

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

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In the Matter of Interest Arbitration Between :  
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**CITY OF NORTH WILDWOOD** : **INTEREST ARBITRATION**  
 "the City or Employer" : **DECISION**  
 : **AND**  
 and : **AWARD**  
 :  
**FMBA LOCAL 56** : Docket No: IA-2006-042  
 "the FMBA or Union" :  
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**Before: Robert M. Glasson, Arbitrator**

**APPEARANCES**

**FOR THE CITY:**

Lawrence Pepper, Jr., Esq.  
Gruccio, Pepper, DeSanto & Ruth  
Of Counsel & On the Brief

**FOR THE FMBA:**

Charles E. Schlager, Jr., Esq.  
Loccke, Correia, Schlager, Limsky & Bukosky  
Of Counsel & On the Brief

### Procedural History

The City of North Wildwood (the "Employer" or "City") and FMBA Local 56 (the "FMBA" or "Union") are parties to a collective bargaining agreement (the "CBA") which expired on December 31, 2005. Upon expiration of the CBA, the parties engaged in negotiations for a successor agreement. Negotiations reached an impasse, and the FMBA filed a petition with the New Jersey Public Employment Relations Commission ("PERC") on January 25, 2006, requesting the initiation of compulsory interest arbitration. The parties followed the arbitrator selection process contained in N.J.A.C. 19:16-5.6 that resulted in my mutual selection by the parties and my subsequent appointment by PERC on March 21, 2006 from its Special Panel of Interest Arbitrators.

I conducted mediation sessions on May 1 and May 16, 2006 which proved unsuccessful. The matter was held in abeyance pending direct negotiations between the parties. These continued negotiations also proved unsuccessful and formal interest arbitration proceedings were invoked. I conducted a hearing on February 26, 2007 when the parties presented documentary evidence in support of their positions. At the hearing, it was agreed that the FMBA's financial expert would submit a financial report commenting on the financial report submitted by the City's financial expert at the hearing. The City's financial expert would then have an opportunity to submit a rebuttal to the FMBA's financial report. Upon receipt of the financial reports, a briefing schedule was established and the record was closed on the receipt of the parties' briefs. The parties agreed to extend the time limits for the issuance of the award.

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

34:13A-16f(5), calls for the arbitrator to render an opinion and award within 120 days of selection or assignment, the parties are permitted to agree to an extension.

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

### **Statutory Criteria**

The statute requires the arbitrator to:

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

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

(2) Comparison of the wages, salaries, hours, and condition of employment of the employees involved in the arbitration proceedings with the wages, hours and condition of employment of other employees performing the same or similar services 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 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:4-45.1 et seq.).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or municipality, the arbitrator or panel of arbitrators shall take into account to the extent the 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 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 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)

**PARTIES' LAST OFFERS**

**FMBA**

**ECONOMIC PROPOSALS**

1. **Term of Agreement:** January 1, 2006 to December 31, 2009.
2. **Sick and Injury Leave:**

New language: Employees covered by this Agreement shall be permitted to cash-in up to six (6) sick days to be paid in the first pay of December provided the employee meets the following criteria:

- a. The employee has a minimum of fifty days of accumulated sick leave;
- b. To be eligible to cash-in up to six (6) sick leave days, the employee may only use up to three (3) sick leave days during the first three quarters of the calendar year.
- c. An employee may only cash-in up to three (3) sick leave days if they use four (4) to six (6) sick leave days during the first three quarters of the calendar year.
- d. An employee may not cash-in any sick leave days if they use more than six (6) sick leave days during the first three quarters of the calendar year.

3. **Holidays:**

Article XI - Eliminate: Section A, the first paragraph of Section B and include the named holidays in this provision, the second paragraph of Section C, and NOTE.

4. **Insurance, Health & Welfare:**

Article XII: Retiree health benefits to reflect the same language as contained in the No. Wildwood PBA Local No. 59 contract with the following modification of the City's proposal (as part of an overall settlement) with the same modification. The language is as follows:

1. Upon an Employee's retirement he/she shall be entitled to receive all of the then health care benefits provided by the City at the expense of the City of North Wildwood for the shorter of the following periods:
  - a. When he/she obtains other employment having comparable coverage to that provided by the City (once the job is obtained, the benefits terminate even if the employment terminates within two (2) years)

- b. When an Employee becomes eligible for Medicare.

Retirement, for the purpose of this Article shall be consistent with the standards set for retirement by the New Jersey Police and Fire Pension laws. Said pension laws currently require twenty-five (25) years of service credit which may include, for example, military time buy back and/or other public employment time credit.

~~Under no circumstances however shall any employee be entitled to retiree medical benefits without twenty (20) years of service in the City of North Wildwood.~~

5. **Clothing Allowance:**

Eliminate Section B of Article XIII. Replace with: Employees shall maintain their uniforms in good and clean condition and failure to maintain uniforms in good and clean condition shall be cause for disciplinary action.

6. **Salary Schedule:**

1. Eliminate Section C (1) of Article XVIII. Add the following provision:

Effective January 1, 2007, an EMT Certification shall be required as a condition of employment and must be obtained within one (1) year of the date-of-hire and maintained throughout their career as a condition of employment. *(Note: this provision, while under the FMBA proposal, is a stipulated concession made by the FMBA to address the issue raised by the City)*

2. The Wage Guide for all Ranks and Top Step Firefighter shall be as follows:
- a. Effective January 1, 2006, each step and rank of the Guide shall be adjusted by 8.65% (180 hours) for the elimination of certain provisions within Article XI;
  - b. Effective January 1, 2006, each step and rank of the Guide shall be adjusted by \$725.00 for the elimination of certain provisions within Article XIII;
  - c. Effective January 1, 2006, Step 6, Lieutenant and Deputy Chief of the Guide shall be adjusted by one percent (1.0%);
  - d. Effective January 1, 2006, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;
  - e. Effective January 1, 2007, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;

- f. Effective January 1, 2008, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;
- g. Effective January 1, 2009, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%.

7. **Article XVIII, Section 1 (D) - Salary Schedule (NEW):**

- 1. The parties recognize that from time to time, the practice of appointing or requiring employees to work in a higher rank in an acting capacity is required. Any employee requested to act in such higher ranking capacity or any employee required to assume the higher rank due to the absence of the superior rank for any length of time due to sick or personal leave, shall receive pay commensurate with such position in which he/she acts. An employee shall not be entitled to acting pay when the superior ranking officer is on pre-approved vacation leave.
- 2. On all shifts where there is no Lieutenant assigned or available the Employer shall assign the supervision of that shift to the most senior regular full time firefighter on said shift and said firefighter shall receive acting Lieutenant's pay.

**NON-ECONOMIC PROPOSALS**

1. **Schooling and Miscellaneous:**

In the event an Employee is not able to use a City vehicle to attend a job related school, he/she shall be compensated at the rate of thirty-three (\$.33) cents per mile and tolls.

2. **Title Change:**

Consistent with the Department of Personnel, the title of Lieutenant throughout the contract will be replaced by the title of Captain. There shall be no change in compensation for this change in title.

CITY

ECONOMIC PROPOSALS

1. **Term of Agreement:** January 1, 2007 to December 31, 2009.
2. **Article XII entitled "Insurance, Health and Welfare":**

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Revise to read as follows:

**ARTICLE XII**  
**INSURANCE, HEALTH AND WELFARE**

A. The City shall provide a comprehensive Health Benefit Program through the Southern New Jersey Regional Benefits Fund including hospitalization, medical treatment, major medical coverage, surgical fees and all of the benefits which are currently included in the Health Benefit Program, at the date of this Agreement, for the employee and his family. Employees shall only be permitted to enroll in the type of coverage for which the employee is eligible.

The City shall provide a Co-Pay Prescription Plan for the individual and his family. Effective January 1, 2006, the Co-Payment for the Prescription plan shall become \$5.00 for mail in prescriptions and \$10.00 for generic drugs and \$20.00 for brand name drugs.

The City shall provide a Dental Insurance Program, which includes all of the benefits which are currently included in the Dental Insurance Program, at the date of this Agreement, for the employee and his family.

The City, at its sole discretion, retains the right to select and change insurance carriers during the term of this Agreement, provided coverages are substantially equal to or better. Disagreements regarding coverage changes can go to the grievance process and to arbitration. The City will notify the Union at least thirty (30) days before any change is to happen. Selection of the carrier or carriers is a managerial prerogative not subject to the terms of this collective bargaining agreement.

B. Upon Employee's retirement he/she shall be entitled to receive all of the then health care benefits provided by the City at the expense of the City of North Wildwood for the shorter of the following periods:

1. For a period of two (2) years or when he/she obtains other employment having comparable coverage to that provided by the City (once the job is obtained, the benefits terminate even if the employment terminates within two (2) years).



2. When an Employee becomes eligible for Medicare.

Retirement, for the purpose of this Article shall be consistent with the standards set for retirement by the New Jersey Police and Fire Pension laws. Said pension laws currently require twenty-five (25) years of service credit which may include, for example, military time buy back and/or other public employment time credit. Under no circumstances however, shall any employee be entitled to retiree medical benefits without twenty (20) years of service in the City of North Wildwood.

C. Employees shall be permitted to opt out of the medical insurance coverage provided by the City as long as the employee furnishes the City with documentation to establish that the employee has health insurance coverage from another source. Employees who elect to opt out of the coverage provided by the City shall be paid the sum of \$2,000.00 for each full year that the employee declines coverage. The amount to be paid to employees who opt out for part of a year and receive City provided health insurance for part of that same year shall be pro-rated. Said payment shall be made by the City to the employee during the first pay period in December of the year in which the employee opted out of coverage. The City reserves the right to discontinue this policy or opt out of reimbursement at any time with thirty (30) days notice prior to an open enrollment period.

Any employee who has elected to opt-out of coverage may re-enroll in the health care plan by giving the City thirty (30) days prior written notice of his/her desire to re-enroll in the plan. The payment of Two Thousand (\$2,000.00) Dollars shall be pro-rated for the period the employee was not covered by the City Plan.

D. Employees hired after January 1, 2006 will have the option of electing a health benefit plan from the following Plans offered by the City through the Southern New Jersey Regional Benefits Fund:

- a. Premier
- b. Patriot X
- c. Patriot V

The Patriot V Plan ("primary plan") shall be provided to all eligible employees and eligible dependents, without any premium cost, by the City. If an employee selects any of the other Plans offered above, the employee shall pay the premium cost differential between the primary plan and the plan they selected. The City may change the provider and/or the Plans offered provided coverages are substantially similar.

E. The City shall provide insurance coverage on employees in their personal vehicles when said vehicles are used on recalls or when used otherwise in the scope of employment.

F. The City shall supply to all employees necessary legal advice and counsel in the defense of charges filed against them in the performance of their duty in accordance with applicable New Jersey Statutes. The selection of an attorney must be made by the employee from the approved list provided by the City's Insurance Provider.

3. **Salary:**

Wages shall be increased as follows:

January 1, 2006	-	3.5%
January 1, 2007	-	3.5%
January 1, 2008	-	3.5%
January 1, 2009	-	3.5%

4. **Longevity:**

Add new Section C to read as follows:

"Effective upon the signing of this Contract, Longevity shall not be provided to new employees."

4. **Add: General Assembly Meeting:**

All Firefighters may be required to attend a General Assembly Meeting of approximately one (1) hour on a monthly basis. Employees shall be compensated with straight time for the time actually spent at the meeting. The meeting shall occur normally on the first Monday of each month.

**Non-Economic Issues**

1. **Recognition:**

No change. The title of Lieutenant shall not be changed to Captain.

2. **FMBA Representatives:**

Article V, Section A: FMBA must designate two specific persons in writing prior to January 1 of each calendar year.

Section E. Change to one (1) Bulletin Board.

3. **Vacation:**

Change Tours of Duty to Hours with conversion based upon 12 hours per Tour of Duty.

4. **Clothing Allowance:**

Article XIII, Section A, add: “Thereafter, each Firefighter shall be responsible at his/her own expense for the purchase of all replacement items of uniforms.”

Section B, add: “...unless the damage or destruction has been caused by the negligence of the Firefighter.”

Add new Section E as follows: “Employees shall maintain their uniforms in good and clean condition and failure to maintain uniforms in good and clean condition shall be cause for disciplinary action.”

6. **Article XVII - Safety:**

Delete as such issues are addressed by the City’s Safety Committee.

7. **Schooling and Miscellaneous Provisions:**

Revise Article XXII, Section 1 to read as follows:

“All new firefighters being hired will attend and successfully complete an accredited Firefighter I basic training school and State of New Jersey Emergency Medical Technician basic training course. Failure to successfully complete the two above courses shall result in the removal of the Firefighter from employment.”

**UNION POSITION**

The following are the FMBA’s arguments and contentions in support of the statutory criteria:

**Interests and Welfare of the Public**

The FMBA requests that the Arbitrator take judicial notice that firefighting services are vital to a community. A paid fire department, unlike a volunteer fire department, trains and hones its firefighting skills and techniques on a regular basis. Fire service is intrinsically bound to police service by law in the procedure to achieve successor contracts, by their pension system and most importantly by their statutory duty to the public. It is due to this unique bond and paralleled service to the public that arbitrators across the state have put significance on the comparative economic and non-economic terms of these public services.

The FMBA asserts that this is extremely important in this matter as the comparative economic and non-economic terms of the FMBA contract to that of the North Wildwood PBA shows a striking disparity. While the FMBA has and continues to seek economic parity with its law enforcement brethren, they are pragmatic in the realization that inequities created through the years cannot be resolved in any one given contract.

In light of the above, the FMBA's proposals reflect this position of equitable treatment. This is specifically the case in the manner in which a firefighter's base salary is formed and the health benefits that should be enjoyed by firefighters when they retire. The stronger the assimilation between fire and police services, the better the public interest and welfare are served.

#### **Comparison of Wages, Salaries and Conditions of Employment**

The Arbitrator's consideration of the interest and welfare of the public must be viewed, in large part, to the comparison of the wages, salaries, compensation, hours, and conditions of employment of the employees involved in the arbitration proceedings with the benefits, terms and conditions of employment of other employees performing the same or similar services as it pertains to the proposals presented by the parties is a statutory requirement under N.J.S.A. 34:13A-16(g)(2).

The FMBA asserts that a review of the evidence in consideration of Criteria 2 and 3 under the Act provide extremely strong support for an award of the FMBA's position in this case. The FMBA's proposed across-the-board adjustment to base wage followed by percentage increases is as follows:

The Wage Guide for all Ranks and Top Step Firefighter shall be as follows:

- a. Effective January 1, 2006, each step and rank of the Guide shall be adjusted by 8.65% (180 hours) for the elimination of certain provisions within Article XI;
- b. Effective January 1, 2006, each step and rank of the Guide shall be adjusted by \$725.00 for the elimination of certain provisions within Article XIII;
- c. Effective January 1, 2006, Step 6, Lieutenant and Deputy Chief of the Guide shall be adjusted by one percent (1.0%);
- d. Effective January 1, 2006, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;
- e. Effective January 1, 2007, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;
- f. Effective January 1, 2008, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%;
- g. Effective January 1, 2009, after the aforementioned adjustments, each step and rank of the Guide shall be increased by 3.8%.

The FMBA notes that the above salary proposal is consistent with the terms reached between the City of North Wildwood and the PBA in their most recent contract. (U-38).

