

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between:

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**CITY OF LONG BRANCH**

**“Public Employer,”**

**- and -**

**LONG BRANCH FIREMEN’S MUTUAL  
BENEVOLENT ASSOCIATION, LOCAL 68**

**“Union.”**

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2005-003

**Before  
James W. Mastriani  
Interest Arbitrator**

Appearances:

**For the City:**

James L. Plosia, Jr., Esq.  
Apruzzese, McDermott,  
Mastro & Murphy, PC

**For the FMBA:**

David I. Fox, Esq.  
Lynsey A. Johnson, Esq.  
Fox & Fox LLP

An impasse arose between the City of Long Branch [the "City"] and the Long Branch Firemen's Mutual Benevolent Association, Local 68 [the "FMBA"] over terms for a new collective negotiations agreement [the "Agreement"] that would commence on January 1, 2003. The parties could not reach a voluntarily negotiated settlement. After my designation to serve as interest arbitrator, I met with the parties commencing August 31, 2004 for the purpose of pre-interest arbitration mediation to ascertain whether a voluntary settlement could be achieved. The FMBA filed a Petition to initiate compulsory interest arbitration on July 16, 2004. When mediation efforts were not successful interest arbitration hearings were held on February 11, May 20, June 10 and June 13, 2005. The record remained open for the submission of financial reports by the parties' respective financial experts. Post-hearing briefs and reply briefs were filed by both parties, the last of which was received on or about April 1, 2006 at which time the record was closed.

At the hearing, the FMBA offered the testimony of Dr. Harry Carter, Thomas Banker, Financial Expert and Timothy Somers, Firefighter and the City offered the testimony of Michael Muscillo, Aide to the Mayor, Ronald Mehlhorn, Chief Financial Officer and Kevin Hayes, Fire Official. In addition to testimony, hundreds of exhibits were submitted into the record by both parties, economic reports and reply economic reports from their respective financial experts. In addition, I received certifications from Samuel Tomaine, Fire Chief, John McNutt,

Battalion Chief, Gloucester City Fire Department and James Parnell, FMBA President primarily relating to staffing and safety issues and prior litigation between the parties in unfair practice proceedings before the New Jersey Public Employment Commission.

As required by statute, the FMBA and the City submitted their final offers for consideration by the arbitrator.

## **FINAL OFFERS**

### **The City**

1. **Length of Agreement:** 1/1/03 through 12/31/06
2. **Health Insurance**
  1. Drug Co-pays increase to \$10/\$20/\$35 effective 1/1/05. Co-pays to increase to \$15/\$25/\$40 effective 1/1/06.
  2. Effective 1/1/05, employees wishing to remain in traditional coverage will contribute \$200 per month to the City for continuing to receive such coverage. This amount shall increase to \$300 per month effective 1/1/06.
  3. Employees hired on or after 1/1/05 shall not be eligible to enroll in traditional health insurance coverage.
  4. Effective 1/1/05, the office co-pays shall increase from \$5 per visit to \$15 per visit.
3. **Salary**
  1. For employees hired on or after 1/1/05, add 3 new steps to the salary guide (a step near the bottom of

the guide and two steps near the top of the guide).  
This will result in a 10-step guide.

2. **Wages:** 2003 – 3.5%. 2004 – 3.5%. 2005 –4%.  
2006 – 4%.
4. **Longevity:** Eliminate for employees hired on or after 1/1/05.
5. **Holidays:** Remedy existing language re incorporation of holiday pay into base pay.
6. **Safety Allowance:** Eliminate for employees hired on or after 1/1/05.
7. **Vacation:** Cap vacation entitlement at 7 “24” hour days for all new employees hired on or after 1/1/05.
8. Incorporate previous settled non-economic issues into the new agreement.

### **The FMBA**

1. **Duration Term of Contracts.** Five year contract effective January 1, 2003 through December 31, 2007.
2. **Salary and Steps 2003-2007.**
3. **Percentage Increases.**
  - a. **Safety Allowance.** The FMBA seeks to include Safety Allowance in base pay.
  - b. **Longevity Pay.** The FMBA seeks to include longevity payments in base pay.
  - c. **Clothing Maintenance.** The FMBA seeks to include the clothing maintenance pay in base pay.
4. **Compensatory Leave Days.** The FMBA is seeking to be provided four (4) compensatory leave days.
5. **Health Benefits.** Subject to the appropriate review, the FMBA will accept the health benefits proposed by the City.

6. **Fire House Seniority.** Before reassigning firefighters to any new fire stations/houses, members should be allowed to pick and choose their new station/house by seniority.
7. **High Hazard Call.** FMBA proposes that all four (4) firefighters on duty shall report in any high hazard call.
8. **Personal Protective Equipment.** The FMBA proposes that the City shall continue the current practice of repairing and cleaning all personal protective equipment issued to each member that is damaged or dirtied in the line of duty, at no cost to the member.
9. **HVAC Diesel Exhaust Ventilation System.** The FMBA proposes that the City should continue to maintain and provide each Fire House with an appropriate HVAC Diesel Exhaust Ventilation System. Additionally, the FMBA proposes that the City should periodically service and repair such system.

### **BACKGROUND**

The City of Long Branch is an oceanfront municipality located in Monmouth County. It is unique in having characteristics that reflect an urban, suburban and resort community. Its profile is diverse and includes beach clubs, a downtown business district, railroad stations, a hospital, high rises, apartment complexes and condominiums. Its overall population of 32,000 lives within 6.6 square miles and it has a minority population of 32%. Its summer population increases substantially due to seasonal residents and tourists. In 1999, the per capita income was \$20,532 and the median household income was \$38,651. In 1999, 16.62% of its residents had income below the poverty level.

During the past several years, the City has created the conditions and planning that has spawned major redevelopment. This has resulted in a strong revitalization of the City's residential and commercial base. Redevelopment has significantly increased the City's tax ratables and its property valuations resulting in moderation and/or reduction of its municipal and equalized tax rate.

The City maintains a paid fire department. The department is a mixed or hybrid department that consists of 22 paid firefighters and a large core of volunteers. Of this core, there are approximately 150 qualified volunteers including the Fire Chief. Virtually all fires result in a volunteer/paid response. After the retirement of a Lieutenant in 2003, the staffing level consisted of one (1) Captain, three (3) Lieutenants and eighteen (18) firefighters. There are normally four (4) paid firefighters on duty whose assignments are split among several firehouses. One major responsibility of the paid firefighter is to ensure that the fire rigs respond to a fire call. The negotiations unit represented by the FMBA consists of full-time permanent firefighters and excludes Fire Lieutenants and Fire Captains. The Captain works a 7 a.m. to 3 p.m. tour. The firefighters work 24 hours on and 72 hours off (24/72) shift, a schedule that was mutually agreed upon and implemented in the last labor agreement.

The issues in dispute are primarily economic in nature including health insurance, salary, longevity, holidays, safety allowance, vacations and compensatory leave days. In addition, the FMBA submits proposals dealing with

Fire House Seniority, High Hazard Calls, Personal Protective Equipment and HVAC Diesel Exhaust Ventilation System.

The framework of this dispute centers on the FMBA's demand to maintain parity with a collective negotiations agreement reached between the City and PBA Local 10 for contract years 2003 to 2006. The FMBA asserts that the City is attempting to "break parity" that has existed between the PBA and the FMBA. The FMBA also seeks that terms be awarded that are consistent with "an agreement based on parity" that it allegedly reached with the City that was not ratified by the City. The City's view sharply differs. It disputes the basis upon which FMBA seeks economic parity with the PBA as well as the FMBA's characterization that an agreement had been reached with the City. In addition to these differences, the FMBA and the City disagree on the terms to be awarded on the merits of each issue independently from their positions with respect to parity or the alleged settlement.

Based upon this general overview, the parties offer the following positions in support of their last offers. Due to the extensive documentary evidence and arguments that have been presented, I set forth their positions in summary form.

