

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

---

**TOWNSHIP OF BLOOMFIELD**

“Public Employer,”

- and -

**BLOOMFIELD FMBA LOCAL 19**

“Union.”

---

Docket No. IA-2008-003<sup>2</sup>

**DECISION  
AND  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Employer:**

Brian J. Aloia, Esq.  
Wiener Lesniak LLP

**For the FMBA:**

David I. Fox, Esq.  
Fox and Fox

I was appointed to serve as interest arbitrator in a negotiation impasse involving the Township of Bloomfield [the "Township"] and FMBA Local 19 [the "FMBA" or the "Union"]. Thereafter, I conducted pre-interest arbitration mediation sessions. Because the impasse could not be resolved, I conducted an interest arbitration hearing on September 19, 2008. At the hearing, the scope of the issues presented in the parties' final offers was very broad leading to the submission of hundreds of exhibits. Subsequent to the hearing, the Township and the FMBA were able to reach agreement on all economic and non-economic issues with the exception of one. That remaining issue concerns "acting pay" for firefighters who serve in the higher rank of Captain. At the hearing and in their post hearing briefs, the parties submitted evidence and argument on this single issue. The record was closed on November 16, 2008.

The final or last offers of the parties on this issue have been presented as follows:

**FINAL OFFER OF THE TOWNSHIP**

Amend Article XII as follows:

1. Acting Officer Pay
  - a. Employees assigned by the Chief of the Fire Department to perform the duties of a higher rank shall be paid at the effective rate of pay for the first year of service for that rank after working two consecutive tours of duty at the higher rank, retroactive to the assignment of that rank.

- b. Payment for work in the higher rank shall be made within thirty (30) days following the month in which the work in the higher rank was performed.
- c. Upon completion of working two consecutive tours of duty at a higher rank, employees will be paid hour for hour for each hour that is worked, retroactive to the assignment of that rank.
- d. Payment shall be calculated by comparing the base salary of the firefighter to the base rate of pay for the first year of service for the rank. Longevity, holiday pay and any other stipends received by the rank and file firefighters or the firefighters of the higher rank shall not be considered when calculating acting time pay.

### **FINAL OFFER OF THE FMBA**

1. **Acting Officer Pay** – Pursuant to two arbitration awards, the Township currently pays firefighters who act as officers the maximum pay for a Lieutenant or Captain depending upon which officer they replace. Under the new Officers' Agreement, steps are established for persons who are automatically moved from Lieutenant to Captain or Firefighter to Captain.

The existing 12 Captains retain a single rate of pay. Firefighters, therefore, who act as a Captain, should receive the rate of pay of Captains who have no steps which is in the rate of pay for Captains prior to the elimination of the Lieutenants rank. This is the maximum of that rank. Consideration should be given, pursuant to having Firefighters receive the same rate of pay as the Captain who they replace.

In its post-hearing brief, the Union poses the following questions to be answered in support of its proposal:

1. Effective on or about June 1, 2008, what should be the acting officer pay, also known as "pay for work in a higher rank" (Article XII)?
2. Should a newly executed agreement for Fire Superior Officers which eliminates the rank of Lieutenant creating a significant pay increase for existing Lieutenants, but no benefit for Firefighters, result in a dramatic reduction in "acting pay" for Firefighters?
3. Should all Firefighters, when they continue to act as Captains, receive the same pay that they received in accordance with arbitration awards, and practice and contractual obligations in the past, namely the pay that they received at the rate of the 12 existing Captains, no matter which captain is replaced in the future?

### **BACKGROUND**

The origins of this dispute over acting time pay for Firefighters who work in a higher rank can be traced to the history of recent negotiations between the Township and the FMBA Local 219 (Superior Officers) and between the Township and this unit, FMBA Local 19. Local 219 has historically represented Fire Lieutenants, Fire Captains and Fire Official/Fire Protection sub code Officials of the Fire Department while Local 19 has historically represented rank and file Firefighters. Both agreements expired on December 31, 2006. In general, when Firefighters served as acting Captains in the past, they have received the single rate of pay that was contractually set for Captains.

Negotiations with Local 219 culminated in a Memorandum of Agreement [MOA] for the years January 1, 2007 through December 31, 2011. This MOA contained revisions relating to superior officer ranks and pay schedules. The first

revision eliminated the rank of Lieutenant. The second was the creation of a five (5) step salary schedule for newly promoted Captains who had previously occupied the rank of Lieutenant and a new step system for Firefighters who would eventually be promoted to Captains in the future. Those Captains who had been promoted to their position before March 16, 2008 were placed on a separate single rate schedule with the same rates as the new five (5) step schedule except for a maximum rate that was set at \$844 higher effective January 1, 2011. For those Captains who had been Lieutenants at the time of the rank and file elimination, they transitioned to the maximum fifth step on January 1, 2012, the first day after the expiration of the agreement. The record reflects that there were eight (8) Lieutenants who were promoted to Captain upon the elimination of the rank of Lieutenant and twelve (12) Captains who, at the time, were already occupying the rank of Captain.