Despite the similarity in terms reached with the PBA and sought by the FMBA, the salaries for police officers are far superior to their fire service counterparts as shown in the Chart below:

	<u>FMBA</u>			<u>PBA</u>					
	<u>2004</u>	<u>2005</u>		<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>		
Lieutenant	\$57,891	\$60,056	Captain	\$72,722	25.6%	\$79,609	32.6%	\$82,395	\$85,279
Step 6	\$55,058	\$56,627	Step 7	\$63,439	15.2%	\$69,447	22.6%	\$71,878	\$74,394
Step 5	\$50,978	\$52,431	Step 6	\$56,383	10.6%	\$61,723	17.7%	\$63,883	\$66,119
Step 4	\$46,084	\$47,397	Step 5	\$47,643	3.4%	\$52,155	10.0%	\$53,981	\$55,870
Step 3	\$42,003	\$43,200	Step 4	\$45,219	7.7%	\$49,502	14.6%	\$51,235	\$53,028
Step 2	\$35,500	\$36,000	Step 3	\$42,797	20.6%	\$46,851	30.1%	\$48,491	\$50,188
Step 1	\$31,500	\$32,000	Step 2	\$38,470	22.1%	\$42,114	31.6%	\$43,588	\$45,114
Entry	\$25,000	\$25,000	Step 1	\$34,000	36.0%	\$37,221	48.9%	\$38,523	\$39,871
			Entry	\$30,000	20.0%	\$31,750	27.0%	\$31,750	\$31,750

The FMBA notes that the above Chart shows a comparison of the firefighter wages to that of their counterparts in law enforcement. In Fire Service the title of "Lieutenant" and "Captain" in Law Enforcement are at the same level. This Chart shows that in 2004 the percentage differential in wages between Lieutenant (Fire) and Captain (Police) was 25.6% and that this increased to 32.6% in 2005. In large part this increase in the percentage differential was due to a market adjustment and consideration for the elimination of paid holidays. At top step the percentage differential was slightly different going from 15.2% in 2004 to 22.6% in 2005, a 7.4% increase. In actual dollars in wage differential (*in italics*) are as follows:

	<u>2004</u>	<u>2005</u>		<u>2004</u>	<u>Diff</u>	<u>2005</u>	<u>Diff</u>
Lieutenant	\$57,891	\$60,056	Captain	\$72,722	<i>\$14,831</i>	\$79,609	<i>\$19,553</i>
Step 6	\$55,058	\$56,627	Step 7	\$63,439	<i>\$8,381</i>	\$69,447	<i>\$12,820</i>
Step 5	\$50,978	\$52,431	Step 6	\$56,383	<i>\$5,405</i>	\$61,723	<i>\$9,292</i>
Step 4	\$46,084	\$47,397	Step 5	\$47,643	<i>\$1,559</i>	\$52,155	<i>\$4,758</i>
Step 3	\$42,003	\$43,200	Step 4	\$45,219	<i>\$3,216</i>	\$49,502	<i>\$6,300</i>
Step 2	\$35,500	\$36,000	Step 3	\$42,797	<i>\$7,297</i>	\$46,851	<i>\$10,851</i>
Step 1	\$31,500	\$32,000	Step 2	\$38,470	<i>\$6,970</i>	\$42,114	<i>\$10,114</i>
Entry	\$25,000	\$25,000	Step 1	\$34,000		\$37,221	
			Entry	\$30,000	<i>\$5,000</i>	\$31,750	<i>\$6,759</i>

As stated above, the FMBA is seeking a 8.65% wage adjustment to each step effective January 1, 2006, followed by an adjustment of \$725 at all steps that represents a market adjustment and consideration for the elimination of certain economic provisions within the Contract. Thereafter, the FMBA seeks, effective January 1, 2006, a one percent (1.0%) adjustment to Step 6, Lieutenant and Deputy Chief followed by an across-the-board wage increase of 3.8%. Effective January 1<sup>st</sup> of 2007, 2008 and 2009 each step will be

increased by 3.8%. Given the above wage proposal the FMBA Wage Guide would appear as follows:

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Lieutenant	\$57,891	\$60,056	\$69,168	\$71,796	\$74,524	\$77,356
Step 6	\$55,058	\$56,627	\$65,262	\$67,742	\$70,316	\$72,988
Step 5	\$50,978	\$52,431	\$60,482	\$62,781	\$65,166	\$67,643
Step 4	\$46,084	\$47,397	\$54,748	\$56,829	\$58,988	\$61,230
Step 3	\$42,003	\$43,200	\$49,968	\$51,866	\$53,837	\$55,883
Step 2	\$35,500	\$36,000	\$41,766	\$43,354	\$45,001	\$46,711
Step 1	\$31,500	\$32,000	\$37,210	\$38,624	\$40,092	\$41,615
Entry	\$25,000	\$25,000	\$29,237	\$30,348	\$31,501	\$32,698

Using the same analysis as above for 2004 and 2005, the percentage differential and actual dollar differential, the analysis for the comparative years 2006 and 2007 are as follows:

	<u>2006</u>	<u>2007</u>		<u>2006</u>	<u>% Diff</u>	<u>\$ Diff</u>	<u>2007</u>	<u>% Diff</u>	<u>\$ Diff</u>
Lieutenant	\$69,168	\$71,796	Captain	\$82,395	19.1%	\$13,227	\$85,279	18.8%	\$13,483
Step 6	\$65,262	\$67,742	Step 7	\$71,878	10.1%	\$6,616	\$74,394	9.8%	\$6,652
Step 5	\$60,482	\$62,781	Step 6	\$63,883	5.6%	\$3,401	\$66,119	5.3%	\$3,338
Step 4	\$54,748	\$56,829	Step 5	\$53,981	-1.4%	-\$767	\$55,870	-1.7%	-\$959
Step 3	\$49,968	\$51,866	Step 4	\$51,235	2.5%	\$1,267	\$53,028	2.2%	\$1,162
Step 2	\$41,766	\$43,354	Step 3	\$48,491	16.1%	\$6,725	\$50,188	15.8%	\$6,834
Step 1	\$37,210	\$38,624	Step 2	\$43,588	17.1%	\$6,378	\$45,114	16.8%	\$6,490
Entry	\$29,237	\$30,348	Step 1	\$38,523	31.8%	\$9,286	\$39,871	31.4%	\$9,523
		Entry	\$31,750	8.6%	\$2,513	\$31,750	4.6%	\$1,402	

While the FMBA's proposal does not bring fire service in parity with law enforcement it does show a percentage trending towards equality, but the actual dollar difference is only slightly better than the 2004 status.

Beyond the comparison to the North Wildwood Police Department, the parties presented documents to show the comparison of wages and benefits to other paid fire departments in the area. The most often compared department to the North Wildwood Fire Department is the Wildwood City Fire Department. The reason for this comparison between the two departments is the degree and quantity of shared services. In Wildwood City the Fire Department contract in comparison to North Wildwood is as follows:

	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>
Lieutenant	\$57,891	\$60,056	\$69,168	\$71,796	\$74,524	\$77,356
Step 6	\$55,058	\$56,627	\$65,262	\$67,742	\$70,316	\$72,988
Step 5	\$50,978	\$52,431	\$60,482	\$62,781	\$65,166	\$67,643
Step 4	\$46,084	\$47,397	\$54,748	\$56,829	\$58,988	\$61,230
Step 3	\$42,003	\$43,200	\$49,968	\$51,866	\$53,837	\$55,883
Step 2	\$35,500	\$36,000	\$41,766	\$43,354	\$45,001	\$46,711
Step 1	\$31,500	\$32,000	\$37,210	\$38,624	\$40,092	\$41,615
Entry	\$25,000	\$25,000	\$29,237	\$30,348	\$31,501	\$32,698

	<u>2004</u>		<u>2005</u>		<u>2006</u>		<u>2007</u>		<u>2008</u>	
Captain	\$67,860	17.2%	\$70,574	17.5%	\$75,465	9.1%	\$80,469	12.1%	\$85,590	14.8%
Step 5	\$59,689	8.4%	\$62,077	9.6%	\$66,379	1.7%	\$70,780	4.5%	\$75,285	7.1%
Step 4	\$53,587	5.1%	\$55,730	6.3%	\$59,592	-1.5%	\$63,544	1.2%	\$67,588	3.7%
Step 3	\$47,484	3.0%	\$49,383	4.2%	\$52,805	-3.5%	\$56,307	-0.9%	\$59,890	1.5%
Step 2	\$41,950	-0.1%	\$43,628	1.0%	\$46,651	-6.6%	\$49,745	-4.1%	\$52,911	-1.7%
Step 1	\$35,175	-0.9%	\$35,175	-2.3%	\$36,206	-13.3%	\$37,237	-14.1%	\$38,267	-15.0%

By 2008, both contracts reflect the elimination of holidays and an adjustment to base wage and as such, are truly comparative. In 2008, the Wildwood City Fire Captains (same duties and responsibilities as a Lieutenant in this Unit) will make \$11,066 or 14.8% more than a Lieutenant in North Wildwood. In addition, the 2008 Top Step firefighter in Wildwood City will make \$4,969 or 7.1% more than a North Wildwood Top Step firefighter.

Without going outside the contractual exhibits submitted by the Employer, the FMBA's position and argument are totally supported. The Chart below shows a comparison to North Wildwood PBA, Cape May Fire Department, Ocean City Fire Department, and Wildwood Fire Department to the proposed North Wildwood FMBA wage guide at the Lieutenant and Top Step level.



	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>
	<u>Lt.</u>	<u>Lt.</u>	<u>Lt.</u>	<u>Lt.</u>	<u>Lt.</u>
NWFMBA	\$57,891	\$60,056	\$69,168	\$71,796	\$74,524
NWPBA	\$67,860	\$70,574	\$75,465	\$80,469	
Cape May	\$68,154	\$70,880	\$73,622	\$76,473	\$79,439
Ocean City	\$70,924	\$73,583	\$76,343		
Wildwood	<u>\$67,860</u>	<u>\$70,574</u>	<u>\$75,465</u>	<u>\$80,469</u>	<u>\$85,590</u>
Avg. Wage	\$68,700	\$71,403	\$75,224	\$79,137	\$82,515
Wage Diff.	-\$10,809	-\$11,347	-\$6,056	-\$7,341	-\$7,990
Pct. Diff.	-18.7%	-18.9%	-8.8%	-10.2%	-10.7%
	<u>Top Step</u>	<u>Top Step</u>	<u>Top Step</u>	<u>Top Step</u>	<u>Top Step</u>
NWFMBA	\$55,058	\$56,627	\$65,262	\$67,742	\$70,316
NWPBA	\$63,439	\$69,447	\$71,878	\$74,394	
Cape May	\$65,110	\$67,714	\$70,329	\$73,049	\$75,878
Ocean City	\$65,670	\$68,133	\$70,688		
Wildwood	<u>\$59,689</u>	<u>\$62,077</u>	<u>\$66,379</u>	<u>\$70,780</u>	<u>\$75,285</u>
Avg. Wage	\$63,477	\$66,843	\$69,819	\$72,741	\$75,582
Wage Diff.	-\$8,419	-\$10,216	-\$4,557	-\$4,999	-\$5,265
Pct. Diff.	-15.3%	-18.0%	-7.0%	-7.4%	-7.5%

The FMBA points out that even with the FMBA's wage proposal, firefighters and superiors in North Wildwood will remain 10.7% (Lieutenant) and 7.5% (Top Step) behind the average wage comparisons in 2008. The City is proposing that the Holiday provisions remain unchanged and that wages are only adjusted by \$725 in 2006 followed by salary increases of 3.5% in 2006, 2007, 2008 and 2009. This would not only provide less of a percentage increase than the comparative contracts used by the City, but cause the employees of this Department to fall further behind their comparative counterparts. On balance, the FMBA asserts that its proposal is more than reasonable, is more reflective of the salary

increases awarded statewide and will bring the FMBA closer to its comparative public service departments.

### Health Benefits

While wages are always the most important issue in collective negotiations, the ~~disparity in the health benefits available for retirees of the North Wildwood Fire Department~~ to those enjoyed by retirees from the other comparative fire departments and more importantly, and most significantly, City of North Wildwood retirees from the Police Department and the Department of Public Works. This issue is at the heart of the dispute between the parties. Simply put, the FMBA is seeking the same benefit level of health benefit coverage for their retirees that is enjoyed by their law enforcement counterparts in the North Wildwood Police Department.

As previously stated, the City is seeking to delete the current health benefit language and replace Article XII with major changes in the health care plan for current employees and significant changes for new hires. Although the City's proposal represents a significant change to the current contractual terms, the FMBA, as part of the mediation process, agreed to accept the City's proposal which the FMBA argues should reflect the same language as currently set forth in the North Wildwood PBA Local No. 59 contract regarding retiree health insurance which provides:

1. Upon an Employee's retirement he/she shall be entitled to receive all of the then health care benefits provided by the City at the expense of the City of North Wildwood for the shorter of the following periods:
  - a. When he/she obtains other employment having comparable coverage to that provided by the City (once the job is obtained, the benefits terminate even if the employment terminates within two (2) years)
  - b. When an Employee becomes eligible for Medicare.

Retirement, for the purpose of this Article shall be consistent with the standards set for retirement by the New Jersey Police and Fire Pension laws. Said pension laws currently require twenty-five (25) years of service credit which may include, for example, military time buy back and/or other public employment time credit.

Under no circumstances however shall any employee be entitled to retiree medical benefits without twenty (20) years of service in the City of North Wildwood.

The FMBA submits that it is incredible that public safety employees, employed by the same employer, do not have the same level of retiree health benefits. Especially in light of the fact that both units have the same level of benefits, coverages and administration for active employees. What is more incredible is that the City's blue-collar DPW workers are entitled to better retiree health benefits than the paid firefighters of the City of North Wildwood.

The FMBA submitted the following comparative data regarding retire health benefits:

No. Wildwood FMBA: 25 years in the State Pension System; fully paid for 2 years after retirement

No. Wildwood PBA: 25 years in the State Pension System; paid for life

No. Wildwood CWA 1034: 25 years in the State Pension System; for 3 years after retirement

Cape May Fire: 25 years in the State Pension System; paid for life

Ocean City Fire: 25 years in the State Pension System; paid for life.

The Cape May PBA contract provides:

Upon retirement after 25 years of service to the City, the City will pay the entire cost of health insurance premiums for those coverages itemized in Section IX, A above available for retirees from the City's insurance group to supplement Medicare or any other health insurance to which the retiring employee may be entitled for the lifetime of the retiring employee and his spouse at the time of retirement. (U-39).

The Pleasantville PBA contract provides:

Upon retirement, an employee with twenty-five (25) or more years of service to the City shall receive paid health benefits in the Police and Firemen's Retirement System or upon retirement of an employee who becomes disabled and receives an accidental disability pension under the provisions of N.J.S.A. 43:16A-7, the City agrees to provide the Health Benefits described in Sections A and B of this Article for the member, and the member's spouse ~~only. Such benefits shall not be extended to the member's spouse once the~~ spouse becomes eligible for Medicare/Medicaid. At this time, the City will become the secondary provider to the spouse. (U-28).

The Pleasantville IAFF contract provides:

Upon retirement, an employee with twenty-five (25) or more years of service to the City shall receive paid health benefits. (U-24).

The Ventnor PBA contract provides:

Under State Health Benefits System, 25 years in the State Pension System; paid for life. (U-39).

Based on all of the comparative contracts, the North Wildwood Firefighters are the only public safety employees that do not receive paid health benefits for life upon retirement. While this alone would seem sufficient to warrant a determination in favor of the FMBA, the FMBA submits that the actual cost to the Employer for this proposal is minimal. The Employer indicated that the 2007 monthly cost of the Patriot V family plan is \$1,031. The FMBA submitted a summary document which indicates when firefighters of this Unit would be entitled to receive retire health benefits. (U-46). In this contract term, no firefighters will be eligible to retire and therefore, there would be no cost to the City. The future cost (10 years) based on a projected 10% annual increase in health care premium costs and firefighters retiring when eligible is as follows:

<u>Name</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
Heitzman	X	X	O	O	O	O	O
Cole			X	X	O	O	
Tirotta				X	X	O	

The FMBA notes that the “X” represents the two years the City is now contractually obligated to pay and “O” represents the years the City would be required to pay retiree health benefits under the FMBA proposal. The three firefighters shown above are the only firefighters eligible to retire within the next ten years. The cost to the City with the projected 10% escalator to the current monthly \$1,031 family rate for Patriot V is as follows:

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
<b>Mo. Premium</b>	\$1,509	\$1,660	\$1,826	\$2,009	\$2,210	\$2,431	\$2,674
<b>Ann. Cost</b>			\$21,918	\$24,110	\$26,520	\$58,345	\$96,269

The FMBA submits that based on the actual eligible firefighters and the escalated premium cost, the City’s cost for the entire ten years is only \$227,162 or an average of \$22,716 over the next ten years. Given the overwhelming evidence, the relatively low comparative wages of North Wildwood Firefighters and the reasonable cost of retiree benefits for these Unit members over a ten-year period should be compelling evidence to reach a decision in favor of the FMBA’s proposal.

As for the other proposals set forth above and as submitted by the FMBA, we rely on the testimony and position of the parties established at hearing and throughout the mediation process, as well as what was reflected in the terms of the Recommended Settlement.

#### **Private Sector Comparisons**

The FMBA asserts that private sector comparisons should not be considered controlling in this case. In the first instance, there is no comparable private sector job compared to that of a firefighter. A firefighter has obligations both on and off duty. This

is most unusual in the private sector. A firefighter must be prepared to act at all times as dictated by law. Certainly we have not seen this in the private sector. The firefighter operates under a statutory language created to form a public franchise of firefighter with on and off duty hours. There is no portability of pension in the firefighter community after age 35. ~~Firefighters may not take their skills and market them outside the State of New Jersey~~ even though an employee may market one's own personal skills in the private sector. A machinist or an engineer may travel anywhere in the county to relocate and market their skills. This ability to relocate throughout the United States is not necessarily or easily available for firefighters. The nature of firefighter work inherently involves hazard and risk. We have not frequently seen this type of inherent hazard or risk in the private sector.