## POSITIONS OF THE PARTIES

### The FMBA

The FMBA proposes a five-year Agreement effective January 1, 2003 through December 31, 2007. It asserts that a five-year Agreement will promote stability and continuity in labor relations. Pointing to the protracted nature of its negotiations with the City, the FMBA notes that a four-year Agreement would terminate at the end of this calendar year and would require the parties to immediately commence negotiations for a new Agreement. The FMBA further contends that an additional year is necessary to remedy alleged salary disparities that exist between Local 68 and other fire departments in New Jersey as well as to remedy an alleged salary disparity between the police and fire employees in the City of Long Branch.

On the issue of salary, the FMBA seeks the same salary increases, structures and step progression that the City and the PBA negotiated in their 2003-2006 agreement. The FMBA asserts that its proposal will eliminate the salary disparity that exists and would be confirmed between firefighters and police officers employed by the City of Long Branch if the City's offer were accepted. It argues that parity between the two units is required based upon historical patterns of settlement and prior interest arbitration awards. Charts in evidence are said to support the parity argument:



YEAR	TOP GRADE PBA	TOP GRADE FMBA	DIFFERENCE
1978	15,618	15,618	0
1979	16,711	16,711	0
1980	17,900	17,900	0
1981	19,581	19,581	0
1982	20,952	20,952	0
1983	22,628	22,628	0
1984	24,228	24,228	0
1985	25,828	25,828	0
1986	27,428	27,428	0
1987	29,622	29,622	0
1988	31,400	31,400	0
1989	33,636	33,636	0
1990	36,030	36,030	0
1991	38,404	38,404	0
1992	40,517	40,517	0
1993	42,542	42,542	0
1994	44,882	44,882	0
1995	47,351	47,351	0
1996	49,506	49,506	0
1997	51,759	51,759	0
1998	54,114	54,114	0

	FMBA	PBA	CWA Local 1034 Blue Collar	CWA Local 1034 White Collar	Local 210 Crossing Guards	SOA	UFCWU Local 56A (mgmt)
1993	5.00%	5.00%	5.00%	N/A	N/A	5.00%	5.00%
1994	5.50%	5.50%	5.00%	5.50%	5.00%	5.50%	5.50%
1995	5.50%	5.50%	4.50%	5.50%	5.50%	5.50%	5.50%
1996	4.55%	4.55%	4.50%	4.50%	4.50%	5.29%	4.50%
1997	4.55%	4.55%	4.50%	4.50%	4.50%	5.33%	4.50%
1998	4.55%	4.55%	4.50%	4.50%	4.25%	4.90%	4.50%
1999	4.25%	4.25%	3.75%	4.25%	4.25%	4.25%	4.50%
2000	4.25%	4.25%	3.75%	4.25%	4.25%	4.25%	4.25%
2001	4.25%	4.25%	3.75%	4.25%	4.25%	4.25%	4.25%
2002	4.25%	4.25%	3.75%	4.25%	4.25%	4.25%	4.25%
2003		3.35- 4.5%	4.00%	8.6% - placement on new guide	5.69% 4% +\$.15/hr	4.00%	4.25%
2004		3.35- 4.5%	4.00%	3.90%	4.00%	4.00%	4.25%
2005		3.35- 4.5%	4.00%	4.50%	3.97%	4.50%	4.25%
2006		3.35- 4.5%				4.50%	4.00%

The FMBA further contends that "there was actually an agreement reached" with the City that would have restored the parity it seeks to be awarded in this proceeding. Because it sees the City as responsible for not agreeing to the terms that it believes represented a prior agreement, the FMBA seeks to be awarded 6% interest on all back pay.

The FMBA also relies upon the testimony of its expert witness and his financial report that is said to reflect that the City is in a sound fiscal position and has the ability to fund the FMBA's proposal. According to the FMBA, the City can do so within its Cap limitations and without adverse financial impact on the City, its residents and taxpayers. In particular, the FMBA submits that there has been substantial increases in equalized valuation, large surpluses in annual budgets, substantial new tax revenue from redevelopment projects and several new phases of re-development that will also become complete in addition to those that have been completed. The financial report and analysis of the official budget documents in evidence are relied upon to support the FMBA's conclusions.

The FMBA further contends that its salaries are not comparable with a comparison group it has submitted when wages, inclusive of longevity, are compared:

**2002-2003 WAGE COMPARISON (INCLUDING LONGEVITY) OF  
MUNICIPALITIES THROUGHOUT NEW JERSEY IN COMPARISON WITH  
WAGES OF LONG BRANCH**

<b>MUNICIPALITY</b>	<b>2002 BASE + LONGEVITY</b>	<b>2003 BASE + LONGEVITY</b>
Hackensack*	\$85,022	\$88,588
Union	\$81,838	\$86,078
Ridgewood	\$80,395	
Newark	\$78,843	
Jersey City	\$78,025	\$80,640
Springfield	\$75,461	\$79,830
Linden	\$75,948	\$78,987
Teaneck	\$75,921	\$78,925
Summit	\$76,523**	\$79,615
Carteret		\$76,634
Elizabeth	\$72,644	\$75,579
New Brunswick		\$75,542
Asbury Park	\$72,334	\$75,092
Ocean City		\$70,695
Passaic	\$70,591	\$73,415
Westfield	\$68,696	\$71,375
<b>Long Branch</b>	<b>\$66,917</b>	<b>---</b>

\*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 points out that its firefighters work 104 more hours per year (2,184 v. 2,080) than do the Long Branch police officers. Nevertheless, the City now seeks to pay firefighters substantially less. The FMBA refers to savings that the City has achieved during the last two years in the fire department. This includes the closing of one fire station (Elberon) and the loss of a paid fire lieutenant that is said to amount to \$100,000 per year in salary and benefits.

In addition to its salary proposals, the FMBA seeks to include its presently received safety allowance, longevity pay and clothing maintenance allowance in base pay in identical manner that the PBA accomplished in its agreement with the City. Article VII, Section 2, provides that a safety allowance in the amount of \$225 shall be paid in the first pay period in July. The FMBA points to the PBA's recent agreement that placed its safety allowance into base pay. The FMBA proposes its inclusion in base pay as necessary to maintain parity with the PBA.

The FMBA makes a similar argument with respect to longevity pay. It currently receives longevity in dollar amount from \$300 to \$3,000 in progress steps based upon seniority. It references the PBA agreement that eliminated longevity pay but incorporated that payment into base pay according to a specific calculation formula. In addition, the FMBA cites numerous municipalities that include longevity in base pay for firefighters. These include Newark, Ridgewood, Bordentown, Bloomfield, Bayonne, Hackensack, Jersey City, Hillside, Elizabeth, Westfield, Summit, West Orange, Trenton, Springfield, Roselle, Clifton, Union, Belleville and Lakewood.

The FMBA also proposes that the clothing maintenance fee of \$325 as set forth in Article XIV, Section 4 be eliminated as well as its \$525 uniform allowance payment as set forth in Article XIV, Section 1. It proposes that an amount be placed into base pay according to a specific calculation formula agreed to the PBA memo. The FMBA again points to the PBA agreement that incorporated

these payments into base pay. The FMBA seeks to do the same to maintain parity with the PBA.

The FMBA has proposed that the City grant its members four (4) compensatory leave days. The FMBA points to the PBA Agreement that provides for four (4) compensatory leave days that must be taken on an annual basis without an accumulation. It argues that "members of the FMBA receive no such benefit" and that the same four (4) days must be provided to firefighters in order to provide parity.

