

In the Matter of Arbitration Between:

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**CITY OF ELIZABETH**

"Public Employer,"

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- and -

**FIREMEN'S MUTUAL BENEVOLENT  
ASSOCIATION, LOCAL NO. 9**

"Union."

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**OPINION  
AND  
AWARD**

Docket No. IA-2006-024

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Employer:**

Brian W. Kronick, Esq.  
Carolyn Buccerone, Esq., on the Brief  
Genova, Burns & Vernoia

**For the Union:**

David I. Fox, Esq.  
Lynsey A. Johnson, Esq., on the Brief  
Fox & Fox

I was designated by the New Jersey Public Employment Commission to serve as interest arbitrator after the City of Elizabeth [the "City"] and the FMBA Local No. 9 [the "Union" or "FMBA"] reached an impasse in negotiations. With the understanding of the parties, extensive mediation was conducted on February 13 and September 5, 2006 and on April 18 and May 10, 2007. Because the impasse remained, a formal interest arbitration hearing was held on September 17, 2007 at which time testimony and documentary evidence was submitted into the record. The record remained open for the submission of additional exhibits, especially on the City's finances. Post hearing briefs were filed on March 15, 2008 with additional letter submissions from each party through April 30, 2008. Because the parties did not agree on an alternative terminal procedure, the terminal procedure shall be conventional arbitration under which the arbitrator has the discretion to render an award that is not confined to the last offers of either party.

As required by statute, each party submitted a final or last offer. They are as follows:

### **FINAL OFFERS OF THE PARTIES**

#### **CITY OF ELIZABETH**

1. **Term of Agreement:** Four (4) year term effective July 1, 2005 through June 30, 2009.

2. **Article XL, EMT Incentive-**

Effective July 1, 2005 – Increase annual stipend by \$50 from \$900.00/yr. to \$950.00/yr.

Effective July 1, 2006 – Increase annual stipend by \$50 from \$950.00/yr. to \$1,000.00/yr.

Effective July 1, 2007 – Increase annual stipend by \$100 from \$1,000.00/yr. to \$1,100.00/yr.

Effective July 1, 2008 – Increase annual stipend by \$100 from \$1,100.00/yr. to \$1,200.00/yr.

3. **Hazmat Stipend\***

Effective July 1, 2005-N/A

Effective July 1, 2006-N/A

Effective July 1, 2007 – Annual Stipend of \$1200.00 not in base.

Effective July 1, 2008 – Annual Stipend of \$1500.00 not in base.

\*In order to receive the Hazmat Stipend, a firefighter must be trained, certified and permanently assigned to the Fire Company responsible for Hazmat duty. The number of firefighters available for assignment to the Hazmat unit shall not exceed 52.

4. **Tech Rescue Stipend\*\***

Effective July 1, 2005-0.00

Effective July 1, 2006-Annual Stipend of \$700.00 not in base.

Effective July 1, 2007 – Annual Stipend of \$1200.00 not in base.

Effective July 1, 2008 – Annual Stipend of \$1500.00 not in base.

\*\*In order to receive the Tech Rescue stipend, the firefighter must be trained, certified and permanently assigned to the Fire Company responsible for Tech Rescue duty. The number of firefighters available for assignment to the Tech Rescue unit shall not exceed 76.

**5. Holiday/Vacation Buy-Back      Article X, Holidays, Section 7:**

Employees earning holiday under Section 1, above, may cash in up to seventy-two (72) hours of holiday time, subject to the City's budgetary constraints to be paid the first pay period in December. Day workers covered by this agreement may cash in up to seventy-two (72) hours of vacation time, subject to the City's budgetary constraints, to be paid the first pay period in December. The hours cashed out shall be deducted from the employee's holiday time allotment, or in the case of day workers their vacation allotment. An employee seeking to cash out holiday time or vacation time under this section must submit a written request to the Director or his designee no later than June 1.

**6. Training**

1. Employees requesting to attend a fire related school must submit the request to the Division of Training who then in return will forward the request to Fire Headquarters for approval by the Fire Director and/or Chief of the Department.
2. The Department shall make every effort to grant school/training when manpower is permitting on the days that the requesting employee is scheduled to work.
3. No reimbursement or compensation of any kind will be granted to employees permitted to attend a fire related school.
4. When the Department sponsors and/or initiates fire related schools, compensatory time shall be given to any employee that chooses to attend. Compensatory time at the rate of one and one half hours will be granted for every hour worked in excess of his/her regularly assigned work week.
5. Employees may be assigned to the Training Division at the discretion of the Fire Director and/or Fire Chief. Employees assigned to the Training Division shall be placed on the 4-3 work schedule described in Section 2 of Article VII, or, in the City's discretion, the 5-2, eight (8) hour per day, five (5) days a week Monday through Friday, work schedule for a total of forty (40) hours per week for the duration of their assignment to the Training Division. Employees will be compensated for holidays that occur during their assignment to the Training Division in accordance with Article X "Holidays", Section 4 of this Agreement.
6. Employees regularly assigned to Firefighting duties who are temporarily assigned to the training Division are placed on the 4-3 or 5-2 work schedule will not be permitted to utilize vacations during their assignment to the Training Division.