The following represents certain statutory and other precedential laws controlling the relationship of firefighters to their employers. Specifically distinguished is the private sector employee from said employees' employer.

1. **The Federal Fair Labor Standards Act, 29 USCA sect.201, et seq.** applies different standards to private sector employees and police officers. Whereas private sector employees have the protection of the 40 hour work week and the 7-day work cycle, police officers are afforded much less protection. Firefighters have only relatively recently been covered by the Act by virtue of the 7k amendment.
2. **The New Jersey State Wage & Hour Law, NJSA 34:11-56a, et seq.** does not apply to the employment relationship between a firefighter the public employer. Private sector employees are covered under New Jersey Wage and Hour Laws. Such protections as are therein available are not available to the police or firefighters, **Perry v. Township of Swedesboro, 214 NJ Super. 488 (1986).**
3. Specific statutory provisions control the very creation of a police department or fire department and its regulation allowing for a strict chain of command and control. Included are statutory provisions for rules and regulations, specifying of powers and duties, specifics for assignments of subordinate personnel, and delegation of authority. **NJSA 40A:14-9 and 118.** There is no such statute covering private employment in New Jersey.

4. **NJS 40A:** provides for specific qualifications that are statutorily mandated for firefighter employment of a paid department. Such requirements as US Citizenship, physical health, moral character, a record free of conviction, and numerous other requirements are set forth therein. No such requirement exists by statute for private employment in this state.
5. If an employee in a police department or fire department is absent from duty without just cause or leave of absence for a continuous period of five days said person, by statute, ~~may be deemed to cease to be a member of such police department or force,~~ **Title 40A.** No such provision exists as to private employment.
6. Statutorily controlled promotional examinations exist for certain classes of firefighters in New Jersey under title 11 and other specific statutory provisions exist under **Title 40A.** A similar provision is contained within the Police Statute. There are no such private sector limitations on promotion.
7. A firefighter in New Jersey must be a resident of the State of New Jersey, **Title 40A.** A similar provision is contained within the Police Statute. No such restriction exists for private sector employees.
8. Hiring criteria and order of preference is set by statute **Title 40A.** No such provision exists for private employees in New Jersey.
9. There are age minimums and age maximums for initial hire as a police officer or firefighter in New Jersey. No such maximum age requirements exist for private employment in this state. Even if an employee in a police or fire department who has left service seeks to be rehired there are statutory restrictions on such rehire with respect to age, **40A:14-127.1.** No such provision exists for private employees in this state.
10. As a condition for employment in a police or fire department in the State of New Jersey there must be acceptance into the applicable Police and Fire Retirement System, **Title 40A.** No such requirement exists in the private sector. The actual statutorily-created minimum salary for police officers and firefighters in New Jersey is set below minimum wage **Title 40A.** Private employees are protected under the Fair Labor Standards Act. Days of employment and days off, with particular reference to emergency requirements are unique to police work. A fireman and police officer's work shall not exceed six days in any one week, "except in cases of an emergency." **Title 40A.** The Fair Labor Standards Act gives superior protection to private sector employees.
11. **Title 40A** permits extra duty work to be paid not in excess of time and one-half. This prohibits the higher pyramided wage rates which may be negotiated in the private sector. There is no such prohibition in the law applying to private sector employees.

12. The maximum age of employment of a police officer is 65 years. No such 65-year maximum applies to private sector employees.
13. The Federal ERISA Pension Protection Act does not cover Police Officer and Fireman's pensions. Private sector employees' pensions are covered under ERISA.
14. Police officers and Firemen are subject to unique statutorily created hearing procedures and complaint procedures regarding departmental charges. Appeals are only available to the court after exhaustion of these unique internal proceedings, NJS 40A:14-147 to 40A:14-151. No such restrictions to due process protections for private employees exist. Private employees, through collective bargaining agreements, may also negotiate and enforce broad disciplinary review procedures. The scope is much different with police personnel.

The FMBA submits that the greatest differentiation between firefighters, police officers and private employees generally is the obligation to act as a firefighter at all times of the day, without regard to whether one is on duty status within the state or not. Firefighters and Police Officers are statutorily conferred with specific authority.

Firefighters are trained in the basic fire academy and regularly retrain in such specialties. The State requires similar academy periods and training requirements for police officers. This basic and follow up training schedules is a matter of New Jersey Statutory law. Such initial and follow up training is not generally found in the private sector. Failure to maintain certain required training can lead to a loss of a firefighter certification and the firefighter's job. This is rarely found in the private sector.

Mobility of private sector employees is certainly a factor in the setting of wages and terms and conditions generally for private sector employees. When a company has the ability to move from one state to another, more of a global competition must be considered. The New Jersey private sector employee must consider the possibility that his industrial employer might move that plant to another state or even another country. This creates a depressing factor on wages and is not possible in the public sector. The employees must work locally



and must live in reasonable proximity to be available to respond promptly to local emergencies.

Local comparisons are more relevant with firefighter and police officer wages. The FMBA cites the decision of Arbitrator William Weinberg in support of its argument: in the Village of Ridgewood case.

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Second of the comparison factors is comparable private employment. This is troublesome when applied to police. The police function is almost entirely allocated to the public sector whether to the municipality, county, state or to the national armed forces. Some private sector entities may have guards, but they rarely construct a police function. There is a vast difference between guards, private or public, and police. This difference is apparent in standards for recruiting, physical qualifications, training, and in their responsibilities. The difficulties in attempting to construct direct comparisons with the private sector may be seen in the testimony of the Employer's expert witness who used job evaluation techniques to identify engineers and computer programmers as occupations most closely resembling the police. They may be close in some general characteristics and in "Hay Associates points", but in broad daylight they do seem quite different to most observers.

The weight given to the standard of comparable private employment is slight, primarily because of the lack of specific and obvious occupational categories that would enable comparison to be made without forcing the data.

Third, the greatest weight is allocated to the comparison of the employees in this dispute with other employees performing the same or similar services and with other employees generally in public employment in the same or similar comparable jurisdictions (Section g. 2(a) of the mandatory standards.) This is one of the more important factors to be considered. Wage determination does not take place without a major consideration of comparison. In fact, rational setting of wages cannot take place without comparison with like entities. Therefore, very great weight must be allocated to this factor. For purposes of clarity, the comparison subsection g,(2), (a) of the statute may be divided into (1) comparison within the same jurisdiction, the direct employer, in this case the Village, and (2) comparison with comparable jurisdictions, primarily other municipalities with a major emphasis on other police departments.

Police and Fire are a local labor market occupation. Engineers may be recruited nationally; secretaries, in contrast, are generally recruited within a convenient commute. The nearby market looms large in police and fire comparisons. The farther from the locality, the weaker the validity of the

comparison. Police and Fire comparisons are strongest when in the local area, such as contiguous towns, a county, an obvious geographic area such as the shore or a metropolitan area. Except for border areas, specific comparisons are nonexistent between states. (Ridgewood Arbitration Award, Docket No.: IA-94-141, pages 29 - 31)

For the reasons noted above, the FMBA maintains that any time there is a comparison ~~made between a firefighter and a private employee generally, the public safety employees'~~ position must gain weight and be given greater support by such comparisons. The levels of scrutiny, accountability and authority imposed upon firefighters are unparalleled in employment generally. A firefighter is charged with access to the most personal and private information of individuals and citizens generally. His/her highly specialized and highly trained environment puts great stress and demand on the individual. Private employment generally is an overly generalized category that includes virtually every type of employment. To be sure, in such a wide array of titles as the nearly infinite number covered in the general category of "private employment", there are highly specialized and unique situations. The majority, however, must by definition be more generalized and less demanding. Specialized skills and standards are not generally as high as in firefighter services. Firefighters are career- committed, 25-year statutorily oriented specialists whom law has given, the highest authority and most important, public franchise. The firefighter should be considered on a higher wage plane than private employment generally.

#### **Lawful Authority of the Employer**

The FMBA submits that the Commission's recent decision in County of Essex v. Essex County Sheriff's FMBA/ Local No. 183, PERC No. 2005-52, IA-2003-37 (2005) sets forth the definitive statement on the "lawful authority of the employer." The Commission stated:

Interest arbitration is an extension of the negotiations process, City of Clifton, PERC 2002-56, 28 NJPER201 (¶33071 2002), and throughout formal arbitration proceedings the arbitrator may continue to mediate and help the parties in reaching a mutually agreeable settlement. N.J.S.A. 34:13A-16f(3) . . . The Reform Act reflects the Legislature's intent that arbitrators focus on the full range of statutory factors - not just public safety salaries in surrounding jurisdictions or the governing body's ability to pay the other's party's offer. (citing, Hillsdale, 137 N.J. at 85-86; Washington Township, 137 N.J. at 82; Fox v. Morris County, 266 N.J. Super. at 516-517; Cherry Hill. Accordingly, the Act expressly requires the arbitrator to indicate which statutory factors are deemed relevant, satisfactorily explain why the others are not relevant, and analyze each relevant factor. N.J.S.A. 34:13A-16g. It also expressly requires the arbitrator to consider the limitations imposed on the employer by the CAP law. However, while the Act directs "due weight" be give to the taxpayers' interests, it does not automatically equate the employer's offer with the public interest. Middlesex Cty., PERC No. 98-46, 23 NJPER 595 (¶28293 1997). The Legislature also recognized "the unique and essential" duties of law enforcement officers and found that an effective interest arbitration process was requisite to maintaining their "high morale," thereby ensuring the efficient operation of public safety departments and the protection of the public. N.J.S.A. 34:13A-14. Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. (citing, Teaneck, 25 NJPER at 459. (Emphasis supplied).

The Commission further stated that the Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. (citing, Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2)) However, the CAP law is only one of the many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296. Moreover, in enacting both the interest arbitration

law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments.

In sum, an arbitrator must consider the financial evidence and explain how he or she ~~weighed the financial impact and lawful authority criteria, along with the other factors~~ deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or legal authority to direct an employer as to how to finance or comply with an award. See, Irvington, 81 N.J. at 296.

**The Financial Impact on the Governing  
Unit, its Residents and Taxpayers**

For discussion of this statutory criterion, the parties mutually agreed to have their respective financial experts review the City's budgetary and financial documents. As to the totality of the Employer's financial condition, the FMBA relies on the findings and analysis of their financial expert, Vincent J. Foti. Mr. Foti concluded as follows:

Clearly the City has the financial ability to pay as indicated in the following charts:

**Results of Operations (AFS Sheet 19)**

<u>YEAR</u>	<u>AMOUNT</u>
2006	\$1,877,736
2005	\$1,818,163
2004	\$2,854,909
2003	\$3,157,547

The Results of Operations is an extremely important chart in as much as it clearly indicates the ability to regenerate surplus. North Wildwood without a doubt has this ability. The fact that 2006 and 2005 decreased from 2003 is not an indication of economic stress but merely less funds were budgeted or more programs and expenditures occurred during the budget cycles.

**Budget Revenues (AFS Sheet 17)**

YEAR	ANTICIPATED	REALIZED	EXCESS/(DEFICIT)
2006	\$21,680,527	\$22,469,728	\$ 789,201
2005	\$20,076,313	\$21,199,491	\$1,123,177
2004	\$17,929,255	\$19,025,660	\$1,096,406
2003	\$17,025,794	\$19,825,916	\$2,800,122

The Budget Revenues are a component of the Results of Operations and the same scenario would apply as indicated above for the Results of Operations. Excess Budget Revenues will vary depending upon the Anticipated Revenues being under or over anticipated.

**Unexpended Balance of Appropriation Reserves (AFS Sheet 19)**

YEAR CANCELLED	FROM/YEAR	AMOUNT
2006	2005	\$680,173
2005	2004	\$430,782
2004	2003	\$335,486
2003	2002	\$136,896

The City continues to improve excess budget appropriations; this affords them a certain amount of budget flexibility. Any agency would have negative numbers if there were serious financial problems.

**Fund Balance (2005 Report of Audit pg 41)**

YEAR	BALANCE 12/31	UTILIZED	PERCENT
2006	\$3,281,801	\$1,980,000	60.33%
2005	\$3,204,064	\$1,800,000	56.18%
2004	\$4,085,417	\$2,800,000	68.54%
2003	\$3,196,209	\$2,000,000	62.57%
2002	\$2,144,185	\$1,684,425	78.56%
2001	\$1,961,190	\$1,460,000	74.44%

The fund balance levels have continued to grow each year, from \$1.9 million in 2001 To \$3.2 million in 2006. This is almost double in 5 years. This certainly does not indicate a deteriorating financial condition.

**Tax Rates (2005 Report of Audit, pg 39)**

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2006	N/A			\$
2005	1.3150	0.5190	0.7260	\$2.5600
2004	1.3150	0.5150	0.7500	\$2.5800
2003	1.3170	0.4650	0.8380	\$2.6200

The tax rate has remained flat since 2003. Any increase in the tax rate would be in keeping with the rating agencies recommendations for nominal increases each year. It is obvious the tax impact has not been in any way negative.

**Tax Collection Rates (2005 Report of Audit Pg 40 and AFS Sheet 22)**

YEAR	COLLECTION RATE
2006	99.11%
2005	99.75%
2004	99.23%
2003	99.42%

The Tax Collection Rate is almost perfect. The State average is 93%

**Tax Levy (2005 Report of Audit pg 37, 2006 AFS sheet 17)**

YEAR	AMOUNT	MUNICIPAL PORTION	PERCENT FOR MUNICIPAL
2006	\$24,064,873	\$13,532,601	56.23%
2005	\$21,217,970	\$11,299,300	53.25%
2004	\$19,667,290	\$10,236,816	52.05%
2003	\$18,658,624	\$ 9,532,632	51.08%

Although the dollar amount of the Tax Levy has increased, this again, goes back to the anticipation of revenues sighted in the Results of Operations and also, the fact that the tax rate has remained flat. The average amount of the tax levy over the past 4 years has been 53%.

**Property Values (2003 Report of Audit pg 37)**

YEAR	AMOUNT
2006	\$
2005	\$794,912,099
2004	\$731,084,474
2003	\$688,182,456

The Property Values have increased on an ongoing basis. This number will continue to grow further with the various developments going on within the City.

**Debt Service (2005 Annual Debt Statement)**

EQUALIZED VALUATION BASIS	DECEMBER 31	\$2,094,244,299
EQUALIZED VALUE	3.5%	\$ 73,298,550
NET DEBT	1.41%	\$ 29,472,679
REMAINING BORROWING POWER		\$ 43,825,871

North Wildwood City is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

### CAP CALCULATION

Attached are the Division of Local Government official CAP Calculations for 2007 and 2006. As you can see the City has not had any CAP problems. The new CAP legislation will not take effect until 2008 and the Division of Local Government Services has not yet enacted any rules or guidelines in connection with the new CAP, which is not on expenditures but on the Levy. It is not anticipated that this will create any undo hardship due to the fact it will allow for exceptions.

### CASH BALANCES (AFS Sheet 9)

FUND	BALANCE AS OF 12/31
CURRENT FUND	\$5,354,354
CAPITAL FUND	\$ 50,757
TRUST FUND	N/A

As indicated in the above chart the City has an excellent cash position.

### PENSION

There was no Pension Contribution required for three years. All municipalities and counties had three-year forgiveness and now are enjoying a 5-year deferral on making payments, 20%, 40%, 60%, 80%, and 100%. This does not impose a hardship. Every agency was made aware of this well in advance before they were required to again begin payments making back into the system. Members continued to make their contributions during this entire period.

In summary, it is my opinion that the City of North Wildwood is in sound financial condition and has no difficulties with the ability to pay salary increases pursuant to the Statutory Criteria.

The FMBA notes that the City's financial expert submitted his analysis essentially indicating that the City's current financial conditions are putting a strain on the City taxpayers. The FMBA's financial expert reviewed the response of the City's expert and submits the following position statement:

In response to the City's financial report please be advised that it appears to be nothing more than a mirroring of the various financial documents of the City that are required to be filed with the State of New Jersey Division of Local Government Services. The information contained in my report of April 1, 2007 sets forth the specific information contained in those financial documents, Results of Operations, Tax Levy, Tax Rate, Tax Collection and CAP Calculations. In summary, it appears that the information contained in the City's report and my report have been extracted from the same official financial documents of the City and both clearly would indicate that the City is not under any severe economic stress as they would like us to believe.

## The Cost of Living

The FMBA recognizes that the cost of living data is somewhat below its last offer on salaries. Notwithstanding this fact however, one must also consider that it is only one of the criteria and certainly is far from a key consideration. The cost of living data is regional. All evidence with respect to wages, settlements, and arbitration awards placed into evidence by the FMBA are regional. The same impact of cost of living was felt on those other jurisdictions as well. The result of those wage increases, awards and settlements is the result of the interplay among all statutory criteria, including cost of living. One must consider the cost of living criteria as an indicator only. This criterion is not controlling.