The Township and Local 219 negotiated the following pay schedules to reflect these changes<sup>1</sup>. The language describing the pay schedules set forth the salaries and salary movements for existing Captains as of March 16, 2008, for newly promoted Captains (who had been Lieutenants) and Firefighters who would be promoted into the Captain rank in the future:

B. Salary Schedule(s)

The salaries of Members of the Fire Department of the Township of Bloomfield covered by this Agreement are fixed and determined by ordinance as follows:

---

<sup>1</sup> I have omitted reference to Fire Officials/FSPOs. This position is not relevant to the issue in dispute.

1. Captains promoted to the position before March 16, 2008, are subject to the following salary guide:

1/1/08	7/1/08	1/1/09	7/1/09	1/1/10	1/1/11
99,704	102,197	104,241	106,847	111,014	115,344

2. Captains promoted (from the position of Lieutenant to Captain) effective March 17, 2008, and Firefighters promoted to the position of Captain after March 17, 2008, but before December 31, 2008, are subject to the following salary guide:

1/1/08	7/1/08	1/1/09	7/1/09	1/1/10	1/1/11
93,454	95,947	97,991	100,597	*Step 3 below (103,698)	*Step 4 below (111,552)

\*On January 1, 2010, these Captains shall drop to the five step salary below and be placed on Step 3. Therefore, on January 1, 2011, the Captains shall move to Step 4 and on January 1, 2012, they shall be at top pay at Step 5.

3. Any firefighter promoted to the position of Captain after December 31, 2008, is subject to the following salary guide:

Steps	1/1/08	7/1/08	1/1/09	7/1/09	1/1/10	1/1/11
1	86,464	88,650	90,443	92,729	96,384	100,182
2	89,774	92,036	93,892	96,258	100,041	103,972
3	93,084	95,442	97,341	99,787	103,698	107,762
4	96,394	98,808	100,790	103,316	107,100	111,552
5	99,704	102,197	104,241	106,847	111,014	114,500

All Firefighters promoted to the position of Captain shall be placed at step one of the salary guide. Captains shall remain at each step for one year, thus, Captains shall move to the next salary step on the anniversary of their promotion to Captain. Accordingly, it shall take all Captains five years to reach Step 5 and receive the top salary for the Captain position.

The Township's proposal in this proceeding is based upon a number of factors. The first is its desire to have comparability between the acting pay provisions of the police department and the fire department. In addition, it contends that it seeks to create a system of acting pay that comports with the new salary schedules for Captains and to lessen the financial impact of the

Union's proposal which it asserts would be adverse to the Township and its taxpayers.

The arguments in support of its proposal are concisely set forth in the Township's post-hearing brief. Rather than summarizing its reasoning, I set forth these positions as follows:

**I. The Township's proposal should be granted based upon the concept of parity in compensation and benefits between the firefighters and police officers.**

Foremost, Local 19 has mischaracterized the negotiations between the Township and Local 19<sup>7</sup>. Simply put, at Local 19's request, the Township offered Local 19 a substantial raise on the premise that the firefighters' benefits and pay should more closely resemble that of the Township's police officers. In an attempt to reach the goal of parity set by Local 19, and bring the firefighters' overall compensation and benefits closer to mirror the police officers, the firefighters agree to reduce their holiday pay from 8.8% to 7.97% to mirror the police officer's holiday pay (Exhibit 3). The firefighters also agreed to reduce their personal day allotment by one day, from a maximum of seven personal days to six personal days. By reducing their entitlement to personal days by one day, the firefighters' personal day allotment more closely mirrors the police officers' personal day benefits as they only receive five personal days. Notwithstanding the fact that the firefighters accepted the very generous raises offered by the Township (which have dramatically raised their salaries to become substantially similar to the police officer salaries), they refuse to accept parity when it comes to acting pay. The Township's agreement with the Bloomfield Police Officers contains a provision controlling pay for work in higher rank that states:

Those employees assigned by the Chief of Police to perform the duties of a higher rank and who so act for

---

<sup>7</sup> **Footnote in Township's argument:** The Township also asserts that the Local 19 has misrepresented the facts regarding the Township's negotiations with Local 219. However, because it is the Township's position that the Township's negotiations with Local 219 are irrelevant to this matter and should not be considered by the Arbitrator, the Township's negotiations with Local 219 will not be addressed. The Township recognizes the actual agreement entered into with Local 219 is relevant and attaches the draft agreement hereto as Exhibit A.

a period of at least four (4) consecutive tours of duty shall be paid at the effective rate of pay for the first year of service for that rank retroactive to the assignment of the rank.

(Exhibit 14, page 26, ¶A).