The FMBA has indicated a willingness to accept various health benefit proposals made by the City "subject to the appropriate review" but rejects the specifics of the City's health benefits proposals that have been made in this proceeding. The FMBA points out that the prescription drug co-pay increases that have been proposed by the City go beyond the negotiated agreement on this issue with the PBA. In the PBA Agreement, a prescription co-pay increase was effectuated requiring \$10 – generics, \$20 – name brand, \$35 – formula. The City's proposal to have a co-pay increase to \$15/\$25/\$40 effective January 1, 2006 is said to be in excess of the PBA Agreement and the FMBA rejects the proposal for that reason. The FMBA also rejects the City's proposal to move the firefighters from the traditional plan to a PPO plan with contributions of \$300 per month if an employee wishes to continue to receive traditional coverage. Also rejected is the City's proposal to make new employees ineligible to enroll in the

traditional plan. The FMBA asserts that the City's unwillingness to maintain peer parity with the PBA is the basis for the rejection of these proposals. For the same reason, the PBA seeks rejection of the City's proposal to increase office co-pays from \$5 to \$15 per visit. The FMBA points to Article XIV of the PBA agreement that contains no reference as to the cost of office co-payment. Because of this, the FMBA argues that the City has extended the PBA a substantially better health insurance benefit package than it has offered to the FMBA.

The FMBA asserts that it would have reached an agreement on health insurance with the City prior to arbitration but did not because of the City's failure to offer similar terms that would match the PBA Agreement. This, according to the FMBA, resulted in a loss of savings to the City which it regards as the City's "fault." The FMBA further contends that it, and not the PBA, was the party that initiated the health benefit changes that the City ultimately reached with the PBA.

The FMBA also offers several proposals that it deems "non-economic" in nature. The first such proposal deals with firehouse seniority. This would require firefighters to be assigned to any new station or house by seniority. The FMBA submits that this proposal is already a practice that should be incorporated into the new Agreement. According to the FMBA, it would not provide any additional cost to the City and would reward firefighters who have many years of continued service.

The FMBA also contends that all four firefighters who are on duty should report to any high hazard call. This would prevent a single firefighter from arriving at a fire scene with his rig without support from another paid firefighter. The FMBA acknowledges that the Agreement is silent on this issue but that its proposal should be placed into a new Agreement to ensure the safety of each firefighter who responds to a high hazard call. The FMBA argues that the existing staffing levels are not sufficient and could cause firefighters to arrive at the scene of an incident from several different fire stations one at a time. This concern would be eliminated if all four firefighters were required to report to the scene of any high hazard call. The FMBA refers to the testimony of Harry R. Carter, PhD, a Municipal Fire Protection Consultant, as well as certifications from firefighters that allegedly show that Long Branch firefighters work in an extremely dangerous environment due to staffing and assignments. The FMBA expresses concern that without this standard its members can be placed in a dilemma of appearing at a fire scene ready to respond but without the manpower to comply with the 2 in / 2 out regulation.

The FMBA has proposed that the City continue the current practice of the repairing and cleaning all personal protective equipment to each member that is damaged or dirtied in the line of duty without cost to each member. The FMBA notes that there would be no cost to this proposal because the City has already been providing this benefit.

The FMBA also proposes that the City continue to provide and maintain each fire house with an appropriate HVAC diesel exhaust ventilation system and that the City periodically service and repair such system. In support of this proposal, the FMBA submits reports and articles reflecting dangers to the lung when diesel fire trucks idle inside the fire station.

For all of the above reasons, the FMBA urges that its proposals be adopted in their entirety.

### The City

The City rejects the FMBA's position that there was a settlement in their negotiations. The City also rejects that there is any basis for the FMBA to seek to achieve and or maintain parity with the PBA. With respect to the FMBA's settlement argument, the City asserts that the FMBA is obligated to seek enforcement of an alleged agreement by filing an unfair practice charge with PERC rather than to seek enforcement by way of interest arbitration. The City rejects the FMBA's position that there was a settlement and that any such claim concerning an alleged settlement must be disregarded.

The City also advances many reasons as to why the FMBA's parity argument is without merit. The City states that parity does not now exist between the FMBA and the PBA for many reasons. The City asserts that their work is



different because Long Branch police work in high crime areas while the number of fire calls in Long Branch have fallen. The City points out that the FMBA's workload has actually been reduced due to the fact that firefighters no longer answer motor vehicle calls or perform fire inspections. This is in contrast to other municipalities where firefighters respond to EMT calls as well as performing fire inspections. The City refers to exhibits showing that there has been a decline in the number of fires, fire calls and structural fires. The City also contrasts the two departments by noting that most police officers are on patrol throughout their shifts while firefighters work a 24 hour shift every four days and often do so without having to answer a call. While acknowledging that firefighters are well trained and hard working, the City notes that there are a large number of volunteers in Long Branch who actively fight fires while paid firefighters mainly respond to fires by driving fire rigs to the site of the incident and set up those rigs in support of the efforts of the volunteers.

The City also asserts that the FMBA's parity argument is undermined because of various differences in the benefits that they now receive in contrast to the PBA, some of which are more attractive than that received by the PBA. The first is that firefighter holiday pay is calculated on fourteen (14) days pay on a ten (10) hour day whereas the PBA is paid for fourteen (14) holidays on an eight (8) hours day. This difference in paid hours is said to create a differential of more than \$800 in holiday pay based on top pay in 2002. Accordingly, the City argues that "the four compensatory days provided to the PBA (at eight hours per day) is

offset by the extra holiday pay received by the firefighters.” An additional difference is the calculation of the worth of personal days. According to the City, the PBA receives three (3) personal days at eight (8) hours per day while firefighters receive 48 hours worth of personal time, or an equivalent of three (3) more days than police officers. Additionally, the City asserts that police officers receive fifteen (15) sick days at eight (8) hours per day (or 120 hours per year) compared to the FMBA’s receipt of twelve (12) sick days calculated at twelve (12) hour days, or a total of 144 hours. According to the City, the difference is three more sick days per year when calculated as eight (8) hour days. The FMBA benefits not only from having more sick time, but also by being able to accrue more sick leave to be paid upon retirement. The City also contrasts the vacation leave benefit between the two groups:

Vacation Days. Long Branch Police Officers receive vacation days pursuant to the following schedule:

1-7 years:	15 vacation days (at 8 hours or 120 hours)
7-18 years:	20 vacation days (at 8 hours or 160 hours)
19 years & above	25 vacation days (at 8 hours or 200 hours)

In juxtaposition, firefighters receive vacation time as follows:

2-3 years:	6 vacation days or 144 hours (24 hour days)
4-7 years:	7 vacation days (160 hours)
8-18 years:	10 vacation days (240 hours)

According to the City, a firefighter with eight years of service receives 40 hours more of vacation time per year than a police officer who has 30 years of experience.

The City acknowledges that the disparities “are reflective of the 24/72 hour work schedule performed in the fire department,” a schedule causes a 104 hour difference in annual work hours for the FMBA. However, the City argues that the additional hours are more than compensated for by the benefits that accrue to a firefighter from working 91 (24 hour) days a year compared to 260 (8 hour) days as is worked in the police department as well as being able to sleep during their working hours. For all these reasons, the City urges that the parties’ final offers be considered on their respective merits, without reference to or reliance on, the parity issue.

The City further contends that the PBA Agreement was in part funded by savings due to separated employees and that this factor is not present in the FMBA unit. The City calculates that 11 employees left the police department between February 1, 2002 and December 31, 2004 resulting in \$1,485,097 in savings while 18 were hired at a cost of \$1,217,261 causing a “breakage” figure of \$267,866. The City further notes that it has received insurance savings from the PBA but none from the firefighters.

The City proposes a comparison group on which to judge the relative terms and conditions of employment for its firefighters. It submits comparative data for the municipalities of Atlantic City, Asbury Park, Cartaret, Ocean City, Bridgeton, Monroe Township (Districts #1 & #3), Trenton, Brigantine, Perth Amboy, Howell Township (Southard), Vineland, Neptune Township and New

Brunswick. Utilizing 2002 comparisons, the City's data reflects that Long Branch ranked fourth out of fifteen (15) in base step 1 salaries, sixth in maximum salary (without longevity), seventh in maximum salary (with longevity) third in clothing allowance while having among the lowest structural fires per firefighter in the comparison group.