The FMBA notes that in the past when cost of living was at or near double digit level, employees did not receive increases of like magnitude. Nor should the employees receive the identical value of cost of living at this time because of a lower value. The CPI is a measure of the average change in price over time in a fixed market basket of goods and services bought by consumers for day-to-day living. The difficulty with putting too much weight on the CPI is because it does not necessarily portray an accurate reflection of the cost of individuals in a specific area.

According to the Employer's own exhibits, the CPI for All Urban Wage Consumers in the Philadelphia-Wilmington-Atlantic City Region increased from 2.7% in 2001 to approximately 4.30% in 2006. The CPI is based on the buying habits of the "average" consumer. It may not be a perfect reflection of an individual's price experience as shown above, but it is the most economically feasible method for providing a statistic that is the most useful in all its application. The CPI is also important in that it has a direct effect upon "compensation costs." Therefore, it seems that the CPI should only be used as a general



measure of the cost-of-living increase in a particular region and should not be viewed (1) in a national context and (2) should not be the ultimate determination of the actual increases experienced by persons within a particular Township and (3) viewed in terms of ranges and not point specific percentages.

### The Continuity and Stability of Employment

The FMBA contends that a review of these criteria seems to suggest an evaluation consistent with the private sector concepts of “area standards” and “prevailing wage.” The Union has previously stated its case based upon testimony and evidence introduced at hearing supporting its position on these concepts. Clearly this criteria and those referenced private sector concepts strongly support an award of the Union position. The Union will not, here again, restate its comparability argument and area standards’ assertions. However, the Union would like to take notice of one very important fact that appears to be overlooked by the Employer. If one accepts the position forwarded by the Employer, the overall compensation of firefighters in this Department will become so anemic that fire services could and most likely will begin to suffer. This is because the *total* compensation level will be so significantly below that of comparable public safety personnel within the City, not to mention in the surrounding comparable communities. It only stands to reason that the Union’s position should be awarded to maintain the most important aspect and duty of a municipal government and that is to provide the residents of North Wildwood with the highest level of public safety and fire/EMT service.

Based upon the testimony and evidence submitted at hearing and the arguments submitted in its brief, the FMBA requests that its last offer be awarded.

## CITY'S POSITION

### Existing Wages and Benefits

The City asserts that it has consistently provided its firefighters with good wages, substantial fringe benefits and good working conditions. The following is a summary of current benefits:

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#### Wages

There presently is in effect a fair and reasonable salary schedule for all firefighters employed by the City of North Wildwood. The existing salary schedule covering the firefighters is as follows:

Deputy Chief	\$61,294
Lieutenant	\$60,056
Firefighter Step 6	\$56,627
Firefighter Step 5	\$52,431
Firefighter Step 4	\$47,397
Firefighter Step 3	\$43,200
Firefighter Step 2	\$36,000
Firefighter Step 1	\$32,000
Firefighter Entry Level	\$25,000

In addition to a reasonable salary schedule, firefighters employed by the City of North Wildwood currently receive substantial benefits that help to enhance the environment in which the firefighters work. These generous benefits include, but are not limited to, sick leave, vacation time, holiday pay, medical benefits, prescription benefits, a clothing allowance, funeral leave, longevity pay and college credit allowance. These benefits may be broken down as follows:

#### Sick Leave

Employees are permitted twelve (12) tours of duty of sick leave with pay in each calendar year, save for the employee's first year of employment, when they are permitted one (1) tour of duty of sick leave with pay for each full month of service from date of appointment up to and including December 31<sup>st</sup> following such date of employment.

#### Vacations

Up to the End of the First Calendar Year - 2 Tours of Duty for every 3 months worked  
Second to Fourth Year - 8 Tours of Duty  
Fifth to Ninth Year - 12 Tours of Duty

Tenth to Fourteenth Year - 16 Tours of Duty  
Fifteenth to Nineteenth Year - 20 Tours of Duty  
Twentieth Year to Time of Retirement - 24 Tours of Duty

#### **Holidays**

Employees are given 15 days of paid holiday time.

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#### **Medical Benefits**

The City provides comprehensive health insurance coverage that is equivalent to Blue Cross and Blue Shield of New Jersey UCR (356 Expanded) Rider J. Major Medical. Provided an employee has twenty-five (25) years of service, this extensive coverage is maintained for the retiree for two (2) years.

#### **Prescription Benefits**

\$10 co-pay for Generic  
\$15 co-pay for Name Brand

#### **Clothing Allowance**

Employees are permitted \$525 per year in addition to the original uniforms that are furnished by the City.

#### **Funeral Leave**

Employees will receive up to four (4) days of paid leave for the death of an immediate family member. Immediate family member is defined within the contract as wife, child, stepchild, mother, father, brother, sister, stepmother, stepfather, grandparents, mother-in-law and father-in-law.

#### **Longevity Pay**

1. In addition to salary, Employees receive longevity pay computed at two (2%) percent of Employee's base pay for every four (4) years of service to a maximum of ten (10%) percent after twenty (20) years of service. Payments are considered part of the Employee's weekly salary and included in his/her regular biweekly paycheck.
2. All Employees hired after January 4, 1999 receive longevity pay upon completion of their twelfth (12<sup>th</sup>) year of employment. Upon entering their thirteenth (13<sup>th</sup>) year, the Employees receive six (6%) percent of their base salary included in their regular biweekly paycheck. Thereafter these employees shall continue to receive an additional two (2%) percent of their base salary for every four (4) years of service to a maximum of ten (10%) percent after twenty (20) years of service.

### **College Credit Allowance**

Employees may receive up to \$750 per year for related college credits acquired.

### **Cost Analysis of the Final Offers**

The City submitted a detailed analysis of the FMBA's salary proposal and its salary proposal including salary, longevity and holiday pay. The City notes that the percentage increases in its last offer on salary is 6.0% for 2006, 5.8% for 2007, 5.8% for 2008 and 5.6% for 2009 and that such increases are well above the legislature's intended 4% increase per year. In addition, it should be noted that these costs represent only the salaries that the City must pay. Health benefit premium increases and normal inflationary increases in general costs of operation are not included in the cost analysis.

The City notes that the percentage increases in the FMBA's last offer on salary are 7.7% for 2006, 5.8% for 2007, 5.8% for 2008 and 5.8% for 2009 and that such increases equal a 27.6% above the salary costs of \$550,062 in 2005 which is far above the legislature's intended limit of a 4% increase in the City's annual tax levy or a total 16% increase for the term of this contract. Again, the City notes that the health benefits premium increase and normal inflationary increases in general costs of operation are not included in the cost analysis.

### **Insurance Health and Welfare Cost Analysis**

The FMBA has proposed that "retiree health benefits" be extended until the employee becomes eligible for Medicare in place of the current contract language which provides "retiree health benefits" for a period of two (2) years following retirement.

Based upon "current cost" (See Exhibit R) each additional year of retiree health coverage for this bargaining unit would cost:

Family Coverage: \$18,888 x 9 bargaining unit members is \$169,992 per additional year.

Husband/Wife: \$15,282 x 9 bargaining unit members is \$137,538 per additional year.

Based upon the current top step salary of \$56,627 per annum, each additional year of retiree health coverage is equivalent to a compensation increase of 33.3% per annum for each employee ( $\$18,888/\$56,627 = 33.3\%$ ). This would equate to an average annual increase of 3.3% per year for a ten-year period without any wage increase whatsoever and this computation is based upon current health benefit premium costs. The City submits that the costs for health insurance will surely increase in future years.

#### **Statutory Criteria**

The New Jersey Employer-Employee Relations Act (the "Act") provides that in reaching a decision on a Fair and Final Offer Arbitration, the Arbitrator should decide the case based on a reasonable determination of all issues giving due weight to the various relevant factors established by the Act. See, Local 207 v. Borough of Hillsdale, 263 N.J. Super. 163, 186 (App. Div. 1993) and Fox v. Morris County Policeman's Association P.B.A. 151, Appellate Division, decided September 10, 1993.

The following are the City's arguments and contentions in support of the statutory criteria:

#### **Interests and Welfare of the Public**

The City asserts that it has a statutory and moral duty to preserve and foster the interest and welfare of the public. To fulfill this duty, the City utilizes a myriad of public services including, but not limited to, police protection, safe and clean streets, sanitation services, adequate planning, zoning and construction control services. The City cannot

consider the FMBA's proposal in a vacuum without regard to the plethora of other governmental functions for which its limited funding must be allocated. The FMBA's proposal will result in a long term disproportionate distribution of funds to the Fire Department and therefore it directly conflicts with the City's duty to preserve and foster the ~~interest and welfare of the public. While firefighters help the City to fulfill its public safety~~ function, to allow them to monopolize the limited governmental funding would force the City to violate its statutory and moral duty to provide other City services.

The interests and welfare of the public must be considered since "...the arbitrator's award may have a profound, albeit indirect, impact on a municipality's policy decisions." Hillside, supra. 263 N.J. Super. at 189. The "impact" to which the Appellate Division referred is the allocation of resources among competing interests in the operation of City government. Some of the competing interests that must be considered are police protection, safe and clean streets, sanitation services, adequate planning, zoning and construction control services. If one group is to receive a disproportionately high increase, the other sectors dependant on the limited municipal budget, must bear the burden of a disproportionately low increase or allocation of resources. The Appellate Division recognized the limitations placed on municipal governments when it observed that, "It is not enough to simply assert that the public entity involved should merely raise taxes to cover the cost of a public interest arbitration award." Id. at 188, footnote 16. The City has a difficult task of funding various services with its limited budget and approval of the FMBA's unreasonable proposal would make the task almost impossible given that the City has a statutory and moral obligation to preserve and foster the interest and welfare of the public. Accepting the FMBA's proposal would force the City to breach its duty and this is unacceptable.

This moral and statutory duty is clearer now than ever before. The State Legislature has recognized that cities throughout the State of New Jersey are facing serious financial difficulties. New Jersey is in a very different financial position than it was fifteen or twenty years ago. The Legislature has recently passed a bill, which will become law in July of 2007, which places a 4% cap on the funds that municipalities can levy from property taxes. The new law is meant to force governments to live within their means and “elevate the public interest over special interest.” Senate, No. 20 State of New Jersey 212<sup>th</sup> Legislature (Exhibit EE). This speaks very much to the present issue. The public interest must be considered above the special interests of the firefighters.

Further, the new law compels governments to prioritize spending decisions and encourages municipalities to “aggressively search for structural changes that will bring down long term costs.” Senate, No. 20 State of New Jersey 212<sup>th</sup> Legislature (Exhibit EE). Outrageously high long term costs are inevitable if the FMBA’s position is approved, especially considering their demand for unlimited retiree health benefits. Approval of the FMBA’s position will directly contradict the Legislature’s intentions and defeat the purpose of the new law that is meant to restrain unnecessary costs. The City’s proposal accounts for the State mandated fiscal restraint and incorporates it into a fair and reasonable offer for the firefighters.

The interests and welfare of the public require that the cost to run City government be contained. If the excessive increases requested by the FMBA are granted, the City will be forced to sacrifice the quality of other services provided to its residents well into the

future. The City's current and future residents should not be forced to suffer in certain areas in order to satisfy the unreasonable economic demands of one over-reaching group of City employees. The City and its residents are already inundated with rising costs that place a great strain on the City and its taxpayers. In the past four years, property taxes have averaged an 11.6% increase, insurance costs have risen steadily and pension costs have risen more than half a million dollars. (See Exhibit DD). The City is also engaged in replacing old utility lines and repaving roads which has resulted in an increase in debt service. (See Exhibit DD).

The City recognizes the unique nature of a firefighter's job and generously provides for the inherent risks with an extremely fair, reasonable and sensible economic package that also provides for equity and labor harmony within its community. The City submits that the FMBA's demands go far beyond the bounds of fairness in seeking unnecessary and unwarranted economic gains that completely disregard what is fair and economically reasonable. In addition, the new law mandating a property tax levy cap further directs arbitrators to take into account the interest and welfare of the public. Under the totality of the circumstances, granting the FMBA's proposal would be manifestly unjust and contrary to the City's statutory and moral duty to preserve and foster the interest and welfare of the public. In the present case, the interest and welfare of the public is only taken into account in the City's proposal and, therefore, it is respectfully requested that the City's proposal be granted.



## Comparison of Wages, Salaries and Conditions of Employment

### Employees in Public Employment in the Same Jurisdiction

The City asserts that its proposal is similar in some aspects to other public employment contracts in the same jurisdiction, however, where the agreements differ, it is ~~necessary to consider the different circumstances under which the City is now forced to~~ negotiate.

Comparability of wages and conditions of employment provided to other public employees of the City of North Wildwood is a factor that must be considered by the Arbitrator. Indeed, such analysis is mandated by N.J.S.A. 34:13A:16(g)(2). The City's proposal to increase wages by 3.5% is consistent with the wage increases in the most recently negotiated collective bargaining agreements with the PBA and the CWA.

The City's current agreements with both the PBA Local 59 and the CWA Local 1034 are similar to the City's proposed agreement with the FMBA. The PBA received an increase of 3.5% in salary per year and the CWA averages a salary increase of 3.6% per year. While the PBA includes a 1% inequity adjustment for certain positions within the Police Department, the CWA includes no such provision. The FMBA's unreasonable proposal, including a 1% inequity increase, roll-in of holiday pay, an increase of clothing allowance, and associated roll-up PRFS pension costs, averages a 4.27% increase per year over four years for a salary increase of 17.08% without the additional cost expenses of step increases as later discussed. (See Exhibit C). This is well above both the PBA and CWA's salary increase per year. When comparing the three public employment contracts in the City of North Wildwood, the FMBA's proposal is unfair and therefore, the City's reasonable proposal should be accepted.

The City asserts that it has made a reasonable proposal to provide retiree health benefits for a period of two years following retirement, or until the employee is eligible for Medicare. The City's proposal is similar to the CWA's agreement which provides retiree health benefits for a period of three years following retirement, or until the employee is eligible for Medicare. Although the PBA agreement does not contain such a provision, the PBA agreement that first included retiree health benefits was negotiated more than two decades ago when salaries were lower and health benefits were inexpensive. The State of New Jersey has changed dramatically since the PBA was first granted its lavish retiree health benefit package. Since this retiree health benefit for the PBA bargaining unit was granted, the State has enacted Chapter 330, P.L. 1997, which provides retiree health benefits for police and firefighters. (Exhibit Q). The State recognizes the financial difficulties that Cities are facing and has thus enacted Chapter 330 to help lessen the burden on Cities. Chapter 330 provides the same retiree health benefits that the firefighters are seeking. Therefore, the firefighters of the City of North Wildwood have already been granted the retiree health benefits through the State. To seek these benefits through the City is superfluous and unreasonable. The City is willing to take on the financial burden of granting retiree health benefits for two years, but granting the benefits beyond that time period would prove to be an unnecessary and monumental burden for the City.

The City asserts that its proposal is fair and reasonable and is comparable to other public employee contracts in the City and also operates within the fiscal restraints that have been placed on the City.

**Comparison with Similar Public Employees in Similar  
Comparable Jurisdictions**

The City asserts that its proposal provides comparable wages, hours and conditions of employment to that of firefighters employed in similar comparable jurisdictions. While there are some areas where the contracts of comparable jurisdictions differ from the City's reasonable proposal, it is respectfully submitted that when comparing the various contracts, the Arbitrator account for both new legislation and the current deteriorating financial situation that many Cities, including the City of North Wildwood, are currently facing.

In resolving the dispute between the City and the FMBA, the arbitrator must compare the package of wages, hours, terms and conditions of employment of Firefighters hereunder as compared to the packages of wages, hours, terms and conditions of employment provided by similar comparable jurisdictions. N.J.S.A. 34:13A-16g(2)(a). These comparisons were set forth in the Exhibits submitted in the arbitration hearing. Essential to the analysis of comparisons between municipalities is the identification of the pool from which such municipalities will be drawn. The most frequently used method is to draw from the bordering and surrounding communities. The comparable jurisdictions used by the City are the South Jersey communities in Atlantic, Cape May and Cumberland Counties consisting of The City of Wildwood, The City of Cape May, The City of Ocean City, The City of Northfield, The City of Bridgeton, The City of Millville and The City of Vineland.