The Township's proposal before you is substantially similar to the acting time provision above which is found in the agreement between the Township and the Township's police officers. Specifically, the Township's position is that Article XII should be amended to read as follows:

- A. Employees assigned by the Chief of the Fire Department to perform the duties of a higher rank shall be paid at the effective rate of pay for the first year of service for that rank, after working two or more consecutive tours of duty at the higher rank, retroactive to the assignment of that rank.
- B. Payment for work in the higher rank shall be made within thirty (30) days following the month in which the work in the higher rank was performed.
- C. Upon completion of working two or more consecutive tours of duty at a higher rank, employees will be paid hour for hour for each hour that is worked, retroactive to the assignment of that rank.
- D. Payment shall be calculated by comparing the base salary of the firefighter to the base rate of pay for the first year of service for the rank. Longevity, holiday pay and any other stipends received by the rank and file firefighters or the firefighters of the higher rank shall not be considered when calculating acting time pay.

(See Exhibit 1)

As you can see, the Township's agreement with its police officers provides that police officers assigned to perform the duties of a higher rank shall not receive additional compensation unless they work in the acting position "**for a period of at least four (4) consecutive tours of duty**" (Exhibit 14, page 26, Article XIV, Pay for Work in Higher Rank, ¶A). It is the Township's position that the firefighter's acting time pay should resemble that of its police officers. Furthermore, the Township considered the difference in work hours between the firefighters and the police officers when



drafting the Township's proposal. Simply put, because two consecutive tours of duty for a firefighter is generally considered to be equal to four twelve hour work days, it is the Township's position that requiring the firefighters to work two or more consecutive tours before being entitled to acting time pay, is similar to the police officer provision requiring at least four consecutive tours of duty. Based upon a comparison of the total salaries and benefits received by these similarly situated employees the Township's proposal should be granted. [emphasis in original]

After consideration of the overall compensation presently received by the firefighters compared to the police officers who are considered similarly situated employees, the Township's proposal with regarding to acting time pay should be granted.

**II. Because Local 19's proposal is fundamentally flawed and cannot be granted as proposed, the Township's proposal should be granted as it is more reasonable especially in light of the firefighters' total current salary and benefits package.**

Local 19's proposal is based upon a misrepresentation of the facts and cannot be implemented on a permanent basis, and therefore, should not be granted by the Arbitrator. First, the FMBA has incorrectly represented that the Township has established three separate categories for superior officers (captains) with regard to their salary. Local 19 was correct that the recently negotiated Collective Bargaining Agreement entered into between the Township and Local 219 eliminated the position of lieutenant. However, only two salary guides have been created that will determine the rate of pay for all captains under the newly negotiated agreement between the Township and Local 219.

First, all lieutenants promoted to the position of captain agreed to a 5 step (five year) salary guide (Exhibit 13 and Exhibit A attached hereto). Therefore, it will take all recently promoted captains five years to reach top step salary on the five step salary guide. Furthermore, on January 1, 2010 (two years into the agreement), the recently promoted captains will be placed on step 3 of the same five step salary guide. All future firefighters promoted to the position of captain will be placed on (Exhibit A attached hereto, page 35, ¶2). Therefore, exactly the same as firefighters promoted to the position of captain in the future, it will take the lieutenant recently promoted to the position of captain, five years to reach the top pay on the newly negotiated five step salary guide (Exhibit 13). Moreover, both the recently promoted lieutenants and future

firefighters promoted to the position of captain will all be on the same five step salary guide.

The second salary guide provides the salary for all senior captains, those captains who were promoted to the position of captain before the parties' agreement to abolish the position of lieutenant. In accordance with the parties' agreement, the senior captains received a percentage raise and are considered a diminishing class. Simply put, this group of senior captains cannot be enlarged and once all of them have been promoted, retire or otherwise cease to work in their current position, the salary guide to which they are subject will no longer be utilized. Therefore, Local 19's request that they get paid acting time based upon the salary of the senior captains cannot be granted because at some time in the future the class of senior captains will diminish to none and the salary guide applicable to them will no longer be utilized.

Furthermore, it would not be proper to award Local 19's proposal because to do so would mean that the acting officers would get paid the highest rate of pay of all captains. Ultimately, Local 19 has requested that they be paid based upon the rate of pay received by the senior captains who receive the highest rate of pay out of all of the captain and are considered a diminishing class. Clearly, this position should not be granted because it would be improper to pay an acting captain who may have no experience in the position, and may not even have passed a promotional examination, more than many of the actual captains who passed promotional examinations and permanently hold the position. Accordingly, the Township's position that acting captains be paid for the first year of service for that rank (as determined by the five step salary guide), after working two or more consecutive tours of duty at the higher rank should be awarded.

### **III. The Township's proposal should be granted based upon the financial impact of the competing proposals**

The Township's position should be granted because a comparison of the financial impact of the competing proposals reveals that the Township's proposal is fair and fiscally responsible, especially after considering the Township's current fiscal state of affairs. As indicated in the Township's previous submission, the Director of Finance has calculated the cost of the Union's proposal to be \$259,894.02 more expensive than the Township's proposal over the term of the Agreement (Exhibit 9). As evidence by the Finance Director's certification, the Township cannot afford the cost of the

Union's proposal without adversely impacting the budget (Exhibit 8, page 8, ¶126).