The City rejects the financial analysis of the FMBA's expert witness. The City acknowledges that it is in better financial condition than in the past but makes several responses to the FMBA. The City presents data showing that there has been a general increase in property values in Monmouth County and not just in Long Branch, that certain redevelopment properties are not yet on the tax rolls, that tax abatement agreements cause a lengthy phase-in of tax payments, that there is less surplus available than what the total cash picture suggests due to the budget's reliance on surplus from the prior year, that revenue excess is closed out to surplus each year as well as unspent appropriations, that there is over \$18 million in redevelopment debt that must be repaid prior to distributing increased tax revenues and that the realization of the successful redevelopment scheme will not occur during this contract term.

The City also seeks a modification of existing terms for newly hired firefighters. Included are the following. New hires would not be allowed to select traditional coverage, the \$225 safety allowance and the longevity program would be eliminated and vacation time would be capped at seven 24 hour days. In

support of these proposals, the City enumerates the existing level of benefits for current employees which it terms as generous and that these terms, as modified by the above, would still represent an attractive level of terms sufficient to attract and retain new hires.

The City opposes the FMBA's non-economic demands. Three of those proposals (assigning firefighters by seniority, cleaning personal equipment damaged in the line of duty and maintenance of a diesel exhaust maintenance system) are asserted by the FMBA to represent a continuation of existing practices.

The City does not disagree that practices exist nor objects to maintaining practices with respect to firehouse seniority and preparing and cleaning personal protective equipment. However, It does not agree that these practices should be awarded, especially in the absence of any specific language proposals set forth by the FMBA that would memorialize the practices. The City does not object to the arbitrator directing the parties to meet for the purpose of reaching mutually agreeable language that is acceptable to both parties.

The City urges that the FMBA proposal to have a HVAC diesel exhaust system be maintained in each firehouse be disregarded for several reasons. It asserts that the FMBA presented no evidence in support of the proposal, that the

issue is non-negotiable and further, that the FMBA is not seeking or suggesting a change to existing contract language or practice.

The City also urges rejection of the FMBA's proposal concerning "high hazard response," namely that all paid firefighters would be required to report to high hazard fires. In the City's view, this proposal impedes the exercise of managerial discretion to decide which apparatus and paid firefighters need to be at a fire scene. These are said to be decisions that should be left to the Fire Chief and Assistant Chiefs.

The City rejects the FMBA's justification that adherence to the "2 in / 2 out" rule requires that all four paid firefighters respond to every high hazard scene without the ranking officer at the scene making the staffing decision to do so. Noting that there has been litigation in this issue, the City contends that volunteer firefighters provide expeditious responses to structural fires citing the testimony from Fire Official Kevin Hayes and the certification of Fire Chief Tomaine. The City recognizes that there may be circumstances that require a paid firefighter or a volunteer to exercise individual discretion in the event of a potential life-threatening situation.

For all of the above reasons, the City urges adoption of its last offer.

## DISCUSSION

The City 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 the issues in dispute. The burden to be met must be at a level beyond merely requesting 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 or denying a single issue if it were to stand alone, but it may be awarded or denied after assessing the merits of the overall award.

The City and the FMBA have each submitted extensive evidence and have addressed the statutory criteria in support of their respective positions. The award must represent a reasonable determination of the issues. 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 my evaluation of the evidence on the disputed issues in this proceeding, I find that all of the criteria are relevant but that the most significant weight must be given to the factors dealing with the interests and welfare of the public, internal comparability with the PBA and the financial impact of the terms of the Award on the governing body, its residents and taxpayers.

## DURATION

The first issue in dispute is contract duration. The City proposes a four (4) year Agreement while the FMBA has proposed a five (5) year Agreement. Under the circumstances present here, I conclude that a five (5) year rather than a four (4) year contract would better serve the interests and welfare of the public and the parties. The prior agreement expired on December 31, 2002. Lengthy negotiations between the parties did not result in settlement. This proceeding was extended and did not close until April 1, 2006. At this point, a four year agreement would expire shortly. Although there is a history of negotiations in the City where there has been parallel between the PBA and FMBA on contract duration, this fact must be balanced with the stability and economy that would result from a contract expiration of longer duration as well as having an additional year in which to accommodate the resolution of the disputed issues in reasonable fashion. An agreement extending beyond January 1, 2007 for a period of one year would represent stability and economy for this unit by not having to return to direct negotiations for at least one full year. Thus, I award a contract duration of five (5) years.

## ECONOMIC ISSUES

The City and the FMBA disagree on the issues of salary, fold-ins to salary, terms for new hires and health insurance. The FMBA seeks a salary increase and salary schedule structure similar to that negotiated by the PBA. The net

impact of the proposal is set forth in FMBA exhibits. For comparison purposes I set forth the PBA Agreement followed by the FMBA's application of that agreement to its members:

**PBA**

	2003	2004	2005	2006
Captain	\$93,390	\$106,365	\$111,152	\$116,154
Lieutenants	\$83,384	\$95,373	\$99,664	\$104,149
Sergeants	\$74,450	\$85,558	\$89,408	\$93,431
Step 10		\$76,794	\$80,250	\$83,861
Step 9		\$75,705	\$78,733	\$81,883
Step 8		\$74,800	\$77,792	\$80,904
Step 7	\$66,474	\$73,896	\$76,852	\$79,926
Step 6	\$62,498	\$67,830	\$70,035	\$72,311
Step 5	\$58,785	\$63,637	\$65,705	\$67,840
Step 4	\$54,740	\$59,106	\$61,027	\$63,010
Step 3	\$50,976	\$55,041	\$56,830	\$58,677
Step 2	\$47,208	\$50,973	\$52,630	\$54,340
Step 1	\$37,325	\$40,302	\$41,612	\$42,964
Probationary Step	\$33,326	\$35,984	\$37,153	\$38,361
Academy Step	\$26,661	\$28,788	\$29,723	\$30,689

On January 1, 2004 Patrol Officers Layton, Gaughran, King and Schuz shall move to Step 10 on the Guide and remain on that Step thereafter.

On January 1, 2004 Patrol Officers Chaparro, Fragele, Sims, Townsend, Condone and Castello shall move to Step 9 on the Guide and will move to step 10 on the following January 1<sup>st</sup>.

On January 1, 2004 Patrol Officers Tomaine, Six, Beaver, Ketch, Alston, Shamrock, McGowan, Aponte, Chapparo, Kim, Morey, Pilone, Volger, Gotfredsen, Graziano, Serviss, and Zuppa shall move to Step 8 on the Guide and will move to Step 9 on the following January 1, 2005 and then Step 10 on January 1, 2006.

The officers currently in the steps on the guide, shall continue to advance on their anniversary date. Once an officer reaches Step 10, they shall receive any increase applied to Step 10 on January 1<sup>st</sup>.

In response, the FMBA submits the following salary schedule which, according to President Parnell, contained adjustments sought by the City with respect to placement of individual firefighters.

**FMBA**

	2003	2004	2005	2006
Captain	\$83,384	\$95,373	\$99,664	\$104,149
Lieutenant	\$74,450	\$85,558	\$89,408	\$93,431
Step 10		\$76,794	\$80,250	\$83,861
Step 9		\$75,705	\$78,733	\$81,883
Step 8		\$74,800	\$77,792	\$80,904
Step 7	\$66,474	\$73,896	\$76,852	\$79,926
Step 6	\$62,498	\$67,830	\$70,035	\$72,311
Step 5	\$58,785	\$63,637	\$65,705	\$67,840
Step 4	\$54,740	\$59,106	\$61,027	\$63,010
Step 3	\$50,976	\$55,041	\$56,830	\$58,677
Step 2	\$47,208	\$50,973	\$52,630	\$54,340
Step 1	\$37,325	\$40,302	\$41,612	\$42,964
Probationary Step (2 <sup>nd</sup> 6 months)	\$33,326	\$35,984	\$37,153	\$38,361
Academy Step (1 <sup>st</sup> 6 Months)	\$26,661	\$28,788	\$29,723	\$30,689

On January 1, 2004 FF C. Barham shall move to Step 10 on the Guide and remain on that step thereafter

On January 1, 2004 FF's Warren and Hoy, shall move to step 9 on the Guide and will move to step 10 on the following January 1<sup>st</sup>

On January 1, 2004 FF's Rogers, Parnell, E. Barham, Fleming, Kruez, Ar. Guzzi, Somers, Wattley, Smuro, Cook, Peterson, and Al. Guzzi shall move to Step 8 on the Guide and will move to Step 9 on the following January 1, 2005 and then Step 10 on January 1, 2006.