The communities selected by the City as comparable were chosen due to certain characteristics which make them similar. For example, all of the communities are basically suburban communities located in Atlantic, Cumberland or Cape May County in close proximity to the City of North Wildwood. The majority of these towns are coastal communities which experience a sharp population increase in the summer months between

Memorial Day and Labor Day and a corresponding decrease in the non-summer months. In addition, these communities are primarily residential in nature with similar types of structures. On the other hand, a City such as Atlantic City is not a comparable community since Atlantic City is an urban area which promotes and received tourism on a year round basis and is a home to many high rise casino/hotels and other high rise buildings which present job conditions and risks unique to Atlantic City and unlike those experienced in the comparable communities cited by the City.

When the City's proposal is compared with the above-mentioned cities, the City's proposed salary for top step firefighters is not far from the average salary of approximately \$59,800. Cities similar to North Wildwood, such as Northfield, Bridgeton, Millville and Vineland are paying their top step firefighters below what the City of North Wildwood is proposing. The following chart compares senior firefighter pay in similar jurisdictions:

	2006 Pay	Holiday Adjustment*	Salary w/o Holiday Pay Rolled-In
Wildwood	\$66,379	\$1,859	\$64,520
Cape May	\$67,996	N/A	\$67,996
Ocean City	\$70,688	\$6,114	\$64,574
Northfield	\$55,939	N/A	\$55,939
Bridgeton	\$54,991	N/A	\$54,951
Millville	\$62,604	\$5,415	\$57,189
Vineland**	\$59,980	\$5,188	\$54,792
<b>Proposed North Wildwood</b>	\$58,609	N/A	\$58,609

\* Holiday Adjustment provides for removal of Holiday Pay which has been included in Base Salary

\*\*Vineland adds three steps to Guide to make up for Longevity which is not otherwise provided.

Average of Salaries: \$59,821

Additionally, the City contends that its proposal for granting retiree-health benefits for two full years after retirement is much better than neighboring cities such as Ocean City or Bridgeton that offer no retiree health benefits. The City offered the following comparison of retiree health benefits in similar jurisdictions:

Wildwood: 1 year paid by the City. Thereafter, 50% paid by City and 50% paid by employee until employee is eligible for Medicare.

Cape May: Retiree health benefits paid by the City

Ocean City: No retiree health benefits; Employee may continue coverage at employee's expense.

Northfield: Retiree health benefits paid by the City

Bridgeton: No retiree health benefits.

Millville: Maximum retiree health benefit coverage of 12 years, or until employee becomes eligible for Medicare.

Vineland: No retiree health benefits, except for prescription plan until employee becomes eligible for Medicare.

N. Wildwood: Two years paid by the City or until employee is eligible for Medicare. (Proposed)

The City submits that some of the cities that may offer retiree health benefits up until the employee is eligible for Medicare require that the employee contribute to the health care plan. Finally, some of the other health benefits that are offered by the surrounding cities are not as comprehensive as the City of North Wildwood's reasonable proposal.

Further, the City asserts that its proposal is extremely reasonable when it is compared with other cities in the area. For example, the City of Millville's wage and benefit package is similar to what the City is now proposing for the Firefighters of North Wildwood. During 2006, the City of Millville, which has an EMT service separate from its Fire Department,

responded to 211 fire incident calls. During 2006, the City of North Wildwood responded to 66 fire incident calls. While Millville had significantly more fire incident calls in 2006, Millville's Firefighters received virtually the same wage and benefit package that the City of North Wildwood's Fire Department received. (See Exhibit VV and Exhibit WW).

~~Moreover, when benefits including sick leave, vacations, holidays, health care, insurance, clothing allowance, funeral leave and salary were compared with the~~ aforementioned cities, North Wildwood's proposal was comparable with most and better than some. The City's current clothing allowance, funeral leave policy and holiday policy are the same as most of the other cities mentioned above. The City's proposed Step 1 salary is comparable to what other cities in the area are paying and the City's proposed salary increase of 3.5% is similar to many of the surrounding cities.

In comparing the City's proposal to the contracts for firefighters in the aforementioned cities, it is necessary to note that all of the contracts were entered into prior to the introduction of the recent legislation placing a cap of 4% on local tax levies. These cities are either in the process of renegotiating contracts or will soon be negotiating new contracts for their respective firefighters and all cities will have to comply with the mandates of the new law.

In addition to the new CAP law, the City and its surrounding municipalities will have to face the realities of rising health insurance costs. In many places, there is actual "cost sharing" of health insurance premiums by all employees. Recently, the CWA and the State reached an agreement whereby the State employees will pay 1.5% of their annual salaries for health care benefits. The City and cities comparable to it are all facing difficult and trying

times financially, and in the future, cities in New Jersey are going to have to tighten the belt on spending instead of spreading its already limited budget too thin.

The City submits that instead of concentrating on the current or recently expired agreements of the cities surrounding North Wildwood, more emphasis should be placed on ~~the future needs of the City as a whole. This is especially true when the new legislation~~ placing a 4% cap on local tax levies is put into effect restricting the already limited government budgets even further. The FMBA's proposal does not take into account the growing trend of excessive strain on city budgets in jurisdictions comparable to North Wildwood and is therefore unreasonable and not economically sound. The City submits that its proposal accounts for the strains and restrictions that will affect the City and its employees as well as similar public employees in similar jurisdictions and it is therefore, sensible and reasonable.

#### **Overall Compensation**

The City previously described the overall compensation presently received by North Wildwood Firefighters, inclusive of direct wages, salary, vacation, holidays, excused leaves, insurance, pensions, medical and hospitalization benefits, college credits, clothing allowances, and all other economic benefits received. An analysis of this entire package must be performed as part of the interest arbitration process. N.J.A.S. 34:13A-16g (3). Hillside, supra, at 192.

As illustrated under the Existing Wages and Benefits Section of this Brief, the City's generous package of wages and benefits furnishes overwhelming evidence of the reasonableness and fairness of the City's position. North Wildwood Firefighters enjoy a complete package of fringe benefits that extend not only to the individual employees but also

to their families. Firefighters are provided with excellent health care coverage, including hospitalization, dental coverage and prescription coverage, as well as life insurance. These economic benefits provided by the City are comprehensive and the health benefit package provided by North Wildwood compares favorably to those provided in comparable jurisdictions.

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The commitment of the City of North Wildwood is and has been clear. There exists no substantial or critical shortfall of benefits or coverage in any area. No glaring deficiency can be claimed. It is respectfully submitted that this factor should be considered in favor of the City by the Arbitrator and as supportive of the City's argument that its Fair and Final Offer should be approved.

#### **Lawful Authority of the Employer**

In evaluating the final economic proposals of the parties, the Arbitrator must determine the reasonableness of the offers in terms of the interests and welfare of the public and the financial impact on the governing unit, its residents and taxpayers. Beyond these considerations, however, the Arbitrator must also determine whether the implementation of either proposal is within the lawful authority of the Employer. N.J.S.A. 34:13A-16g(5). Hillsdale, supra, at 193.

The lawful authority of the City of North Wildwood is not without limitation. The New Jersey Legislature, in the passage of the "CAP" law, has legislatively determined that the budgets of municipalities and counties should only be increased by certain limited amounts each year (N.J.S.A. 40A:4-45.1 et seq.). This legislative mandate reflects the Legislature's belief that a limited increase in budget expenditures each year is not only reasonable but also carries with it the public's best interests.



The City's lawful authority in developing its budget will be restricted by the old New Jersey CAP law, N.J.S.A. 40A:4-45, as amended (spending CAP), as well as the new 4% CAP law (tax levy CAP).

The old CAP law prohibits counties and municipalities from increasing their annual spending in excess of 2.5% percent or the "index rate", whichever is less, but not more than 3.5% over the prior year's eligible expenditures. The "index rate", in turn, is based upon the rate of annual percentage increase in the Implicit Price Deflator for State and Local Government Purchases of Goods and Services, computed by the United States Department of Commerce, Bureau of Economic Analysis, for the second quarter of the preceding local budget year for 2006.

Under its lawful authority of the old CAP law, the City's 2007 overall budget increase may not exceed \$508,513.

The new CAP law prohibits counties and municipalities from increasing their tax levy above 4% with certain restricted exceptions. The Arbitrator must be mindful of this new CAP law when reviewing the cost analysis of the contract as to the implications of the lawful authority of the employer. The 4% CAP levy is approximately \$546,000. (See Exhibit DD). There is a slight difference between this figure and calculation shown in Exhibit DD. This is because Exhibit DD was created prior to the adoption of the budget. The \$546,000 figure is based upon the actual adopted budget.

In brief, the City must control increases in those areas over which it has some control, i.e., wages, so that it will be able to fund increases in those areas over which it has no control. In the absence of fiscal restraint over controllable expenses, more severe strain will be placed on the

City's ability to provide necessary services to its residents. Indeed, in order to maintain control over the budget, it is likely that all employee groups will be reduced and those employees that remain will face increased workloads.

In the present situation the City is proposing in its Fair and Final Offer an economic package which results in an increase of \$32,925 or 6.0% in new money costs in 2006; a \$33,922 or 5.8% increase in new money costs in 2007; a \$35,769 or 5.8% increase in new money costs in 2008; and a \$36,743 or 5.6% increase in new money costs in 2009. Such an economic package is clearly beyond the legislature's ideal 4.0% tax levy increase per year and graphically demonstrates the reasonableness of the City's offer and the extraordinary increase requested by the FMBA. Conversely, the FMBA's demand would cause a \$42,247 or 7.7% increase in new money costs in 2006. The FMBA's demand for the term of the contract would result in a 27.6% increase in new money. This is well above the legislature's ideal 16% increase for the term of the contract. The City will also be expending funds for the higher cost of health care coverages and the roll up cost of other related fringe benefits such as pension contributions, education credits and higher overtime costs. Further, based upon the current top Step salary of \$56,627 per annum, each additional year of retiree health coverage is equivalent to a compensation increase of 33.3% per annum for each employee ( $\$18,888 / \$56,637 = 33.3\%$ ).

The demand by the FMBA, when combined with the benefits package provided by the City, will make it extremely difficult if not impossible for the City to comply with the old New Jersey CAP law as well as the new 4% tax levy CAP law without making severe cuts in other areas.

### Financial Impact on the Governing Unit

The City also urges the Arbitrator to be mindful that an unwarranted award to the FMBA would certainly have a long-term adverse impact on the City, its governing unit, and its taxpayers. This is painfully obvious since this award will surely become the standard against which all future increases in the City will be measured. It is indisputable that salary or benefit increases which significantly exceed the City's budget CAP, put a strain on a City's finances. As expressed by the Appellate Division in Hillside, supra, "A municipality should not have to demonstrate it would be financially crippled before its arguments could be found to be sufficient." *Id.* at 194.

According to the City, the tremendous financial burden that the City will face if the FMBA's proposal is approved is illustrated by examining the wage increases of firefighters moving through the Steps. In addition to the 3.5% wage increase that applies across the wage guide, an employee moving through the steps receives additional compensation. For example, an employee who is being paid at Step 2 in 2006 will make 61% more in 2009. This is a wage increase that averages 15.25% per year. An employee is being paid at Step 3 in 2006 will make 45% more in 2009. This is a wage increase that averages 11.25% per year. These rates of increase are extraordinary and when the new law that places a property tax levy cap at 4% takes effect they may be simply impossible to pay.

Furthermore, these percentages only calculate the wage increases and do not account for the additional benefits such as longevity pay, costs of operating the fire department or health benefits. The City of North Wildwood has 125 total employees including 109 full-time employees. (See Exhibit RR). The FMBA is proposing for the year 2007 that the firefighter's wage compensation be increased by \$34,457 for its 9 employees. Under the old CAP law, the

City's 2007 overall budget increase may not exceed \$508,513. Assuming that the 109 employees were all granted the same wage increase for 2007 as the 9 firefighters, the salaries alone for public employees in the City of North Wildwood would total \$417,361. This figure swallows up most of the budget increase that is permitted and allows a mere \$91,000 for all other ~~new money costs for the entire City such as general costs of operation, including electricity,~~ utilities, property and casualty insurance, supplies, repair and maintenance of equipment and gasoline for the fire trucks. To allow this monopolization of limited funds is an unnecessary burden to place on the City. The numbers clearly show that the FMBA's proposal would place monumental burdens on the City's already limited budget.

The City submits that the already excessively burdened taxpayers will not accept a reduction in services or suffer additional tax increases so that the FMBA can receive the increases it seeks. Nor, in view of the increases received by the other employee groups, should they have to endure such a hardship. It should be noted that the City of North Wildwood's general property tax appropriations escalated from \$10,445,886.73 in 2005 to \$13,304,912.63 for 2006, an increase of \$2,859,025.90 or in excess of 27.4%. (See Exhibit DD). When this tax increase is considered in light of the demographics of the City of North Wildwood, the burden on the City is obvious. For example, one factor which should be considered is "the percentage of citizens on relatively fixed incomes . . ." *Id.* The 2000 Census of Population & Housing prepared by the New Jersey State Data Center shows the City of North Wildwood's household income, family income, non-family income and per capita income are all below the median income levels for the County of Cape May. (Exhibit C).

In the same manner, the City should not be forced to reduce staffing levels to fund an increase that is unwarranted by any relevant criteria, particularly in view of the fact that the

FMBA has offered nothing to indicate that its service levels have materially increased, thereby warranting special large increases.

The City, in providing for the public protection and welfare, must provide for the integrity of the operations of all departments, not only the Fire Department, and a disproportionate allotment of funds to the Fire Department could jeopardize the City's overall operations and its ability to provide for the public's health and general safety. The Arbitrator's acceptance of the FMBA final offer would have an adverse impact upon the City's finances. Acceptance of the FMBA's proposal could result in the long term misallocation of City funds which are needed to fund other City operations within the limits of the lawful authority of the City.

According to the City, the FMBA's economic proposal will have an adverse financial impact on the City of North Wildwood and will unfairly burden the City and its citizens. The City asserts that its economic proposal recognizes the City's financial responsibility to its citizens and also reflects the City's continuing commitment to deal fairly with its Firefighters. The City suggests that a balancing of the public interest against the interests of the firefighters will lead to only one fair and equitable conclusion: that the City's economic proposal provides for a harmony of the public interest and the Firefighter's financial interests, and therefore should be awarded.

#### **The Cost of Living**

The City contends that all factors to be considered in evaluating positions in an interest arbitration matter must be examined in light of the geographic and economic area within which the employer and employee operate. All parties must acknowledge that the cost of living must be considered when evaluating the need of employees for higher wages or increased fringe benefits. N.J.S.A. 34:13a-16G(7).

The Consumer Price Index ("CPI"), the nation's most important price index, is used to measure inflation and success in restraining price rises. This cost of living standard is commonly used by arbitrators to calculate changes in the purchasing power of the average family. The frequent use of this standard is strong evidence that the CPI is generally regarded to be valuable in determining the reasonableness of proposed wage increases. Indeed, the Appellate Division stressed the need to consider the difference between increases in employee salaries and the CPI when evaluating the positions of the parties. Hillsdale, supra, at 195. A review of the statistics discloses that from 2002 through 2006 the CPI only increased on an average of 2.64%. The City's offer to give the firefighter's an annual increase of 3.5% is certain to keep firefighters well ahead of the annual increases in the Consumer Price Index and further illustrates that the City is providing the firefighters with good wages.

	<u>Annual CPI</u>
<u>Year</u>	<u>Increase</u>
2002	1.6%
2003	2.3%
2004	2.7%
2005	3.4%
2006	3.2%
<b>Total Increase</b>	<b>13.2%</b>
<b>Average Increase Per Year</b>	<b>2.64%</b>

The City submits that its economic proposal is fair and reasonable and will keep the firefighters well ahead of the Consumer Price Index.

### Continuity and Stability of Employment

The City maintains that the continuity and stability of employment of the City's Firefighters and all other City employees will be preserved and promoted by approval of the City's economic proposal. Low employee morale and substantial discord among employees could result from Firefighters getting disproportionately higher increases than all other City employees. This is contrary to what is in the best interests of the public. The negative impact that would occur throughout the City should be of greater concern than the possibility of a slight "morale boost" to only a small sector of the City's employees and therefore, the unreasonable demands of that one sector should not be granted.

The City's fair and reasonable proposal not only seeks to promote continuity and stability among various parts of the City, but promotes continuity within the fire department itself. The recently expired contract provides the same reasonable coverage that the City is now proposing. Health insurance coverage for two years after retirement has been acceptable and deemed reasonable in the past and there is no compelling reason why the City should be forced to abandon the status quo. This reasonable coverage has been sufficient in the past and continues to be fair and reasonable to the employees and also economically sensible. Further, the Firefighters can gain the benefits they are seeking through Chapter 330. This allows employees to get the same health benefits they are seeking from the City but at no additional cost to the City. Chapter 330 is a viable option that is available for the retiring firefighters and there is no substantial reason why it should not be utilized. To forego this option and monopolize the City's budget would severely jeopardize the continuity and stability of employment that the City must strive to maintain.