Astonishingly, Local 19 has argued that somehow because they requested and agreed to a 2% raise in January 2007, in lieu of the 4% raise originally offered by the Township during negotiations, they are now entitled to additional compensation for acting time pay. As a matter of fact, Local was offered a 4% raise in 2007, and instead requested a 2% raise with changes in the article that controls their health benefits, in lieu of the 4% raise. Although the Township did not want to make the requested changes to the language within Local 19's health benefits, it did so because it could not pass up the potential savings based upon the current financial condition the Township as described in the Township's previous submission. Therefore, Local 19's position that they are entitled to higher acting time pay because they did not receive a 4% raise in 2007 should be completely disregarded.

In Local 19's position statement, Local 19 has also argued that the Township's agreement with Local 219 somehow entitles Local 19 to an increase in acting time pay. However, what Local 19 fails to recognize is the actual savings realized by the Township when Local 219 agreed to a five step (five year) salary guide, a cut in holiday pay, a reduction in personal days and a change in health benefits made the Township's agreement with Local 219 very economical. Regardless of what is represented in Local 19, the actual total cost of the contract between the Township and Local 219 is less than a 4% increase per year. Moreover, this cost calculation does not consider the savings that will be realized by the Township in the future by reducing the number of personal days, implementing a five step salary guide, and eliminating the traditional health benefit plan. Therefore, Local 19's argument that their position with regard to acting time pay should be awarded based upon the Township's agreement with Local 219 is also nonsensical and should be completely disregarded. Accordingly, the Township's proposal with regard to acting time pay should be granted.

The FMBA disagrees with the Township's position and its reasoning. It cites many points in support of the adoption of its final offer and the rejection of the Township's. It believes that the payment of acting pay at the first step of the

salary schedule for Firefighters who are promoted to the rank of Captain in the future “punishes” Firefighters who will act, and have acted, as Captains.

The FMBA points to the fact that Firefighters who, in the past, have served in this capacity, have always received the maximum pay for the Captain rank and should continue to do so. It also points to the fact that the eight (8) Lieutenants who were promoted to Captain after their positions were eliminated were placed in favorable steps on the new five (5) step guide guaranteeing their ultimate placement on the maximum pay step on January 1, 2012. By placing Firefighters on step 1 of the new guide they would, according to the FMBA, be inequitably placed in a position of receiving less money than both the existing Captains and the newly promoted Captains when the Firefighters serve as acting Captains despite the fact that they would be performing the same duties and have the same responsibilities. The FMBA also sees the remaining portions of the Township’s last offer as being inequitable including the requirements that they would have to work two consecutive tours of duty to be eligible and the limitation on the calculation of the rate of pay that would exclude longevity, holiday pay and stipends.

The Union contends that two prior arbitration awards support its position that acting pay must be pegged at the maximum rate of pay for Captains. It submits the following arguments in its post-hearing brief in support of its belief that substantial weight must be given to these awards:

A summary of each of these Opinions and Awards follows. One of the Awards was issued by Arbitrator Carl Kurtzman as to higher rank pay in 1990, and the other was issued by Arbitrator John E. Sands in 2000.

Both of these positions strongly support the position taken as to the issue on acting pay here by Local 19.

The 1990 decision involved a very simple issue, namely: "Did the Township violate the Agreement by paying, since March 20, 1990, a Firefighter acting Lieutenant's pay instead of acting Captain's pay when they have replaced Captains?"

The determination was a resounding victory for Local 19 and supports Local 19's position as to the current issues before the arbitrator.

The facts in that situation were as follows: From 1960 to 1990, there was only one rank of Captain. A Firefighter replacing a Captain received acting Captain's pay, in accordance with the one pay scale for Captains. On March 21, 1990, the Township created the position of Lieutenant between Firefighter and Captain, and determined that acting officer's pay would always be at the Lieutenant's salary, instead of the pay at the rank which the officer replaced (i.e. Captain).

The Township maintained that all Fire Captains were performing Fire Lieutenant's duties and, therefore, should be paid the same as Fire Lieutenants.

Obviously, the Township's position is the reverse of its position now!

The arbitrator determined simply, that the pay for replacing Fire Captains should not be reduced, so that a Firefighter acting as a Captain should not receive the Lieutenant's pay. The determination was as follows: "The compensation for their (the) Firefighter replacements should continue as heretofore, prior to March 20, 1990." If the arbitrator determined Firefighters the (Captains included) all performed Lieutenant's work, then acting pay would be based upon a Lieutenant's pay.

In this situation here, Local 19 simply wants acting Fire Captain's pay to remain the same as it has been in the past with the replacement of a Captain, and not be influenced by the change imposed by the Township of different gradations in Captain's salaries, particularly as to those Captains who will be promoted on or after January 1, 2009.

