 Sea Girt, New Jersey

  
 James W. Mastriani

State of New Jersey        }  
 County of Monmouth        } ss:

On this 9<sup>th</sup> day of October, 2006, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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