In order to maintain the continuity and stability of employment throughout the City and within the Fire Department, the City asserts that its reasonable and economically sensible proposal must be adopted.

### **Conclusion**

The City asserts that its proposal is fair, reasonable and economically sensible. It is respectfully requested that the Arbitrator consider the City's proposal as it will affect the City's financial obligations now and in the future. In considering the financial obligations of the City it is also necessary to account for the new legislation that places a 4% cap on property tax levies, the current burdened financial situation of the State of New Jersey and other available options that are available to the firefighter's such as Chapter 330, which provides firefighters with retiree health benefits until the firefighter is eligible for Medicare.

As the Arbitrator takes into consideration the interests and welfare of the public, it is necessary to remember the legislature's intentions to elevate the interests of the public above special interests. The interests of the public are better served by the City's proposal.

The new law that places 4% cap on property tax levies restricts City governments further than they have been restricted in the past. This new law directs that the Arbitrator must consider this factor. N.J.S.A. 34:13A:16(g)(5). If the FMBA's proposal is accepted, the salary increases alone would be practically impossible to pay. This does not even account for the outrageous health benefit plan that the FMBA has proposed. The City has a statutory duty to search aggressively for structural changes to bring down long term costs. This means that other options such as Chapter 330 must be considered.

The City maintains that its proposal is also fair and reasonable when compared to other public employment contracts in the same jurisdiction and when compared to firefighter



contracts in similar jurisdictions. Where the contracts may differ, the arbitrator must consider the current impact each proposal will have on the City, especially when new legislation takes effect. This is especially true when considering the new 4% CAP law and the deteriorating financial situation of cities throughout the State of New Jersey, including North Wildwood. Cities will soon have to re-negotiate contracts under these unprecedented restraints. It is respectfully requested that the Arbitrator consider how these restraints will impact cities and how the FMBA's proposal will monopolize the City's limited budget.

The City submits that it has proposed a fair, sensible and reasonable plan that accounts for the needs of the firefighters without placing an outrageous strain on the City's limited budget. For all of the above reasons, the City requests that its economic and non-economic proposals be awarded.

### Discussion and Analysis

The parties presented testimony and more than 100 documentary exhibits totaling thousands of pages in support of their last offers. I am required to make a reasonable determination of the issues, giving due weight to the statutory criteria which are deemed relevant. ~~Each criterion must be considered and those deemed relevant must be explained.~~ The arbitrator is also required to provide an explanation as to why any criterion is deemed not to be relevant.

I have carefully considered the evidence as well as the arguments of the parties. I have examined the evidence in light of the statutory criteria. Each criterion has been considered, although the weight given to each factor varies. I have discussed the weight I have given to each factor. I have determined the total net economic annual changes for each year of the agreement in concluding that those changes are reasonable under the criteria.

I will set forth the award at this time so that, in discussing the evidence and applying the statutory criteria, the terms of the award will be the reference point. This will allow the reader to follow the analysis which led to the award. The parties related the evidence and arguments regarding the statutory criteria primarily to its own last offer and to the last offer of the other party. I will not do so because, in this conventional proceeding, the terms of the award will be the reference point rather than the parties' last offers. Conventional arbitration is a more flexible process which grants the arbitrator broad authority to fashion the terms of an award based on the evidence without the constraint of selecting any aspect of a final offer submitted by the parties. The prior statute required the selection of the final offer of one party or the other on all economic issues as a package and then to justify that selection.

A governing principle that is traditionally applied in the consideration of wages, hours and conditions of employment is that a party seeking a change in an existing term or condition of employment bears the burden of showing a need for such change. I shall apply this principle to all new proposals.

~~I shall award a four-year agreement. The duration of the new four-year agreement shall be January 1, 2006 to December 31, 2009.~~

I shall award the following changes and increases to the salary schedule:

- a. Effective January 1, 2006, Step 6, Lieutenant and Deputy Chief on Schedule A shall be increased by one percent (1.0%);
- b. Effective January 1, 2006, after the application of the above increase, each step and rank on Schedule A shall be increased by 3.5%;
- c. Effective January 1, 2007, each step and rank on Schedule A shall be increased by 3.5%;
- d. Effective January 1, 2008, each step and rank on Schedule A shall be increased by 8.65% (180 hours) with the deletion of Sections A & B in Article XI. This shall be followed by a \$725 adjustment to each step and rank on Schedule A with the deletion of Section B of Article XIII. This shall be followed by a 3.5% increase to each step and rank on Schedule A.
- e. Effective January 1, 2009, each step and rank on Schedule A shall be increased by 3.5%;
- f. Effective January 1, 2009, Article XIX, Longevity, Sections A & B, shall be amended to provide that a 12 percent (12%) longevity step shall be established for all employees after twenty-four (24) years of service.

I shall award the inclusion of holiday pay in base salary to be effective January 1, 2008. I shall award the City's health care proposal to be effective as soon as practical after

the issuance of the Award. I shall award the change of the "Lieutenant" rank to "Captain" consistent with the requirements of the Department of Personnel. I shall award a change in the EMT requirements to provide that EMT certification must be obtained within one (1) year of date-of-hire and maintained throughout a firefighter's career as a condition of employment. This shall be applicable to all employees hired on or after February 1, 2008.

I shall award new language for Article XIII, Clothing Allowance and Article XI, A & B, Holidays. I shall incorporate by reference in this Award all of the parties' tentative agreements reached prior to the initiation of interest arbitration which are included in Attachment 'C' executed on May 17, 2006. All other proposals of the Borough and the FMBA are denied.

#### **Cost of Salary Proposals**

The current bargaining unit (at the close of the record) includes nine firefighters. The total base pay salary in 2005 is \$478,105. The base salary for calculation purposes is the salary that a bargaining unit member is paid in 2005. I note that seven of the nine bargaining unit members are at the maximum step on the salary schedule. Thus, the cost of increments is minimal.

The calculations of the parties' last offers do not include incremental step increases and roll up costs nor do they assume any resignations, retirements, promotions or additional new hires. Neither party included the incremental costs in their last offers. Historically, incremental costs have not been factored in by the parties. These incremental costs fluctuate depending on the amount of turnover in a bargaining unit. High turnover, while not desirable, tends to keep the public employer's average salary costs down because senior officers are replaced by entry level officers making less than 50% of the maximum step officer's salary.

Changes since the close of the hearing are not relevant since the parties' salary proposals are based on the same complement of officers. Calculations for 2006, 2007, 2008 and 2009 do not include the cost of increments.

### 2006

~~The FMBA proposed a 1% adjustment to Step 6, Lieutenant and Deputy Chief, effective January 1, 2006 to be followed by a 3.8% across-the-board salary increase to be effective January 1, 2006. The cost of the 1% adjustment in 2006 is \$4,100. The cost of the 3.8% increase in 2006 (excluding increments) is \$18,168. The total cost of the FMBA's proposed salary increase in 2006 is \$500,529. The FMBA proposed the inclusion of holiday pay effective January 1, 2006. I did not factor this into the cost of the FMBA's 2006 proposal. It is included in the FMBA's salary proposal for 2008 which is the year that I awarded its inclusion. This is also true of the \$725 inclusion and the deletion of Section B of Article XIII. Both of these stipends are currently paid by the City.~~

The City proposed a 3.5% across-the-board salary increase to be effective January 1, 2006. The cost of the 3.5% increase in 2006 (excluding increments) is \$16,733. The total cost of the City's proposed salary increase in 2006 is \$494,839.

I awarded a 1% adjustment to Step 6, Lieutenant and Deputy Chief, effective January 1, 2006 followed by a 3.5% across-the-board salary increase effective January 1, 2006. The cost of the 1% adjustment in 2006 is \$4,100. The cost of the 3.5% salary increase in 2006 (excluding increments) is \$16,733. The total cost of my award in 2006 is \$499,082. The cost of the awarded salary increases in 2006 is \$4,243 more than the City's 2006 salary proposal and \$1,447 less than the FMBA's salary proposal.

## 2007

The FMBA proposed a 3.8% across-the-board salary increase to be effective January 1, 2007. The cost of the 3.8% increase in 2007 (excluding increments) is \$19,020. The total cost of the FMBA's proposed salary increase in 2007 is \$519,549.

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The City proposed a 3.5% across-the-board salary increase to be effective January 1, 2007. The cost of the 3.5% increase in 2007 (excluding increments) is \$17,319. The total cost of the City's proposed salary increase in 2007 is \$512,158.

I awarded a 3.5% across-the-board salary increase effective January 1, 2007. The cost of the 3.5% salary increase in 2007 (excluding increments) is \$17,468. The total cost of my award in 2007 is \$516,550. The cost of the awarded salary increases in 2007 is \$149 more than the City's 2007 proposed salary increase and \$1,552 less than the FMBA's proposed salary increase.

## 2008

The FMBA proposed that the current holiday pay (180 hours) be added to each step and rank on Schedule A effective on January 1, 2006. I awarded this effective January 1, 2008. There is no basis to make this adjustment retroactive since all of the unit members have already received payment for holidays in 2006 and 2007. While I am aware that there are additional costs for including this in base salary, I shall not include the calculation in this analysis since the total amount of actual holiday pay is the same exact dollars when included in base salary or paid as a stipend. This is also applicable to the \$725 adjustment to be effective January 1, 2008 in consideration of the deletion of Section B in Article XIII.

The FMBA proposed a 3.8% across-the-board salary increase to be effective January 1, 2008. The cost of the 3.8% increase in 2008 (excluding increments) is \$21,721. The total cost of the FMBA's proposed salary increase in 2008 is \$593,320. The 2008 base is

increased by the value of the holiday pay (8.65% = \$45,525) and the \$725 adjustment (\$6,525) for a total adjustment of \$52,050. It is undisputed that the City would have paid a similar amount in 2008. The difference for calculation purposes is the minimal compounding of the 2008 (and 2009) salary increases on the \$6,525 adjustment and the additional 1% adjustment that I made in 2006. There is no compounding attributable to the holiday pay since the holiday pay increases from year-to-year and is computed based on annual salary.

The City proposed a 3.5% across-the-board salary increase to be effective January 1, 2008. The cost of the 3.5% increase in 2008 (excluding increments) is \$17,925. The total cost of the City's proposed salary increase in 2008 is \$530,083. The City's total salary costs in 2008 also include \$45,852 for holiday pay (even if not in base) and the \$6,525 adjustment for a total 2008 salary of \$582,460. The \$45,852 holiday pay in 2008 is a \$1,550 increase above 2007 bringing the city's total increase in 2008 to \$19,475 (\$17,925 + \$1,550).

I awarded a 3.5% across-the-board salary increase effective January 1, 2008. The 2008 base is increased by the value of the \$725 adjustment (\$6,525) and the inclusion of the holiday pay (8.65% = \$45,235) for a total adjustment of \$51,760. The cost of the 3.5% salary increase in 2008 (excluding increments) is \$19,891. The total cost of my award in 2008 is \$588,201. The cost of the awarded salary increases in 2008 is \$416 more than the City's 2008 proposed salary increase and \$1,829 less than the FMBA's 2008 proposed salary increase.

### **2009**

The FMBA proposed a 3.8% across-the-board salary increase to be effective January 1, 2009. The cost of the 3.8% increase in 2009 (excluding increments) is \$22,546. The total cost of the FMBA's proposed salary increase in 2009 is \$615,866.

The City proposed a 3.5% across-the-board salary increase to be effective January 1, 2008. The cost of the 3.5% increase in 2009 (excluding increments) is \$18,551. The total cost of the City's proposed salary increase in 2009 is \$548,634. The City's total salary costs in 2009 also include \$47,458 for holiday pay (even if not in base) and the \$6,525 adjustment ~~for a total 2009 salary of \$602,617. The \$47,458 holiday pay in 2009 is a \$1,660 increase~~ above 2008 bringing the City's total increase in 2009 to \$20,211 (\$18,551 + \$1,660).

I awarded a 3.5% across-the-board salary increase effective January 1, 2009. The cost of the 3.5% salary increase in 2009 (excluding increments) is \$20,587. In addition, effective January 1, 2009, I established a new 12% longevity step after 24 years of service. A review of the City's cost analysis shows that none of the bargaining unit members will reach the 24<sup>th</sup> year longevity step during this contract. Thus, there are no additional costs attributable to this component of the award. I will discuss this component of the award in more detail in my discussion of the parties' positions on retiree health insurance.

The total cost of my award in 2009 to \$608,788. The cost of the awarded salary increases in 2009 is \$377 more than the City's 2009 proposed salary increase and \$1,959 less than the FMBA's proposed salary increase.

#### **Interests and Welfare of the Public**

The New Jersey Supreme Court in Hillsdale determined that the interests and welfare of the public must always be considered in the rendering of an interest arbitration award and that an award which failed to consider this might be deficient. The amended statute specifically requires the arbitrator to consider the CAP law in connection with this factor. I have considered and fully discussed the relevance of the CAP law in the section on Lawful Authority but at the outset it is sufficient to state that the award will not cause the Borough



to exceed its authority under the CAP law. The award can be funded without the Borough exceeding its spending authority.

*The interests and welfare of the public* require the arbitrator to balance many considerations. These considerations traditionally include the Employer's desire to provide ~~the appropriate level of governmental services and to provide those services in the most cost~~ effective way, taking into account the impact of these costs on the tax rate. On the other hand, the interests and welfare of the public requires fairness to employees to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. It is axiomatic that reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. The work of a Firefighter is undeniably and inherently dangerous. It is stressful work and is clearly subject to definite risks. Firefighters are certainly aware of this condition of employment. This is a given which is usually balanced by the appropriate level of increases in compensation to be received by a Firefighter from one contract to the next.

I agree with the analysis provided by Arbitrator Jeffrey B. Tener in an interest arbitration award in Cliffside Park. Arbitrator Tener's analysis:

"The arbitrator is required to strike an appropriate balance among these competing interests. This concept has been included in the policy statement of the amended interest arbitration statute. N.J.S.A. 34:13A-14 refers to the 'unique and essential duties which law enforcement officers . . . perform for the benefit and protection of the people of this State' and the life threatening dangers which they confront regularly. The arbitration process is intended to take account of the need for high morale as well as for the efficient operation of the department and the general well-being and benefit of the citizens. The procedure is to give due respect to the interests of the taxpaying public and to promote labor peace and harmony."

(In the Matter of the Borough of Cliffside Park and PBA Local 96, PERC  
Docket No. IA-98-91-14, page 45.)

I shall discuss the open issues with respect to the interests and welfare of the public factor.

### Term of Agreement

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This is effectively a stipulation since both parties proposed a four-year Agreement. I shall award a four-year agreement to commence on January 1, 2006 and continuing to December 31, 2009.

### Salary

The City proposed a 3.5% across-the-board salary increase in 2006, 2007, 2008 and 2009. The FMBA proposed a 3.8% across-the-board salary increase in 2006, 2007, 2008 and 2009. Obviously, the City and the FMBA salary positions are very close. The 3/10 of 1% annual difference on a total base salary of less than \$500,000 is less than \$1,500 annually.

The FMBA seeks to include holiday pay in base salary. Currently, all bargaining unit members receive 180 hours of holiday time. This is equal to 8.65% annually. [180 hours divided by 2080 hours = 8.65%] The 8.65% of base salary is currently paid as a stipend. As stated above, I am aware that there are additional costs for including the current holiday pay stipend in base salary. I shall not include the calculation in this analysis since the total amount of actual holiday pay is the same exact dollars when included in base salary or paid as a stipend.

The City is opposed to the inclusion in base salary. It is common practice to include holiday pay in base salary. Public safety officers (firefighters, police correction officers),

unlike other public employees who enjoy paid holidays, work in 24/7 operations and are thus required to work on holidays. They work additional hours and are paid for these additional hours. All other City employees work a traditional Monday to Friday schedule and do not work on the day the holiday is celebrated. This is the traditional work schedule for the vast majority of all public sector employees except for public safety employees who are required to provide fire (and police) services on a 24/7 basis. These traditional schedule employees enjoy these holidays as days off with pay. These traditional schedule employees work one less day (for each designated holiday) when a declared holiday occurs since all such holidays are celebrated Monday through Friday.

Firefighters do not work a traditional Monday to Friday schedule. Fire Officers are required to provide firefighting services on a 24/7 basis. Therefore, firefighters must work on holidays. Thus, firefighters work more days than traditional schedule employees. The additional work days are equal to the number of declared holidays in a municipality. It has long been recognized that this additional work requires compensation. This compensation is provided in base salary or in an annual "lump sum" payment. This is the common method of providing compensation for holidays to employees who work in 24/7 operations such as police officers and firefighters. This is how employees who work in 24/7 operations receive the same benefits as other employees who work the traditional Monday to Friday schedule.