The issues here are simply, what should the acting pay be in view of the changes, albeit unilateral changes, with regard to the Fire Captains represented by 219, and the elimination of the Fire Lieutenant rank.

The basic concept in the Kurtzman arbitration is that the acting pay for Fire Captain's work should not be changed because of the creation of a Lieutenant's rank.

The same is true here. The acting pay for a Fire Captain's work should not be changed because of the creation of three Fire Captain categories, namely those twelve currently employed, those promoted to the position of Captain automatically with a tremendous increase in pay on or before December 31, 2008, and those promoted from Firefighter to Captain thereafter, with a step system.

The April 17, 2000 decision (the Sands Award) raised another issue which was won by Local 19.[clarification provided]

In that arbitration there was yet another change in the Superior Officers contract (Local 219) which the Township sought to use as an excuse to reduce the acting pay. The Township was denied this right. A new contract created a new initial three month "rate of Lieutenants and Captains new to their rank." (See page 3 of the Award). The Township sought to say that this should be the acting pay (the reduced 90 day rate) for the entire first twelve months of the date that a Firefighter replaced an acting officer. (Both ranks had no steps).

Once again, the arbitrator found in favor of Local 19 by determining that the unilateral change of the terms and conditions of Fire Lieutenants and Captains contract would not adversely impact the practice for Local 19.

The actual officer's pay (only one rate with no steps) after the 90 day training pay would be used as the acting pay.

In both these Awards, the unilateral change was not allowed to be used by the Township to reduce the acting pay in any significant respect for Firefighters.

These Awards and the situation as expressed above, strongly if not overwhelmingly support the position of Local 19 that the pay of Firefighters acting as Captains, should not be diminished because of the changes here, as to Local 219's contract. This pay should continue to be at the same rate of pay received for replacing any of the twelve Captains as to all Captains.

In sum, the FMBA concludes that the Township has sought to “dramatically reduce” acting pay for Firefighters by discontinuing the prior method of how it calculated acting pay.

### **DISCUSSION**

The Township and the FMBA have offered argument, testimony and considerable documentary evidence in support of their final offers on the issue of acting pay for Firefighters who serve as Captains. I am required to make a reasonable determination of the above issue giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) 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.
- (9) Statutory restrictions imposed on 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 section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

Given the limited nature of this dispute, the application of the statutory criteria need not be as broad in scope as what normally would have been required if this dispute, as originally presented, were to concern issues, including, but not limited to, salary, health insurance, survivor benefits, stipends, continuing education benefits, unused sick time, personal days and vacation pay. Over 200 exhibits were presented in the original record encompassing the broader impasse. Nevertheless, evidence and arguments have been presented that do relate to the criteria that concerns the acting pay issue. The criteria that I deem most relevant for the resolution of this dispute are internal and external comparability, financial impact and the interests and welfare of the public.

There is merit to the FMBA position that the internal relationship between Firefighters and Fire Officers within the Bloomfield Fire Department should be given stronger consideration in determining the formula for calculating acting pay

for Firefighters when they perform the duties of a Captain than the internal comparison on the acting pay provisions between firefighters and police officers.

As a general proposition, acting pay for firefighters has never been tied to any corresponding calculation in any other department, including the Bloomfield Police Department. On the surface, the Township's parity argument has some logical appeal because the Memorandum of Agreement between the Township and FMBA Local 19 was predicated, in part, upon internal comparability considerations between Police Officers and Firefighters. However, the record reflects that the acting pay issue for Firefighters has been administered based predominantly upon the unique characteristics within the fire service and the Fire Department. Insufficient justification has been shown to now provide a parallel on the acting pay issue between the two departments where none previously existed. Thus, I do not conclude that the acting pay issue in the fire department should mirror the acting pay provision in the police contract as the Township has proposed.

By way of example, prior to January 1, 1996, Fire Lieutenants received acting pay at the single Captain rate when acting as Captains. Thereafter, Local 219 (Fire Officers) eliminated acting pay for Lieutenants thereafter in exchange for a salary differential of \$6,250.00 less than a Captain's salary. This shows that the Township and Local 219 recognized that a relationship existed between base pay and acting pay within the Fire Department when they traded off the benefit of

receiving higher pay for acting in a higher rank with higher base pay for all employees who occupied the rank of Lieutenant.

In the most recent negotiations between the Township and Local 219, the rank of Lieutenant was eliminated. All Lieutenants were made Captains upon receiving approval from the New Jersey Department of Personnel. This reflected the reality that the duties that the Lieutenants were performing had evolved to be so closely matched with those of the Captain rank that the position of Lieutenant could be abolished. Future promotions for Firefighters are now to the rank of Captain. There is an absence of parallel between the police and fire departments on the structure of rank. A rank and file police officer typically acts as a Sergeant but a rank and file Firefighter now acts solely as a Captain after the elimination of the Lieutenant rank.