The firefighters currently in the steps on the guide, shall continue to advance on their anniversary date. Once a firefighter reaches Step 10, they shall receive any increase applied to step 10 on January 1<sup>st</sup>.

The Union relies heavily upon a pattern of settlement that it asserts has existed for many years between the FMBA and the PBA. The FMBA directs attention to an interest arbitration award covering 1991 and 1992 that contained language stating that "... the relationship or linkage between major municipal unions is an important factor which cannot be ignored or minimized. Such a relationship has existed between the PBA and the FMBA for approximately 15 years." The Union also points to an argument made by the City in its post-hearing brief at that time that stated "... if the City were to give one group, such as the FMBA, an economic package greater than that given to other groups, a question of fairness inevitably would arise together with a disruption of historical pay relationships. Such a result must be avoided." Thus, the FMBA asserts that the City's attempt now to "break parity" flies in the face of the "historical pay relationships" and should be rejected.

The City, for reasons previously set forth, rejects the parity concept. It does not deny that there has been a historical pattern but advances several reasons why parity is no longer appropriate including certain fringe benefits that the FMBA receives that are greater than the PBA, a reduction in firefighter job responsibilities and decreases in the number of calls and structural fires.

According to FMBA calculations, the City proposes the following wage schedule that would result in a maximum salary several thousand dollars less than the PBA:

### WAGE SCALE FOR CITY'S FINAL OFFER

Step	New Step	2003	2004	2005	2006
Academy Step (1 <sup>st</sup> 6 months)	Academy	\$26,727	\$27,662	\$28,768	\$29,919
Probationary Step (2 <sup>nd</sup> 6 months)	Probationary	\$33,407	\$34,576	\$35,959	37,397
New Step	1				
Step 1	2	\$37,415	\$38,725	\$40,274	\$41,885
New Step	3				
Step 2	4	\$47,322	\$48,978	\$50,937	\$52,974
Step 3	5	\$51,099	\$52,887	\$55,002	\$57,202
Step 4	6	\$54,873	\$56,794	\$59,066	\$61,429
Step 5	7	\$58,643	\$60,696	\$63,124	\$65,649
Step 6	8	\$62,441	\$64,626	\$67,211	\$69,899
New Step	9				
Step 7	10	\$66,154	\$68,469	\$71,208	\$74,056
Lieutenant		<u>\$74,093</u>	<u>\$76,686</u>	<u>\$79,753</u>	<u>\$82,943</u>
Captain		<u>\$82,893</u>	<u>\$85,887</u>	<u>\$89,322</u>	<u>\$92,895</u>

The evidence and arguments of the City and the FMBA on salary mainly reflect differences over parity or internal comparability, external comparability between Long Branch Firefighters and those in other municipalities, the financial resources of the City that are necessary to assess the financial impact of the respective proposals and the "packaging" of salary with the other economic issues in dispute. The packaging of terms in dispute fall squarely with N.J.S.A. 34:13A-16g(8) in that the totality of terms that are negotiated is a principle that is "ordinarily or traditionally considered in the determination of wages, hours and

conditions of employment through collective negotiations ... in the public service.”

Internal comparability has been present in the setting of salaries between the FMBA and the PBA for a very long time. The exhibits of each party reflect this fact. Prior arbitration awards also reflect this. Thus, there is no real dispute as to the history of the negotiated wage relationship between these two groups. The FMBA seeks to maintain the continuity of this relationship while the City does not.

The reasons and the evidence submitted by the City for a differentiated salary level for the FMBA have been scrutinized and given very careful consideration. I first note that parity is a more complex concept to apply between police and firefighters than simply determining whether one or more economic terms of one unit's contract has been or must be equal that of the other unit. The PBA and FMBA Agreements contain a broad range of economic benefits and not just salary. Historically, salaries have been the same. Many fringe benefits have been the same but some have been different. The present differences reflect the fact that police and fire each have unique characteristics that flow from the needs of performing their respective missions. While preserving the public's health, safety and welfare are common missions subjecting each group to personal danger, the discharge of police and firefighter responsibilities are different in certain respects. For example, their work schedules differ as well as the training

and specializations required to perform the unique requirements and responsibilities of their respective department. Differences in terms and conditions of employment result from negotiating over subjects that flow from these unique requirements and responsibilities. Because of this, the respective contracts already show some differences on certain specific terms. For example, the PBA contract provides a detective stipend of \$625 per year. Firefighters do not perform detective work and cannot claim an entitlement to this stipend based upon parity. The FMBA work schedule yields a greater number of hours of paid time for holidays, personal days, sick days and vacation days. Firefighters do work more hours annually, have longer workdays but they have substantially more days off. The PBA receives paid time off in the form of four compensatory days, presumably as an offset for the greater number of paid hours received by the FMBA. The FMBA seeks the same number of compensatory days off for parity purposes but this claim is diminished when hour for hour paid time off comparisons are made.

Notwithstanding the differences that may exist, one indisputable fact that remains that there has been a pattern of salary comparability between the FMBA and the PBA. The existence of such a pattern is not required but is not atypical as reflected in the agreements present in the municipalities of Plainfield, Elizabeth, Westfield and Maplewood. The lengthy history of pattern in the City of Long Branch suggests a presumption of its continuation, a presumption that needs to be overcome by evidence that differentiation is justified due to a change



in the circumstances that initially caused the pattern and its continuation over a substantial amount of time.

The City's contentions that the FMBA's salary level should now be differentiated relative to the PBA rely upon 1) reductions in workload, 2) the substantial presence or involvement of volunteers, 3) a more attractive work schedule than the PBA, 4) a less dangerous work environment and 5) the evolution of less work responsibilities. I do not find these contentions to be persuasive for the following reasons.

The City and FMBA dispute workload statistics. The City submits that there has been a reduction in structural fires and that they represent a small percentage of calls made to the department. The FMBA disputes this point by the submission of statistics of its own. Despite its argument, the City does not discount the significance of maintaining an immediate full-time paid response team that is capable of swiftly responding to citizen and property endangerment. Any fire call can place a firefighter in harms way at any given moment. It may be that police face more consistent exposure to danger during a given work shift but there is no quarrel that any one fire scene can expose a firefighter to the prospect of harm. Further, there has been longstanding pattern in Long Branch and no evidence that the development of this pattern was based upon comparable workload statistics between the two departments.

The presence or involvement of volunteers does not diminish the importance of paid firefighters. The City is fortunate to have a corps of volunteers who are dedicated and committed to the mission of the fire services. Volunteers have been shown to be an invaluable asset to fire response in the City. The record reflects that volunteers arrive at a fire scene promptly and in large numbers. Their presence is coordinated with the paid firefighters who man the firehouses, drive the rigs to the scene, prepare equipment for the fire response and directly provide expert fire response in hazardous circumstances. Credible testimony reflects that paid firefighters may appear first at a scene and risk personal harm through protecting the safety of individuals and property. There is obvious tension between these two components of the fire department. This tension is beyond the reach of the arbitrator's authority to bridge. This is an internal task. The relative value of each group to the City would be diminished by any analysis over their respective level of importance. In any event, the presence and involvement of dedicated and civic minded volunteers does not diminish the value of the paid firefighters nor serve to change the longstanding comparability relationship that existed between the PBA and the FMBA.