It is undisputed that firefighters in North Wildwood currently receive compensation for 180 hours of holiday time. The value of the holiday compensation is calculated by dividing a firefighter's annual salary by the required annual hours to determine the hourly rate (excluding longevity and other stipends). Another method is to determine the percentage value of the holiday hours in relation to the annual hours worked.

Public employers are willing to include the holiday payment in base salary for several reasons. First, the inclusion of holiday pay in base salary creates a more competitive salary schedule, assists in the recruitment and retention of firefighters and contributes to maintaining continuity and stability of employment. Second, the inclusion of holiday pay in base salary provides an additional incentive for senior firefighters to retire which provides additional savings to a municipality. This savings is achieved by the "breakage" derived from replacing a senior firefighter with a junior firefighter. In North Wildwood, the breakage is more than \$30,000.

A review of the City's contract with the PBA shows that holiday pay was included in base salary in the most recent negotiations for the 2004-2007 CBA. This internal comparability is a major reason to award the inclusion of holiday pay in the base salary of firefighters. It is inconsistent for the City to voluntarily agree to include holiday pay in base salary for police officers and to then oppose such inclusion for firefighters.

I note that the City received cost containment concessions regarding health care and prescription drug copayments from the PBA in exchange for the inclusion of holiday pay, the 1% equity adjustment and \$725 adjustment. The City is seeking the same cost containment concessions regarding health care and prescription drug copayments from the FMBA. I have awarded the City's health care and prescription drug copayment concessions. The inclusion of holiday pay in base salary (plus the 1% equity adjustment and \$725 payment) in the FMBA contract is consistent with the City's agreement with the PBA and balanced by the savings that the City will gain from the cost containment concessions regarding health care and prescription drug copayments. I awarded a 1% increase (equity adjustment) to Step 6, Lieutenant and Deputy Chief to be effective January 1, 2006. These increases are identical

to the terms negotiated by the City with the PBA in the negotiations for the 2004-2007 CBA. Again, internal comparability favors an award of the 1% increase to firefighters.

I awarded a \$725 increase effective January 1, 2008 in consideration of the elimination of the clothing allowance. This is also consistent with the City's agreement with ~~the PBA in the 2004-2007 CBA and the internal comparability subfactor.~~ In consideration of the \$725 increase, the current language of Section B of Article XIII shall be eliminated and replaced by the following language in Sections A, B and C:

- A. The City shall continue to furnish an initial issue of new uniforms and turnout gear to all new firefighters. Thereafter, each firefighter shall be responsible at his/her expense for the purchase of replacement items of uniforms.
- B. Employees shall maintain their uniforms in good and clean condition and failure to maintain uniforms in good and clean condition shall be cause for disciplinary action.
- C. The City shall replace all uniforms and equipment damaged in the line of duty unless the damage or destruction has been caused by the negligence of the firefighter.

It is important to note that the City's salary proposal of annual 3.5% increases is consistent with the 3.5% salary increases received by the PBA in the 2004-2007 CBA. The addition of the 1% "equity adjustment" brings the average annual salary increase to 3.75%. Again, the City cannot "pick and choose" which of the salary increases it wants to apply to the firefighters. There is simply no basis to award a lower salary increase to firefighters when the evidence in the record clearly shows that North Wildwood police officers receive considerably higher salaries than North Wildwood firefighters.

Accordingly, I shall award the following changes and increases to the salary schedule:

- a. Effective January 1, 2006, Step 6, Lieutenant and Deputy Chief on Schedule A shall be increased by one percent (1.0%);
- b. Effective January 1, 2006, after the application of the above increase, each step and rank on Schedule A shall be increased by 3.5%;
- d. Effective January 1, 2007, each step and rank on Schedule A shall be increased by 3.5%;
- e. Effective January 1, 2008, each step and rank on Schedule A shall be increased by 8.65% (180 hours) with the deletion of Sections A & B in Article XI. This shall be followed by a \$725 adjustment to each step and rank on Schedule A with the modification of Section A and replacement of the language of Section B of Article XIII. This shall be followed by a 3.5% increase to each step and rank on Schedule A.
- f. Effective January 1, 2009, each step and rank on Schedule A shall be increased by 3.5%;
- g. Effective January 1, 2009, Article XIX, Longevity, Sections A & B, shall be amended to provide that "Employees shall receive longevity pay to be computed at two percent (2%) of an employee's base for every four (4) years of service to a maximum of 12 percent (12%) after twenty-four (24) years of service."

#### **Health Insurance & Retiree Health Insurance**

The FMBA currently receives full health benefits for two years following retirement. The FMBA is seeking the same retiree health benefits enjoyed by members of the North Wildwood PBA bargaining unit. The PBA contract provides for retiree health benefits until either a retiree receives health insurance provided by another employer or the retiree becomes medicare eligible. The FMBA submits that internal comparability favors its proposal arguing that public safety employees, employed by the same employer, should have the same level of retiree health benefits given that both units have the same level of benefits, coverages and

administration for active employees. The FMBA submitted a number of comparable communities in support of its position.

The FMBA submits that the actual cost to the City is minimal. The 2007 monthly cost of the Patriot V family plan is \$1,031. The FMBA submitted a summary document ~~which indicates when firefighters of this Unit would be entitled to receive retire health benefits.~~ In this contract term, no firefighters will be eligible to retire and therefore, there would be no cost to the City during the term of the new CBA. In fact, no unit members would be eligible until 2013. The FMBA calculates that three firefighters would be eligible to retire within the next ten years. The FMBA estimated the cost to the City with a projected 10% escalator to the current monthly \$1,031 family rate for Patriot V is as follows:

	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>
<b>Mo. Premium</b>	\$1,509	\$1,660	\$1,826	\$2,009	\$2,210	\$2,431	\$2,674
<b>Ann. Cost</b>			\$21,918	\$24,110	\$26,520	\$58,345	\$96,269

The FMBA submits that based on the actual eligible firefighters and the escalated premium cost, the City's cost for the entire ten years is only \$227,162 or an average of \$22,716 over the next ten years.

The City seeks certain cost containment concessions identical to the concessions made by the PBA in the 2004-2007 CBA. The City is opposed to increasing its obligation on retiree health benefits beyond the current two-year period. The City calculates the cost of providing retiree health insurance at \$169,992 annually for family coverage (nine unit members @ \$18,888) and \$137,538 annually for husband/wife coverage (nine unit members @ \$15,282). The City estimates that based upon the current top step salary of \$56,627 per annum, each additional year of retiree health coverage is equivalent to a compensation increase of 33.3%. ( $\$18,888/\$56,627 = 33.3\%$ ).

The City notes that the lifetime retiree benefits in the PBA agreement were negotiated more than two decades ago when salaries were lower and health benefits were inexpensive. The City further notes that since this retiree health benefit for the PBA bargaining unit was granted, the State has enacted Chapter 330, P.L. 1997, which provides retiree health benefits for police and firefighters. ~~The City submits that the State recognized the financial difficulties that municipalities face and enacted Chapter 330 to lessen the burden. Chapter 330 provides retiree health benefits that are similar to what the FMBA is seeking. The City asserts that the FMBA's proposal on retiree health benefits is unreasonable given the availability of such retiree health benefits under Chapter 330.~~

Both the FMBA and the city acknowledge the high cost of providing retiree health benefits. While this cost would not be effective until 2013, the projected cost of this benefit to all firefighters will be a significant cost to the City. It is undisputed that the cost in 2013 for only one firefighter will be more than \$22,000. In subsequent years, this cost will increase to more than \$100,000 annually. Even with increasing salaries, the City's cost to provide retiree health insurance will be 15-20% of the annual salary for all of the City's firefighters.

Negotiations regarding health insurance are now primarily directed to cost containment issues. Negotiations that included improved health benefits, particularly full retiree health benefits, almost always include some commensurate major concession by a labor organization. In the past, unions have been resistant to both a reduction in plan options (elimination of Traditional Plan) and to premium cost sharing provisions (in any form) for medical insurance. However, this is no longer the case. Tens of thousands of State employees have seen the elimination of the Traditional Plan as well as premium cost sharing provisions. Employees in many counties are now sharing in the cost of health insurance



premiums and a significant number of municipalities have negotiated both reduced plan options and health insurance premium cost sharing.

The premium cost sharing agreements include fixed dollar biweekly payments (with cap & without cap); obligation to pay the difference between a POS Plan and a Traditional Plan; single only coverage in Traditional Plan with full payment for dependent coverage; elimination of Traditional and limitation to POS Plan only for new hires; cash incentive to switch to lower priced health plan; 50/50 sharing between employer and employee for the increased cost of health insurance premiums (often with cap); bi-weekly contributions based on a salary range; percentage contribution of full cost of health insurance; full payment of dependent coverage in Traditional Plan; employee payment of 50% of annual increase in dependent coverage; declining percentage contribution ranging from 20% upon initial employment declining to no cost beginning with 13<sup>th</sup> year of employment; payroll deduction with or without a 125 Plan (allowing pre-tax payments for health care contributions); financial incentives to migrate to lower cost health plans; and employee financial incentives for "opting out" of employer provided health insurance.

Many of these health care concessions have been made voluntarily in the give-and-take of negotiations. These concessions are often made to insure the continuation of the level of benefits and the continuation of the existing network of doctors and hospitals.

Salary and health care are often linked in bargaining. Concessions on health care influence the level of salary increases. The total cost of a settlement for an employer includes the increased cost of a negotiated salary increase and the increased cost of employee fringe benefits. It is undisputed that the cost of health insurance and drug prescription coverage is the most significant component of employee benefits. The costs of these health insurance benefits are rising at a much higher rate than inflation and salary increases. Health

insurance is a costly fringe benefit that must be considered as part of the cost of employment and part of the overall wage and fringe benefit package of an employee. Under the statute, health insurance and prescription drug benefits must be treated as an economic issue. The increased cost of providing these benefits cannot be considered only as an employer obligation but also must be viewed as a continuing fringe benefit to an employee that is more costly to provide.

I conclude that the future expense of providing lifetime retiree health benefits is not justified given both the state of current negotiations regarding health benefits state-wide and the ability of North Wildwood's firefighters to receive retiree health benefits under Chapter 330. The cost of providing such benefit is excessive and impractical given the access to retiree health insurance provided by the State under Chapter 330.

Notwithstanding the above discussion, I recognize that retiree health benefits are an important fringe benefit. Chapter 330 provides retiree health benefits under which the State pays for 80% of the cost of the least expensive plan offered by the State Health Benefits Plan ("SHBP") for the level of coverage selected. The retiree then pays the remaining cost of the chosen plan. It makes no sense to have the City pick up 100% of the cost of retiree health insurance when an employee can receive retiree health insurance for 20% of the cost. Under Chapter 330, the City is not permitted to provide reimbursement for the 20% portion of a retiree's cost for health insurance. However, I am convinced that given the disparity between the PBA and the FMBA in both salary and retiree health benefits that an additional modification is called for given my denial of the FMBA's proposal for lifetime retiree health benefits.

Accordingly, effective January 1, 2009, Article XIX, Longevity, Sections A & B, shall be amended to provide that "Employees shall receive longevity pay to be computed at two percent (2%) of an employee's base for every four (4) years of service to a maximum of 12 percent (12%) after twenty-four (24) years of service." This will have no immediate cost to the City and will provide additional salary for a firefighter as he nears retirement to defray the costs of retiree health insurance. While I have linked this to retiree health insurance, I must emphasize that this modification is more than justified given that a top step police officer earned nearly \$13,000 more than a top step firefighter in 2005. This difference narrows to approximately \$6,000 in 2008 after the inclusion of the holiday pay in base salary, the application of the 1% equity adjustment and \$725 adjustment as received by the PBA in the 2004-2007 CBA. The additional 2% longevity will further reduce the salary disparity between the PBA and the FMBA.

For all of the above reasons, I must also deny the City's proposal that longevity benefits be limited to current employees only. Denying longevity benefits to new employees will only further increase the disparity in salary between a firefighter and a police officer.

In the above discussion on salaries, I noted that the City received cost containment concessions regarding health care and prescription drug copayments from the PBA in exchange for the inclusion of holiday pay, the 1% equity adjustment and \$725 adjustment. I awarded the City's health care and prescription drug copayment concessions. The inclusion of holiday pay in base salary (plus the 1% equity adjustment and \$725 payment) in the FMBA contract is consistent with the City's agreement with the PBA and balanced by the savings that the City will gain from the cost containment concessions regarding health care and prescription drug copayments.

The City's health care proposal is awarded in its entirety and shall be effective as soon as practicable following the issuance of this award.

#### **EMT & Title Change**

The title of "Lieutenant" shall be changed to "Captain" consistent with the requirements of the New Jersey Department of Personnel. ~~There shall be no change in compensation as a result of the change in this title.~~

The EMT language in the CBA shall be modified to provide that EMT certification must be obtained within one (1) year of date-of-hire and maintained throughout a firefighter's career as a condition of employment. This shall be effective upon the issuance of this award.

#### **Tentative Agreements**

The City and the FMBA reached agreement on a number of issues prior to the initiation of interest arbitration. These issues include FMBA Representative, Vacation, Safety, Schooling and Miscellaneous Provisions, and General Assembly Meeting. I shall incorporate by reference all of these tentative written agreements in this award. I shall retain jurisdiction on these tentative agreements to resolve any disputes that may arise.

In summary, I find that the terms of my award satisfy the requirements of the interests and welfare of the public criterion to maintain labor harmony and high morale and to provide adequate compensation levels to attract and retain the most qualified employees. Reasonable levels of compensation and good working conditions contribute to a productive and efficient work force and to the absence of labor unrest. I find that the interests and welfare of the public require a stable and experienced fire department and that the terms of my award will maintain the City's ability to recruit and retain qualified and experienced firefighters consistent with the requirements of this factor.

**Comparison of The Wages, Salaries, Hours  
and Conditions of Employment**

Comparisons of the wages, salaries, hours and conditions of employment of the City's firefighters are to be made with other employees performing similar services as well as with other employees generally in the following three groups: 1) in private employment in general,

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2) in public employment in general, and 3) in public employment in the same or similar jurisdictions. I shall discuss these in order.

The first part, private sector comparisons, calls for comparisons with private sector employees performing similar services as well as private employees generally. It is well established that there are no easily identified private sector firefighters who perform services similar to those performed by City firefighters. Neither party submitted salary data on this sub-factor since none exists. A firefighter position is a uniquely public sector position that does not lend itself to private sector comparisons. I agree with the analysis of Arbitrator William Weinberg that comparisons to the private sector are difficult because of the unique nature of law enforcement. (See page 25). There is no data in the record to evaluate the comparison to other employees performing the same or similar services in private employment. I have given this sub-factor no weight.

The second part of this sub-factor requires a comparison with other employees generally in private employment. Neither party emphasized private sector comparisons. I take arbitral notice that the average 3.75% salary increase awarded, while somewhat higher than average salary increases in the private sector, is consistent with the requirements of this subfactor. I further note that the parties' salary proposals were not significantly different in their total cost over the terms of the new CBA. I find that my award, while somewhat higher

than private sector settlements in general, is acceptable when measured against the totality of the terms of the award including the awarding of the City's health care proposal. This sub-factor is not entitled to significant weight.

The next comparison is with public employees in general. Neither party submitted significant salary data on public employees in general. I have served as a mediator or fact-finder in many cases involving other public sector employees; i.e., school district employees and non-police municipal and county employees. A review of this data shows that the average annual salary increases in public employment in general are consistent with the salary increases proposed by the City and the FMBA and more closely approximate the awarded salary increases. This sub-factor is supportive of the awarded salary increases.

I shall now address internal comparability with other City employees. A review of the 2005-2009 CBA between the City and the CWA shows that employees received a salary increase of 3.5% in 2006, 3.75% in 2007 and 3.5% in 2008 and 2009. In addition, Article XVIII, Section 5 shows that "in addition to the above annual salary increases, all current employees . . . shall receive an additional \$750 in their base salary. This brings the average salary increase in line with the average 3.75% salary increase received by the FMBA in 2006-2009 and the average 3.75% salary increase received by the PBA in 2004-2007. I find that internal comparability data on salary is consistent with the terms of this award and consistent with the requirements of this subfactor.

The next sub-factor calls for comparisons of the wages, hours and conditions of employment of employees performing the same or similar services in the same or similar comparable jurisdictions.