An additional distinction between the two departments is the recent change in salary schedule structures between the superior officers within the two departments. This, in large measure, is the source of the instant dispute. In the Fire Department, there is no longer a single rate of pay for the Captain rank. Instead, there are now five (5) steps with a range between minimum pay and maximum pay within the rank that approximates \$15,000. The police superior officers' agreement shows no such five (5) step guide for any superior officer rank and no such compensation spread within a rank.

Beyond these differences, a distinction also exists in the hours of work that constitute a tour of duty. In the police department a tour is less than half the time of a Firefighter tour which is twenty-four (24) hours in length. The Township strives to accommodate this difference by proposing that acting pay for Firefighters commence after working two (2) or more consecutive tours of duty instead of four (4) or more consecutive tours as is required in the police department. However, the Township's argument fails to give sufficient weight to the fact that the Firefighter's tour of duty is twenty-four hours in length every fourth work day. Thus, a Firefighter is subject to a far lengthier work day of supervisory authority than a police officer and the Firefighter would not normally work consecutive days. The Township's sought after standard of two (2) consecutive tours of duty for Firefighters would require the spanning of at least five work days with three regular days off in between in order to become eligible for acting pay.

While I have rejected the Township's reliance upon awarding an acting pay provision based upon parity with the police department this does not compel the conclusion that there is merit to FMBA Local 19's proposal to link acting pay to the fifth or maximum salary step for Captains.<sup>2</sup>

---

<sup>2</sup> For the sake of clarity, it should be pointed out that the fifth, or maximum, salary step for Captains needs to be more clearly defined because the maximum step is different on the January 1, 2011 salary schedules for Captains who were promoted to the position before March 16, 2008 than for those promoted after March 17, 2008. The difference in rate is \$115,344 and \$114,500 respectively. As I understand the position of the FMBA, the rate for acting captain pay should be set at the rate of pay received by Captains who were promoted to the position before March 16, 2008. According to the Local 219 Agreement, these Captains have been placed on the salary schedule that is identical to the fifth step maximum except in year 2011 where they are \$844 higher.

The FMBA fails to recognize that the new five (5) step guide for Captains represents a distinct departure in the manner in which Captains have been previously compensated. The salary relationship between Firefighters and Captains is not as straight-forward as in the past because Firefighters who are promoted to Captain now go to the first of five steps. A four year period of time is now required before a Firefighter who is promoted to Captain reaches the maximum fifth step. Lieutenants who became Captain after the elimination of the rank did not automatically go to the maximum step for Captains. They were placed on a transition schedule that moved them to Step 3 of the five (5) step guide on January 1, 2010, Step 4 on January 1, 2011 and eventually to the Step 5 maximum on January 1, 2012.

As a general proposition, it would be an anomalous situation if a qualified Captain, not at maximum pay, were to receive less daily compensation for performing his or her duties than a Firefighter who while periodically as a Captain receives maximum Captain pay but remains in the rank of a Firefighter. Such possibility would be created if, under all circumstances, acting pay for Firefighters were to be calculated at the top of the five step guide for Captains. This possibility distinguishes this situation from the facts that were present in the prior awards that the FMBA relies so heavily upon. In Kurtzman, acting pay for acting in the Captain rank was found to not be diminished after a Lieutenant's rank was established in 1990. But at the time, there were only single rates of pay for the

ranks of Lieutenant and Captain. The arbitrator found that the Township violated the contract by paying a Firefighter at the Lieutenant's rank when acting as a Captain. Acting pay was found to be linked to the rank that the Firefighter was acting and serving in. At that point in time, there was only a single rate of pay. But in the current situation, a five step guide was negotiated by Local 219 that created a five step guide placing newly promoted Firefighters at Step 1. Also on January 1, 2010, Lieutenants becoming Captains were placed on Step 3. While those Lieutenants would eventually reach the maximum at Step 5 the day after the December 31, 2011 expiration of the Local 219 agreement, the agreement did not immediately place them at the maximum rate that Local 19 seeks for the payment of acting pay. At least three years of service are required before those Captains receive top pay for their full-time work. Thus, in contrast to Kurtzman, a single rank no longer exists and not all Captains have been placed at Top Step.

In Sands, the arbitrator reviewed the applicability of a newly negotiated agreement (in 1996-1997) between the Township and Local 219 that provided an initial three month "training" rate for Lieutenants and Captains before they could earn the single rate of pay that was set for those ranks at the time. The Township, citing language in Article XII (A) [Pay for Work in Higher Rank] of Local 19's agreement, began to pay Firefighters acting as either Lieutenants or Captains, depending upon the rank in which they were acting, at the three month "training" rate at all times rather than the single rate set for the work. At that time, Article XII(A) provided that "[t]hose Employees assigned by the Director of the

Fire Department to perform the duties of a higher rank, shall be paid at the effective rate of pay *for the first year of service for that rank*, retroactive to the assignment to that rank.” [emphasis in original]. The arbitrator found that paying acting Captains or acting Lieutenants only at the “training rate” violated the language of Article XII(A). However, he found no violation if the Firefighter who acted did so for a Lieutenant or a Captain who was serving in the three month “training” rate or if the Firefighter acted in a position that was vacant. Under the latter circumstance, there was no violation for paying the “training rate” for the first ninety days when a Firefighter acted in a vacant position of the higher rank. Although the practical impact was that the Firefighter would, in most circumstances, be paid at the single Lieutenant or Captain rate, the Sands award allowed acting Firefighters to be paid, under certain circumstances, at a rate of pay that was less than the “single rate of pay” for that rank.