The respective work schedules of the police and fire departments differ. They are both the result of voluntary agreements and reflect how the City and the Unions have decided to staff their departments to meet service demands. There is no evidence that salary levels or structures were modified when the work schedules were created. To the extent that the City now proposes to differentiate

salaries due in part to different work schedules, I find this argument to be without merit.

I am also unable to conclude that whatever differences may exist in the relative danger of the police and fire occupations serve as a basis for a change in the level of salary. Each group works in a dangerous environment. Concrete evidence of this is not required but is present in the certification of John McNutt, Deputy Chief of the Gloucester City Fire Department as well as in the prior experience within the Long Branch Fire Department. The potential for danger is high in both occupations and the City is a challenging work environment due to the existence of high-rise residences, business structures (new and old), older residential structures, tourism that increases population during the summer months and a diverse population. Each group is subject to life-threatening situations that have been documented in the record.

The City points out that firefighter job responsibilities have diminished but acknowledges that firefighting remains a key job responsibility. The record reflects the absence of EMT responsibilities and responses to certain motor vehicle calls. While this may have narrowed the scope of their duties, the record reflects that duties that go beyond the strict parameters of firefighting are normally rewarded by additional compensation in the form of base or non-base stipends. Such payments are absent here. The absence of these

responsibilities does not serve to now alter the relative base salaries received between the two departments.

I award a salary package that will restore the comparability proposed by the FMBA over the term of the Agreement coupled with an adjustment for contract year 2007. The maintenance of longstanding comparability between the two departments is in the interests of the public because of the stability that it provides to the City's labor relations responsibilities and to the City's employees who, in the absence of compelling evidence to the contrary, will have their relationships maintained between the respective departments who provide for the public's health, safety and welfare. The proposed elimination of safety allowance, longevity pay and clothing maintenance allowances and the placement of such payments into base pay over the term of the Agreement has also been justified. The FMBA's proposal to maintain parity requires their inclusion in the salary schedules during the term of this Agreement in the manner that was accomplished in the PBA Agreement. The continued separation of these payments from base pay rather than placing them into base pay, according to the PBA calculation and formula, would cause a deviation in base salary between the two groups that would represent a break in longstanding parity between the police and fire departments, a break that I have found has not been justified.

The City has asserted that the salary schedules and the fold-ins it agreed to with the PBA were justified by the turnover or breakage in the police department resulting from retirements between 2002 and 2004 that amounted to more than \$200,000. It argues that this factor has not been present in the fire department and that no cost offsets have been proposed by the FMBA to facilitate the funding of its proposals. An additional cost consideration advanced by the City is that the health insurance modifications that were agreed to with the PBA represented actual cost savings in the PBA unit that, even if awarded here, would not occur in the FMBA unit until after the date of the Award in contrast to the PBA settlement.

The negotiated PBA schedule shows that the various steps of the new schedule during 2003 through 2006 were adjusted in a differentiated manner. The increases varied from 3.25% at the Academy Step through Step 6, 3.75% to 4.0% from Step 7 to Step 9, and from 4% to 4.5% at Rank and Top Step depending on the year. Seven steps remained in 2003 and the fold-ins were implemented at the end of 2003 and were effective January 1, 2004 according to specific formulas. A ten step guide was implemented simultaneously with the fold-ins. The FMBA's proposed salary schedule (FMBA Exhibit #11) is the same as the PBA's. It maintains the seven steps for 2003 and then incorporates the fold-ins, as well as a ten step schedule with the same salary rates and with individual salary placements effective with the 2004 agreement.

The cost impact considerations raised by the City as well as the passage of time warrant the awarding of comparability with the PBA Agreement but in accordance with the following terms. The elimination and incorporation of safety allowance, clothing maintenance allowance and longevity payments into base pay shall be implemented prospectively rather than retroactively. This will lessen the overall cost impact on the City, its residents and taxpayers ease the administrative burdens associated with the fold-ins but will restore the parity sought by the FMBA upon completion of the 2006 contract year in order to serve as a base for the 2007 salary adjustment that will have an effective date of January 1, 2007.

The existing seven step salary schedule of the FMBA shall be maintained for contract years 2003 through 2006 according to a similar formula the City has agreed to with the PBA. The Academy Step through Step 4 shall be increased by 3.25% in each of these contract years. Steps 5 and 6 shall be increased by 3.75% in 2003, and by 4.0% in 2004, 2005 and 2006. Step 7 shall be increased by 4.0% in 2003, 4.25% in 2004 and by 4.50% in 2005 and 2006. This will reflect a salary schedule that appears as follows:

Step	2003	2004	2005	2006
Academy Step (1 <sup>st</sup> 6 months)	\$26,662	\$27,529	\$28,423	\$29,347
Probationary Step (2 <sup>nd</sup> 6 months)	\$33,326	\$34,409	\$35,527	\$36,682
Step 1	\$37,325	\$38,538	\$39,790	\$41,084
Step 2	\$47,208	\$48,742	\$50,326	\$51,962
Step 3	\$50,976	\$52,632	\$54,343	\$56,109
Step 4	\$54,740	\$56,519	\$58,356	\$60,253
Step 5	\$58,785	\$61,136	\$63,582	\$66,125
Step 6	\$62,591	\$65,095	\$67,699	\$70,407
Step 7	\$66,474	\$69,299	\$72,417	\$75,676

Upon the completion of the 2006 contract year on December 31, 2006, the FMBA salary schedule shall be converted to the ten step salary schedule set forth in FMBA Exhibit #11 for contract year 2006. That schedule represents the same number of steps, the same salary levels and fold-in amounts as is reflected in the PBA salary schedule, although the fold-ins will not be effective until January 1, 2007. That schedule appears as follows:

	12/31/2006
Step 10	\$83,861
Step 9	\$81,883
Step 8	\$80,904
Step 7	\$79,926
Step 6	\$72,311
Step 5	\$67,840
Step 4	\$63,010
Step 3	\$58,677
Step 2	\$54,340
Step 1	\$42,964
Probationary Step (2 <sup>nd</sup> 6 months)	\$38,361
Academy Step (1 <sup>st</sup> 6 Months)	\$30,689

The placement of individual firefighters on the December 31, 2006 salary schedule shall be identical to the placement and step movement that was

proposed by the FMBA and was discussed with the City as is set forth in FMBA Exhibit #11. In other words, individual firefighters shall be placed on his or her step on the schedule in an identical manner as if that individual had originally been placed on this schedule on January 1, 2004.

A remaining salary issue concerns contract year 2007. I have already awarded a contract duration extending through December 31, 2007. The record is sufficient to make a determination on salary for that year given the extensive evidence and argument that has been submitted on, among other things, the City's financial status and salary comparisons in Monmouth County and throughout the State of New Jersey. That, and other relevant evidence that impacts on salary, causes an award of 4.0% effective January 1, 2007. The adjustments shall be at each step of the converted salary schedule effective at the conclusion of December 31, 2006. That schedule shall read as follows:

	1/1/2007
Step 10	\$87,215
Step 9	\$85,158
Step 8	\$84,140
Step 7	\$83,123
Step 6	\$75,203
Step 5	\$70,554
Step 4	\$65,530
Step 3	\$61,024
Step 2	\$56,514
Step 1	\$44,683
Probationary Step (2 <sup>nd</sup> 6 months)	\$39,895
Academy Step (1 <sup>st</sup> 6 Months)	\$31,917



The City has proposed that there be some specific additional changes for new hires. These include the elimination of the safety allowance and longevity and a modified vacation schedule. I do not award the elimination of either the safety allowance or the longevity program. These payments have been placed into base pay upon the conclusion of December 31, 2006. To eliminate these payments for new hires would result in a differentiated salary schedule for new hires, a result that is not justified after reviewing the salary schedules in comparable fire departments in other jurisdictions that do not provide salary schedules at lesser levels for new hires. A relevant consideration is that three additional years are now required for new hire movement through the schedule in order to reach top step or maximum salary.