The single most important consideration in this matter is the comparison of the wages, hours and conditions of employment of employees performing *similar services* in the same jurisdiction. The City's 2004-2007 agreement with the PBA is entitled to the most weight in this matter and I have patterned the terms of my award on this voluntary settlement between the City and the PBA. All of the economic terms of this award, including the 3.5% salary increases, the inclusion of holiday pay in base salary, the \$725 adjustment and the 1% equity adjustment are fully consistent with the terms of the City's agreement with the PBA. I have granted the City's health care proposal which is identical to the health care proposal agreed to by the City and the PBA in the 2004-2007 CBA. The only difference is the award of the 12% longevity step after twenty-four years of service. This change has no impact during the term of the 2006-2009 CBA and will have no impact for several years thereafter. As stated above, the additional longevity step will narrow the gap in maximum salary between a police officer and firefighter in North Wildwood.

While internal comparability appears to favor the award of lifetime retiree health benefits, I found that the cost of such benefit is excessive and impractical given the access to retiree health insurance provided by the State under Chapter 330. While a firefighter is requiring to pay 20% of the premium for retiree health insurance, the additional longevity step will improve a firefighter's career salary while employed and in retirement.

I find that the terms of my award are consistent with the PERC reported average of salary increases for all interest arbitration awards and voluntary settlements and the CBAs in the record. The PERC data shows that the average salary increase for awards issued in 2006 is 3.95% and the average increase for voluntary settlements reached in 2006 is 4.09%.

The PERC data shows that the average salary increase for awards issued in 2007 is 3.89% and the average increase for voluntary settlements reached in 2007 is 3.95%. The PERC salary data is supportive of the terms of my award which average 3.75% annually. The addition of holiday pay to base salary, the inclusion of the \$725 in base salary and the ~~awarding of the additional longevity benefit brings the total value of the award in line with~~ the PERC salary data.

The awarding of the City's health care proposal will offset some of the City's costs associated with the inclusion of holiday pay in base salary in 2008. All of the economic components of the award must be considered in their totality and balanced to achieve a reasonable result under the statutory criteria. I have awarded salary increases that are consistent with County and state-wide averages in 2006 and 2007.

In summary, I found that the single most important consideration in this matter is the comparison of the wages, hours and conditions of employment of employees performing *similar services* in the same jurisdiction.

#### **Lawful Authority of the Employer**

This factor, among other things, requires the arbitrator to consider the limitations imposed on the City by the CAP Law which, generally, limits the amount by which appropriations of counties and municipalities can be increased from one year to the next. This was intended to control the cost of government and to protect homeowners. The limitation applies to total appropriations and not to any single appropriation or line item.

This can be a significant factor in interest arbitration matters when the parties last offers on salary are extreme or when a party is asserting that the CAP Law affects their



ability to fund salary increases. There is certainly no ability to pay argument under the New Jersey Cap Law (including the recent amendments) given the difference between the cost of the City's four-year salary proposal and the terms of my award. The difference between the cost of my award and the City's last offer is \$4,243 in 2006, \$149 in 2007, \$416 in 2008 and ~~\$377 for a total of \$5,185 over four years. This is approximately ¼ of 1% annually.~~ As I previously stated, the City will have additional costs associated with the inclusion of holiday pay in base salary. These are the same costs that it incurred when it agreed to include holiday pay in base salary in the 2004-2007 PBA agreement. This concession was made in consideration of the savings that the City will realize from the awarding of its health care proposal which will provide savings for current employees and even more savings for future employees.

PERC discussed a public employer's obligations under the CAP Law and the Interest Arbitration Reform Act in County of Essex v. Essex County Sheriff's PBA Local No. 183, PERC No. 2005-52, IA-2003-37 (2005). The following are relevant excerpts:

Accordingly, arbitrators have viewed the public interest as encompassing the need for both fiscal responsibility and the compensation package required to maintain an effective public safety department with high morale. (citing, Teaneck, 25 NJPER at 459.)

The Legislature rejected proposals that would have amended the predecessor statute to limit increases to the statutory CAP rate, or otherwise set a numerical standard for arriving at an award. Instead, the Legislature directed that disputes be resolved by conventional arbitration, thereby vesting arbitrators with the responsibility and discretion to weigh the evidence and fashion an award.

In exercising that discretion, an arbitrator unquestionably must take into account financial constraints and budget caps, and determine that the net annual economic changes for each year of the agreement are reasonable. Hillsdale, 137 N.J. at 86; N.J.S.A. 34:13A-16d(2) However, the CAP law is

only one of the many factors an arbitrator must consider. Cf. Irvington, 81 N.J. at 296 (holding that an award that exceeded the CAP rate was reasonable, even though it would force the municipality to effect economies). Moreover, in enacting both the interest arbitration law and local finance statutes, we believe the Legislature understood that negotiations and interest arbitration would require public officials to consider and plan for settlements and awards that might require budget adjustments.

~~In Essex, The Commission cited the following excerpt from a textbook used in a required course for municipal finance officer certification:~~

Demands for improved wages and benefits will not always coincide with adopted budgets. Difficulties are often experienced in meeting statutory deadlines. Retroactivity of contract provision may create financing problems. Finance officers have to develop flexible budget timetables, provide for operating reserve funds or contingencies, and make supplemental appropriations (with governing body approval) in order to finance increased salaries and benefits. [Robert Benecke, Municipal Finance Administration in New Jersey, I-18 (July 2004), prepared for Rutgers, The State Univ. of New Jersey, Center for Government Services]

In Essex, the Commission provided further direction:

In sum, an arbitrator must consider the financial evidence and explain how he or she weighed the financial impact and lawful authority criteria, along with the other factors deemed relevant. However, the Reform Act does not require an arbitrator to award the amount the employer has budgeted. Middlesex. Further, an arbitrator does not have the statutory responsibility or legal authority to direct an employer as to how to finance or comply with an award. See, Irvington, 81 N.J. at 296.

There is absolutely no evidence in the record to show that the awarded salary increases or any other aspect of this award will cause the City to approach the limits of its financial authority or to breach the constraints imposed by the CAP Law in funding the salary increases I have awarded.

**Financial Impact on the Governing Unit,  
its Residents and Taxpayers**

The financial impact of the awarded salary increases, which are nearly identical to the City's proposed salary increases, is not significant when calculated over the four years of the new CBA. As noted under the lawful authority criterion, the difference between the cost of my award and the City's last offer is \$4,243 in 2006, \$149 in 2007, \$416 in 2008 and \$377 for a total of \$5,185 over four years. This is approximately ¼ of 1% annually. . The funding of the awarded salary increases will have minimal financial impact on the City.

There is no evidence that the terms of my award will require the City to exceed its lawful authority. The CAP law, or lawful spending limitations imposed by P.L. 1976 C.68, is not directly impacted by this proceeding nor is there any evidence that the terms of this award will impact on the City's obligations under the recently amended budget CAP law, N.J.S.A. 40A:4-45.1 et seq.

Based on the evidence in the record, I conclude that the financial impact of the award will not adversely affect the governing unit, its residents and its taxpayers.

**Cost of Living**

Arbitrators must consider changes in the cost of living. The cost of living data shows that the increase in the Consumer Price Index ("CPI"), as published by the U.S. Department of Labor, Bureau of Labor Statistics ("BLS"), increased by 3.2% in 2006 and 3.9% through November 2007. I conclude that the awarded base salary increases, while moderately higher than the average increase in the cost of living in 2006 and 2007 (through November), provide for an acceptable increase in real earnings that must be measured against the continued

delivery of quality services by the City's firefighters. The award provides for base salary increases that over the full term of the CBA will allow for a modest increase in real earnings consistent with historical trends.

### **Continuity and Stability of Employment**

The terms of my Award will maintain the continuity and stability of employment for the City's firefighters. The salary award in this matter will not jeopardize either employment levels or other governmental services. The salary award will maintain a competitive salary and permit the City to continue to recruit and retain qualified firefighters. I conclude that the terms of this award will maintain the continuity and stability of employment and satisfy the requirements of this factor.

### **Overall Compensation**

I have considered the overall compensation received by the City's firefighters and find that the terms of my Award will maintain the existing levels of economic benefits. I have given considerable weight to this criterion in awarding the inclusion of holiday pay in base salary. The terms of the award will permit North Wildwood firefighters to maintain their current ranking in comparison to their peers in Cape May County. This comparison will be improved by the awarding of the holiday pay in base salary and the establishment of the 12% longevity step. The terms of my award are consistent with other external settlements in the County and throughout the State, thus maintaining a consistent level of benefits.

Accordingly, after carefully considering each of the statutory criteria in relation to the evidence in the record, I respectfully issue the following award:

## AWARD

1. **Term of Agreement:**

There shall be a four-year agreement effective January 1, 2006 through December 31, 2009.

2. **Salary:**

- a. Effective January 1, 2006, Step 6, and the ranks of Lieutenant and Deputy Chief on Schedule A shall be increased by one percent (1.0%);
- b. Effective January 1, 2006, after the application of the above increase, each step and rank on Schedule A shall be increased by 3.5%;
- c. Effective January 1, 2007, each step and rank on Schedule A shall be increased by 3.5%;
- d. Effective January 1, 2008, each step and rank on Schedule A shall be increased by 8.65% (180 hours of holiday time) with the deletion of Sections A & B in Article XI. This shall be followed by a \$725 adjustment to each step and rank on Schedule A with the deletion of Section B of Article XIII. This shall be followed by a 3.5% increase to each step and rank on Schedule A.
- e. Effective January 1, 2009, each step and rank on Schedule A shall be increased by 3.5%;
- f. Effective January 1, 2009, Article XIX, Longevity, Sections A & B, shall be amended to provide that a 12 percent (12%) longevity step shall be established for all employees after twenty-four (24) years of service.
- g. All salary increases are fully retroactive. The following is the new salary schedule:

## SCHEDULE A

### Wage Guide

	Eff. 1/1/06	Eff. 1/1/07	Eff. 1/1/08	Eff. 1/1/09
Deputy Chief	\$64,074	\$66,316	\$75,324	\$77,960
Lieutenant	\$62,779	\$64,977	\$73,818	\$76,402
Step 6	\$59,195	\$61,267	\$69,646	\$72,084
Step 5	\$54,266	\$56,165	\$63,909	\$66,146
Step 4	\$49,056	\$50,773	\$57,846	\$59,871
Step 3	\$44,712	\$46,277	\$52,790	\$54,638
Step 2	\$37,260	\$38,564	\$44,117	\$45,661
Step 1	\$33,120	\$34,279	\$39,298	\$40,673
Entry	\$25,875	\$26,781	\$30,867	\$31,947

### 3. Health Insurance & Retiree Health Insurance

The following health insurance language shall be implemented by the City as soon as practical after the receipt of this award:

#### ARTICLE XII INSURANCE, HEALTH AND WELFARE

A. The City shall provide a comprehensive Health Benefit Program through the Southern New Jersey Regional Benefits Fund including hospitalization, medical treatment, major medical coverage, surgical fees and all of the benefits which are currently included in the Health Benefit Program, at the date of this Agreement, for the employee and his family. Employees shall only be permitted to enroll in the type of coverage for which the employee is eligible.

The City shall provide a Co-Pay Prescription Plan for the individual and his family. Effective January 1, 2006, the Co-Payment for the Prescription plan shall become \$5.00 for mail in prescriptions and \$10.00 for generic drugs and \$20.00 for brand name drugs.

The City shall provide a Dental Insurance Program, which includes all of the benefits which are currently included in the Dental Insurance Program, at the date of this Agreement, for the employee and his family.

The City, at its sole discretion, retains the right to select and change insurance carriers during the term of this Agreement, provided coverages are substantially equal to or better. Disagreements regarding coverage changes can go to the grievance process and to arbitration. The City will notify the Union at least thirty (30) days before any change is to happen. Selection of the carrier or carriers is a managerial prerogative not subject to the terms of this collective bargaining agreement.

B. Upon Employee's retirement he/she shall be entitled to receive all of the then health care benefits provided by the City at the expense of the City of North Wildwood for the shorter of the following periods:

1. For a period of two (2) years or when he/she obtains other employment having comparable coverage to that provided by the City (once the job is obtained, the benefits terminate even if the employment terminates within two (2) years).
2. When an Employee becomes eligible for Medicare.

Retirement, for the purpose of this Article shall be consistent with the standards set for retirement by the New Jersey Police and Fire Pension laws. Said pension laws currently require twenty-five (25) years of service credit which may include, for example, military time buy back and/or other public employment time credit. Under no circumstances however, shall any employee be entitled to retiree medical benefits without twenty (20) years of service in the City of North Wildwood.

C. Employees shall be permitted to opt out of the medical insurance coverage provided by the City as long as the employee furnishes the City with documentation to establish that the employee has health insurance coverage from another source. Employees who elect to opt out of the coverage provided by the City shall be paid the sum of \$2,000.00 for each full year that the employee declines coverage. The amount to be paid to employees who opt out for part of a year and receive City provided health insurance for part of that same year shall be pro-rated. Said payment shall be made by the City to the employee during the first pay period in December of the year in which the employee opted out of coverage. The City reserves the right to discontinue this policy or opt out of reimbursement at any time with thirty (30) days notice prior to an open enrollment period.

Any employee who has elected to opt-out of coverage may re-enroll in the health care plan by giving the City thirty (30) days prior written notice of his/her desire to re-enroll in the plan. The payment of Two Thousand (\$2,000.00) Dollars shall be pro-rated for the period the employee was not covered by the City Plan.

D. Employees hired after January 1, 2006 will have the option of electing a health benefit plan from the following Plans offered by the City through the Southern New Jersey Regional Benefits Fund:

- a. Premier
- b. Patriot X
- c. Patriot V

—The Patriot V Plan (“primary plan”) shall be provided to all eligible employees and eligible dependents, without any premium cost, by the City. If an employee selects any of the other Plans offered above, the employee shall pay the premium cost differential between the primary plan and the plan they selected. The City may change the provider and/or the Plans offered provided coverages are substantially similar.

E. The City shall provide insurance coverage on employees in their personal vehicles when said vehicles are used on recalls or when used otherwise in the scope of employment.

F. The City shall supply to all employees necessary legal advice and counsel in the defense of charges filed against them in the performance of their duty in accordance with applicable New Jersey Statutes. The selection of an attorney must be made by the employee from the approved list provided by the City’s Insurance Provider.

4. **EMT & Title Change:**

The title of “Lieutenant” shall be changed to “Captain” consistent with the requirements of the New Jersey Department of Personnel. There shall be no change in compensation as a result of the change in this title.

The EMT language in the CBA shall be modified to provide that EMT certification must be obtained within one (1) year of date-of-hire and maintained throughout a firefighter’s career as a condition of employment. This shall be effective on or after February 1, 2008.

5. **Clothing Allowance:**

The current language of Section B of Article XIII shall be eliminated and replaced by the following language in Sections A, B and C:

- A. The City shall continue to furnish an initial issue of new uniforms and turnout gear to all new firefighters. Thereafter, each firefighter shall be responsible at his/her expense for the purchase of replacement items of uniforms.

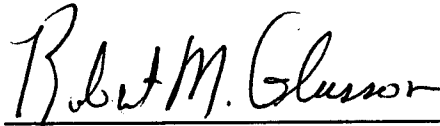


- B. Employees shall maintain their uniforms in good and clean condition and failure to maintain uniforms in good and clean condition shall be cause for disciplinary action.
- C. The City shall replace all uniforms and equipment damaged in the line of duty unless the damage or destruction has been caused by the negligence of the firefighter.

6. **Tentative Agreements:**

The City and the FMBA reached agreement on a number of issues prior to the initiation of interest arbitration. These issues include FMBA Representative, Vacation, Safety, Schooling and Miscellaneous Provisions, and general Assembly Meeting. I shall incorporate by reference all of these tentative written agreements in this award. I shall retain jurisdiction on these tentative agreements to resolve any disputes that may arise.

- 7. All proposals of the City and the FMBA not awarded herein are denied and dismissed. All provisions of the 2001-2005 CBA shall be carried forward except for those provisions modified by the terms of this Award.



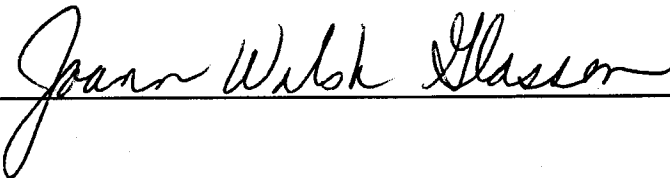
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ROBERT M. GLASSON  
ARBITRATOR

Dated: January 4, 2008  
Pennington, NJ

STATE OF NEW JERSEY) ss.:  
COUNTY OF MERCER)

On this 4<sup>th</sup> day of January 2008, before me personally came and appeared ROBERT M. GLASSON, to me known and known by me to be the individual described in and who ~~executed the foregoing instrument and he acknowledged to me that he executed the same.~~

  
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JOANN WALSH GLASSON  
NOTARY PUBLIC OF NEW JERSEY  
Commission Expires 12/11/2011