In reviewing the merits of the parties’ respective proposals, I am persuaded that the most reasonable determination of the issue is one that gives weight to the parties’ prior history, the interests and welfare of the public, the internal relationships between firefighters and their superior officer ranks [N.J.S.A. 34:13A-16g(2)(c)], the newly enacted contract provisions that altered the salary structure for Captains to a five step schedule after the elimination of the Lieutenant rank and the financial impact of the new acting pay issue. The interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] would be served by maintaining a reasonable and logical system that rewards firefighters who serve

in an acting capacity. When this occurs, both parties benefit. The Township benefits by not having to pay overtime rates and by not having to immediately fill vacancies because of the ability of Firefighters to serve in a temporary acting capacity. The firefighters benefit by receiving experience in supervisory capacities and by having the opportunity to earn higher compensation during the time that they serve in an acting capacity.

The acting pay provision that I award has weighed the following facts and considerations. Acting Captain pay has historically been tied to the pay set for the Captain rank. Prior contract language exists, as interpreted in the Sands award, that allowed for lesser pay than the maximum rate under limited circumstances. However, in most instances, pay was received at the single maximum rate set for the Captain rank. The costs of awarding the FMBA proposal (calculated by the Township at \$259,894.02) would have substantial financial impact because, under all circumstances, payment would be at the maximum rate set for Captains. Payment pegged at the first year of service as proposed by the Township would have less financial impact but would represent an unwarranted and unjustified departure from the historical relationship that has existed in the department. The new five step compensation scheme for Captains is a substantial change in the past structure for determining Captain pay and provides support for the awarding of a new formula that is not governed solely by past methods. An additional consideration is that the nature of the formula should not be so administratively burdensome that innumerable calculations



would be required on a daily or continuous basis based upon each individual acting assignment.

I am also persuaded that the new acting pay provision should differentiate between short term assignments, those of longer duration involving consecutive fill-ins and those where the acting Captain fills in for a specific Captain on a consistent, longer term, but not consecutive basis. Short term assignments are required when a vacancy is created due to circumstances such as when Captains take a sick or vacation day or other intermittent paid leave days. When this occurs, the acting assignments may be daily or during consecutive shifts but only until such time that the regular Captain returns from these short term and more temporary absences. While supervisory authorities may be exercised during these relatively brief periods of time, the acting Captain has not been placed in a situation where the nature of his or her supervisory responsibilities would rise to a level that approaches that of the regular Captain who assumes more permanent overall supervisory responsibilities. Under such short term circumstances, the pegging of the acting rate to an amount over the maximum firefighter rate rather than tying the rate to the Captain schedule is reasonable. It gives some meaning to the prior contract language that did not require payment at the maximum rate, albeit under limited circumstances, but also gives weight to the historical relationship that, in most cases, resulted in acting pay be paid at the single maximum rate for Captains. An acting rate that is 25% over Firefighter maximum pay on the salary schedule balance these considerations and creates

a consistency in rates that is not directly connected to the individual rate received by the Captain who is being replaced on a short-term basis or to the structure or number of steps in the Captain's schedule. It also gives meaning to the new five (5) step salary schedule in that it generally correlates the amount of compensation to the amount set by the third step of the new schedule. The 25% premium for these types of assignments maintains sufficient reward to the Firefighter to perform the assignment of an acting Captain.

Captain vacancies that are longer term in nature require separate treatment. These vacancies may occur under circumstances such as long term sickness, disability or when the Township awaits the taking of, or the results from, a promotional examination for the rank of Captain. When such situations arise, the acting Captain takes on the greater responsibilities and duties that a regular Captain normally assumes under the more permanent supervisor-subordinate relationship. Under such circumstances, a more reasonable result is to compensate the acting Captain at the compensation level that has been paid in the past at the fifth, or maximum, step of the new five (5) step salary schedule during the longer, but still temporary, term of that assignment.