I do find merit in the City's proposal that a new vacation schedule be awarded for new hires. The City contends that the schedule is above comparables and provides more paid vacation leave than the PBA's schedule. Article X sets forth the existing vacation leave entitlement as follows:

<b>Length of Employment</b>	<b>Vacation Leave Entitlement</b>
First year of employment	One-half (½) day for each month
2-3 Years	6 days (144 hours)
4-7 Years	7 days (168 hours)
8-18 Years	10 days (240 hours)
19 Years or more	13 days (312 hours)

The FMBA argues that the City's proposal for a new vacation schedule for new hires seeks to "break parity" with the PBA Agreement that contains no "cap." I do not agree with the FMBA's position on this issue. Initially, I note that there is

no agreement for 2007 in the PBA unit and any such change to FMBA leave entitlement will be effective January 1, 2007. Secondly, there is no direct parity on this issue apparently due to the dramatically different work schedules that are worked in the two departments. It is also apparent that the existing level of the vacation benefit at 19 years or more need not be maintained for new hires in order for this benefit to remain competitive with other fire departments elsewhere in New Jersey. A comparison of vacation day benefits reflects that a reasonable schedule for new hires can be included in the Agreement at a modified level from that now provided to existing employees. Accordingly, I award the following vacation leave entitlement for firefighters hired on or after January 1, 2007:

<b>Length of Employment</b>	<b>Vacation Leave Entitlement</b>
First year of employment	One-half (½) day for each month
2-3 Years	6 days (144 hours)
4-10 Years	7 days (168 hours)
11-18 Years	8 days (192 hours)
19 Years or more	10 days (240 hours)

I do not award the FMBA's proposal to receive four (4) compensatory days. The FMBA asserts that these days are required to maintain parity with the PBA. The PBA receives these compensatory days but parity considerations do not require the awarding of the FMBA's proposal. As stated before in this decision, there is not absolute equality in all of the terms in the respective FMBA and PBA agreements nor is absolute equality required for all terms. For example, holiday pay for the FMBA (see Article IX) provides fourteen (14) days pay on a ten (10) hour day, whereas holiday pay is calculated at fourteen (14) days pay on an eight (8) hour day thus creating a twenty-eight (28) hour

difference in pay. The City asserts that PBA compensatory days represent an attempt to balance the paid time off provisions and holiday pay that are present in the FMBA agreement. Thus, the underlying basis that allegedly supports this proposal is without merit and the proposal is denied.

The City has proposed health insurance modifications. A modified health insurance package shall be awarded consistent with the terms that were included in the PBA agreement. They shall be implemented as soon as practicable after the date of the Award upon at least fourteen (14) days notice to the FMBA. This shall consist of the City's proposal in this proceeding but with certain modifications. The drug co-pays shall increase to \$10/\$20/\$35 and remain at this level for the duration of the Agreement. Employees wishing to remain in traditional coverage will contribute \$300 per month to the City for continuing to receive such coverage. Currently employed firefighters can switch from traditional to POS or HMO at no cost to the employee. Employees who switch cannot switch back to the traditional plan. Any new employee hired after the date of the Award shall not be eligible to enroll in traditional health insurance coverage. Effective January 1, 2007, office co-pays shall increase from \$5 per visit to \$15 per visit. Although most, but not all, of these changes are present in the PBA Agreement that expires on December 31, 2006, the practical effect of these changes will be in 2007, the year after the expiration of the PBA Agreement and thus, they are not in conflict with that agreement. The City has provided substantial evidence that its health insurance expenditures have risen

dramatically after 1994 and that the health insurance options it will continue to provide to the FMBA in light of those costs and national trends remains comprehensive. These changes are reasonable as part of extending the Agreement through December 31, 2007 as has been proposed by the FMBA.

The terms of the award represent a reasonable determination of the disputed issues after giving due regard to the statutory criteria.

The terms of the award will not cause the City to exceed the limitations imposed on the Cap law nor require expenditures that would cause adverse financial impact on the City, its residents or taxpayers. The record reflects that 1% represents a cost of approximately \$30,000. The City has appropriated less than the spending limitations and has averaged more than \$1,000,000 in unspent Cap appropriations.

Extensive testimony and documentary evidence was submitted by both parties concerning the City's financial ability. Experts Banker and Mehlhorn agree on some of this evidence but disagree in other portions of the evidence. Much of the evidence was directed towards the impact of the City's revitalization through its successful redevelopment programs.

Banker and Mehlhorn agree that there has been a healthy increase in equalized valuation causing a decrease in the equalized tax rate. The record

reflects that the equalized tax rate has decreased from 3.18 in 1999 to 1.97 in 2005. The FMBA projects the rate to be further reduced to 1.62 in 2006. Banker places emphasis on the City's redevelopment program as a primary cause for the reduction while Mehlhorn attributes the result to a general increase in property values in general, especially in attractive oceanfront communities such as Long Branch. Mehlhorn stresses that the positive impact seen by Banker has yet to be achieved and will do so in the future (as in the Pier Village project) due to tax abatement agreements calling for the gradual phase in of taxes after completion. Also certain properties were not on the tax rolls at time of hearing and were not expected to be fully assessed until 2006 or 2007. In Mehlhorn's view, longer-term residents are still carrying most of the burden of the tax levy and not new taxpayers. He points out that residential property owners have seen their taxes rise by 30% in the last five years, from an average of \$4,419 to \$5,748. Banker responds that their significantly increased valuations (an \$835,972,000 increase or 82% since 1994) offsets the increases in their tax burdens.

Banker and Mehlhorn also disagree on the significance of the City's surplus figures. While they agree that the City has averaged approximately \$8,000,000 in available cash within current funds over the last several years, Mehlhorn points out that there has been an average of \$3,300,000 in cash liabilities leaving an average of \$4,750,000 in surplus. This amount, according to the City, should not be considered additional available funds annually because the City's excess revenues are closed out to its Results of Operations account at

years end and then closed out to surplus. The City asserts that it is required to use these surplus funds as revenue in its subsequent budget year to meet its expenditure requirements in that year to avoid large tax increases. In effect, the City believes that Banker's analysis doubles up the City's available cash.

Despite the differences in perspective, the undisputed fact is that the City's finances, by virtue of its own efforts, have become progressively healthier. Future projections are also on the positive side of the ledger as there has been a large increase in added amounts and new value resulting in increased unanticipated tax revenue. The phase in of tax obligations associated with redevelopment support this optimistic view. The City's improved health allows for the economic parity the FMBA seeks to maintain at the conclusion of the 2006 contract year while the deferred effective date of the roll-ins eases the City's burden to do so by not requiring expenditures associated with increased pension costs and roll-up costs until January 1, 2007. At that time, the City will also benefit from the health insurance modifications for all employees, an elongated salary guide as well as a modified vacation schedule for new hires.

Remaining relevant factors have also been considered. The City, in support of its own proposal, submits that cost of living data reflects increases of 2.3% in 2003, 2.7% in 2004 and 3.4% in 2005. I have considered this data but conclude that it must be balanced with the merits of comparing FMBA terms to the terms of the PBA agreement. I have given more weight to this latter

consideration. Further, the continuity and stability of employment in the fire department will be maintained by this Award. A lack of turnover in the fire department that has been cited by the City but the fact that there has been employment stability does not warrant the adoption of a lesser salary schedule for the FMBA. The FMBA has also demanded interest on back pay. The demand for interest is without merit and is denied.

### **NON-ECONOMIC ISSUES**

I turn to the FMBA's non-economic proposals that deal with firehouse seniority and personal protective equipment. The FMBA has proposed that before reassigning firefighters to any new fire stations/houses, members should be allowed to pick and choose their new station/house by seniority. The FMBA has also proposed that the City shall continue the current practice of repairing and cleaning all personal protective equipment issued to each member that is damaged or dirtied in the line of duty, at no cost to the member. According to the FMBA, these issues exist by practice but should now be included in the Agreement.

The City acknowledges that the above proposals exist by practice. It does not object to maintaining the practices with respect to firehouse seniority and preparing and cleaning personal protective equipment. It notes, however, that the FMBA's proposals do not contain specific contract language that would memorialize the practices. The City submits that it would be appropriate for the

arbitrator to direct the City and the FMBA to meet for the purpose of reaching mutually agreeable language that is acceptable to both parties.

I award the FMBA's proposals that language be included in the Agreement that incorporates existing practices with respect to firehouse seniority and personal protective equipment. I award the proposals as phrased but subject to the City and the FMBA meeting for the purpose of refining the proposed language in a manner that is acceptable to both parties.

The FMBA has also proposed that all four (4) firefighters on duty shall report to any high hazard call. This proposal is based upon the FMBA's concern that the dispersion of paid firefighters among the City's firehouses without all having to report to this type of call could result in an inadequate response leading to a possible violation of the "2 in / 2 out" rule that deals with the fighting of structural fires. In the FMBA's view, its proposal would guarantee the arrival of sufficient paid firefighters to comply with this rule when there is a high hazard call, thus removing the potential for a firefighter to access the inside of a structure without sufficient staffing support. The City urges denial of this proposal because it is said to conflict with its managerial authority to determine staffing and assignments. The City also rejects the FMBA's suggestion that responses by paid firefighters coupled with volunteer response have not been adequate to deal with high hazard calls.



The certifications in the record and the testimony from each party reflects that the City and the FMBA have differed over staffing levels and assignments for some period of time. The FMBA's insight on fire response staffing levels is of value to the City and its input should be given serious consideration. But I am compelled to conclude that the incorporation of this proposal into the labor agreement would conflict with the policy, organization and governance of the fire department. I note that the existing Agreement contains a management labor committee whose purpose is to "discuss all matters pertaining to occupational safety and health within the Fire Department, impending new rules and regulations and other matters relevant to the operation of the Department. When either party deems it appropriate to meet, said party shall contact the other party and a meeting shall be scheduled within a reasonable period of time." The proposal of the FMBA deals with staffing but is also directed towards occupational safety and health within the department and is a proper issue that can be raised before the committee. For these reasons, the proposal is denied.

The FMBA has also proposed that there be language in the Agreement requiring the City to continue to maintain and provide each firehouse with an appropriate HVAC Diesel Exhaust Ventilation System. Additionally, the FMBA has proposed that the City should periodically service and repair such system. The City does not voice objection to the substance of the proposal. However, the City urges denial of this proposal asserting that it also interferes with its managerial prerogatives. There is no evidence that the concerns of the FMBA

have not been met by the City or that the City will not meet its legal obligations to comply with safety standards and requirements. For these reasons, I am persuaded that the language proposed by the FMBA concerning the HVAC Diesel Exhaust Ventilation System need not be incorporated into the labor agreement. The proposal is denied.

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

### **AWARD**

1. All proposals by the City 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, 2003 through December 31, 2007.

3. **Health Insurance**

The City shall modify the current health insurance program according to the following terms, as soon as practicable after serving at least fourteen (14) days notice on the FMBA.

1. Drug co-pays shall be increased to \$10/\$20/\$35.
2. Employees wishing to remain in traditional coverage will contribute \$300 per month to the City for continuing to receive such coverage. Employees who switch from traditional to POS or HMO at no cost to the employee cannot switch back to the traditional plan.

3. Employees hired after the date of this award shall not be eligible to enroll in traditional health insurance coverage.
4. The office co-pays shall increase from \$5 per visit to \$15 per visit.

4. **Vacation Leave Entitlement**

Employees hired on or after January 1, 2007 shall be subject to the following vacation leave entitlement.

<b>Length of Employment</b>	<b>Vacation Leave Entitlement</b>
First year of employment	One-half (½) day for each month
2-3 Years	6 days (144 hours)
4-10 Years	7 days (168 hours)
11-18 Years	8 days (192 hours)
19 Years or more	10 days (240 hours)

5. **Salary**

1. The existing salary schedule of the FMBA shall be maintained for contract years 2003 through 2006 according to the following formula. The Academy Step through Step 4 shall be increased by 3.25% in each of these contract years. Steps 5 and 6 shall be increased by 3.75% in 2003, and by 4.0% in 2004, 2005 and 2006. Step 7 shall be increased by 4.0% in 2003, 4.25% in 2004 and by 4.50% in 2005 and 2006. The increases shall be effective each January 1 and retroactive to the effective dates. The salary schedules shall read as follows:

Step	2003	2004	2005	2006
Academy Step (1 <sup>st</sup> 6 months)	\$26,662	\$27,529	\$28,423	\$29,347
Probationary Step (2 <sup>nd</sup> 6 months)	\$33,326	\$34,409	\$35,527	\$36,682
Step 1	\$37,325	\$38,538	\$39,790	\$41,084
Step 2	\$47,208	\$48,742	\$50,326	\$51,962
Step 3	\$50,976	\$52,632	\$54,343	\$56,109
Step 4	\$54,740	\$56,519	\$58,356	\$60,253
Step 5	\$58,785	\$61,136	\$63,582	\$66,125
Step 6	\$62,591	\$65,095	\$67,699	\$70,407
Step 7	\$66,474	\$69,299	\$72,417	\$75,676

2. Effective upon the conclusion of December 31, 2006, the safety allowance, clothing maintenance allowance and longevity payments

shall be eliminated and then included in base pay according to the formula and calculations adopted for the PBA in its Memorandum of Agreement resulting in a revised salary schedule consistent with FMBA Exhibit #11 that provided a ten step salary schedule. Individual firefighters shall be placed on their appropriate step of the revised schedule in an identical manner as if that individual had originally been placed on the revised schedule on January 1, 2004 pursuant to FMBA Exhibit #11. The revised schedule shall serve as a basis for calculating future increases. That schedule shall read as follows:

	12/31/2006
Step 10	\$83,861
Step 9	\$81,883
Step 8	\$80,904
Step 7	\$79,926
Step 6	\$72,311
Step 5	\$67,840
Step 4	\$63,010
Step 3	\$58,677
Step 2	\$54,340
Step 1	\$42,964
Probationary Step (2 <sup>nd</sup> 6 months)	\$38,361
Academy Step (1 <sup>st</sup> 6 Months)	\$30,689

3. Effective January 1, 2007, each step of the revised schedule shall be increased by 4.0%. That schedule shall read as follows:

	1/1/2007
Step 10	\$87,215
Step 9	\$85,158
Step 8	\$84,140
Step 7	\$83,123
Step 6	\$75,203
Step 5	\$70,554
Step 4	\$65,530
Step 3	\$61,024
Step 2	\$56,514
Step 1	\$44,683
Probationary Step (2 <sup>nd</sup> 6 months)	\$39,895
Academy Step (1 <sup>st</sup> 6 Months)	\$31,917

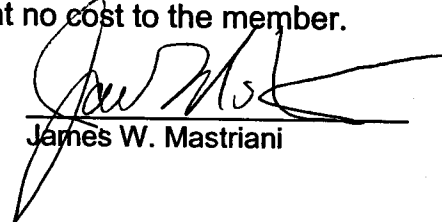
6. **Firehouse Seniority**

Mutually agreed upon language shall be included in the Agreement reflecting that before reassigning firefighters to any new fire stations/houses, members should be allowed to pick and choose their new station/house by seniority.

7. **Personal Protective Equipment.**

Mutually agreed upon language shall be included in the Agreement reflecting that the City shall continue the current practice of repairing and cleaning all personal protective equipment issued to each member that is damaged or dirtied in the line of duty, at no cost to the member.

Dated: December 4, 2006  
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }  
County of Monmouth }ss:

On this 4<sup>th</sup> day of December, 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