The distinction in terms of time as to when a short term appointment ends and a long term appointment begins defies precise definition. For the purposes set forth herein, I define that distinction as commencing after the completion of a fourth (4<sup>th</sup>) consecutive shift and the commencement of a fifth (5<sup>th</sup>) consecutive

shift regardless of whether the assignment spans more than one calendar year<sup>3</sup>. When such assignment exceeds the fourth (4<sup>th</sup>) consecutive shift, the acting Captain shall be paid at the fifth (5<sup>th</sup>) or maximum step of the salary schedule retroactive to the commencement of the third consecutive assignment to fill in for that Captain.<sup>4</sup> When an individual Firefighter fills in for the same Captain during the course of a calendar year for more than four shifts where such fill-in is not for consecutive shifts, the same consideration shall apply as exists for the longer term assignment. That Firefighter shall be paid at fifth (5<sup>th</sup>) or maximum rate of the salary schedule for Captains commencing on the fifth shift of the fill-in retroactive to the commencement of the third tour of duty that the Firefighter has filled in for that Captain.

I deny the FMBA proposal that all acting Captains be paid based upon the salary of those Captains who pre-existed in the Captain rank prior to the promotion of Lieutenants into the rank of Captain after the elimination of the Lieutenant rank. The preexisting Captains will assume an annual rate set at \$844 above the fifth (5<sup>th</sup>), or maximum, step on the new schedule for the "old" Lieutenants and for Firefighters who are promoted to the rank of Captain in the future and advance to that maximum step. The pre-existing Captains are a

---

<sup>3</sup> For these purposes, a shift shall be defined as a 24 hour tour.

<sup>4</sup> For these purposes, it shall be assumed that the Township could not remove an acting Captain except for cause after the performance of the fourth (4<sup>th</sup>) consecutive shift but before the commencement of the fifth (5<sup>th</sup>) consecutive shift when there is a continuing requirement to fill that particular vacancy and the acting Firefighter remains available and willing to perform the assignment.

diminishing class and the salary guide applicable to them will no longer exist and their rate of pay shall not be the basis for the calculation of acting pay.

There is no evidence that the lawful authority of the Employer [N.J.S.A. 34:13A-16g(5)] or other statutory restrictions [N.J.S.A. 34:13A-16g(9)] on the Employer would be imperiled by this award. The continuity and stability of employment for unit members [N.J.S.A. 34:13A-16g(8)] will be maintained by the formula awarded for acting Captain pay compensation. In this context, the Award will provide sufficient reward for the performance of the duty. The criterion concerning the cost of living [N.J.S.A. 34:13A-16g(7)] is of little relevance to this dispute inasmuch as the salary schedules have already been negotiated in each unit and the only issue is acting pay compensation. The Township's statutory spending and taxing limitations are not implicated by the costs required by the Award. The financial impact of the Award is not adverse to the Township because it has had an acting pay obligation tied to the maximum Captain rate under the old agreement and its obligation will be under an adjusted formula that will apply during the new agreement that does not require the payment at the maximum rate except under more limited and justifiable circumstances.

I next turn to the remaining issues in the parties' respective final offers that are in dispute. Consecutive tours of duty at the higher rank were not required in the past and I do not award the Township's proposal to require that two consecutive tours of duty be worked in order to become eligible for any acting

pay. All assignments shall be paid at 25% over the Firefighter maximum except for the longer term assignments described above when the acting Firefighter becomes eligible for the Fifth (5<sup>th</sup>), or maximum, step. I also do not including holiday pay or longevity pay in the new formula that has been awarded. The acting Captain shall receive the holiday pay that the contract requires for that employee in his or her permanent rank of Firefighter. In addition, longevity pay is not relevant to the issue in dispute because longevity pay is connected to one's length of service rather than to the performance of work in a particular rank and shall be paid based upon a Firefighter's normal base pay.

Accordingly, and based upon the above, I respectfully enter the terms of the award that follow.

### **AWARD**

Article XII shall be amended as follows:

- a. Firefighters assigned by the Chief of the Fire Department to serve in an Acting Captain capacity during a calendar year shall be paid at twenty-five (25%) percent of the maximum rate set for Firefighters in the Local Agreement except under the following circumstances. When such assignment exceeds four (4) consecutive tours of duty regardless of whether the assignment spans more than one calendar year, the acting Captain shall be paid at the rate of pay set for the fifth (5<sup>th</sup>) or maximum step of the Captain rank retroactive to the commencement of the third (3<sup>rd</sup>) consecutive shift of such assignment. When an acting Captain assignment involves an individual Firefighter replacing the same Captain, that Firefighter shall begin to be paid at the rate of pay set for the fifth (5<sup>th</sup>) or maximum step of the Captain rate

commencing with the fifth (5<sup>th</sup>) such fill-in during a calendar year even when the five (5) shifts are not consecutive retroactive to the commencement of the third (3<sup>rd</sup>) shift replacement for that Captain.

- b. Payment for work in the higher rank shall be made within thirty (30) days following the month in which the work in the higher rank was performed.
- c. Employees will be paid hour for hour for each hour that is worked, retroactive to the assignment of that rank.
- d. Longevity, holiday pay and any other stipends received by firefighters of the higher rank shall not be considered when calculating acting Captain pay.


Dated: May 31, 2009  
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey        }  
County of Monmouth       }ss:

On this 31<sup>st</sup> day of May, 2009, 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 04/30/2014