7. Employees who are "ordered" to attend training and not reassigned to the Division of Training shall be compensated at the rate of one and one half hours for every hour worked over their assigned workweek.
8. Travel time will be reimbursed in compensatory time at straight time for a minimum of one half hour for each direction totaling one hour per day for each day the employee attends school. Travel time will not be reimbursed for the days that the employee would have normally been scheduled to work.
9. Employees shall be granted ten hours school/training the night before or after training is scheduled unless more time is required for travel.
10. When employees attend Department sponsored training reimbursement for mileage will be at the IRS rate per mile traveled. Not included in the travel distance is the distance the member would have traveled to work on their normal scheduled shift.
11. Tolls will be reimbursed provided receipts are submitted. No meals will be reimbursed.
12. UASI training shall be handled in accordance with the Side Agreement dated July 1, 2006 (copy attached).

### **FMBA LOCAL 9 FINAL OFFER**

1. **Term of Agreement:** Six-year term effective July 1, 2005 through June 30, 2011.
2. **Stipends:** The FMBA proposal includes the following stipends:
  - a. **EMT incentive:** EMT stipend of 4% of base pay each year. All employees with a current EMT certification and those who obtain the certification in the future shall be entitled to the payment, which is in base pay for all purposes and settlements of grievances which have been made involving the certification shall remain in effect.
  - b. **Hazmat Stipend:** Hazmat stipend as follows: July 1, 2005 – 2% of base; July 1, 2006- 4%; July 1, 2007 – 6%; and July 1, 2008-7%. The stipend shall be made to all employees who are assigned to units which have a responsibility for this service and to all employees who may not be assigned to those units but who have received the training for this position and for those employees who have involuntarily left those units. At least 53 employees shall be

in the units in question. Once an employee is assigned to or given work in the unit in question, the employee shall not be involuntarily transferred from that unit except for disciplinary reason, provided, however, that the payment shall in any event continue, consistent with this paragraph. Notwithstanding the foregoing, employees who are not assigned to such units may, beginning on the first day of their 23<sup>rd</sup> year in the fire department, have the right to bid for the position in the unit in question in which case openings will be available for such employees based upon inverse order of seniority of those who are at the time in the units performing the work of the units. Compensation for training for Haz-Mat Technician also known as first Responder/Haz-Mat Technical shall be paid at time and one-half in compensatory time.

c. **Tech Rescue Stipend:** Tech Rescue stipend paid as follows: July 1, 2005 – 2% of base; July 1, 2006- 4%; July 1, 2007 – 6%; and July 1, 2008-7%. The stipend is to be paid to all employees who may not be assigned to those units but who have received the training for this position and for those employees who have involuntarily left those units. At least 76 employees shall be in the units in question. Once an employee is assigned to or given work in the unit in question, the employee shall not be involuntarily transferred from that unit except for disciplinary reason, provided, however, that the payment shall in any event continue, consistent with this paragraph. Notwithstanding the foregoing, employees who are not assigned to such units may, beginning on the first day of their 23<sup>rd</sup> year in the fire department, have the right to bid for the position in the unit in question in which case openings will be available for such employees based upon inverse order of seniority of those who are at the time in the units performing the work of the units. Compensation for training for Technical Rescue/Special Operations also known as First Responder/Tech Rescue shall be paid at time and one-half in compensatory time.

d. **Shift/Night Differential:** The FMBA also proposes a shift/night differential totaling 4% each year.

3. **Holidays:**

a. Increase in the "buy back" of holidays and an increase in paid holidays. Buy back time shall be increased to 88 hours, effective July 1, 2007.

- b. Increases in improvements and ability to bank holidays and vacation time.
  - c. Employees shall have the right to hold over holiday time December 31 of the following year (instead of the current April 1 of the following year), effective July 1, 2007.
4. **Vacation Time:** Employees shall have the right to hold over vacation time which is unused for two years effective July 1, 2007.
  5. **Tech Days:** Four tech days (24 hour days per year) beginning July 1, 2005 to be cashed in at the end of the year if not used.
  6. **Special Pay:** The FMBA also proposes that all special payments be in base pay for all purposes including longevity.
  7. **Prescription Co-Pay:** The FMBA proposes improvements in this program are sought as to generic, brand name, and mail order prescriptions.

### **BACKGROUND & POSITIONS**

The FMBA represents uniformed firefighters, fire subcode officials, UFD, fire prevention specialists UFD, probationary firemen and all other uniformed members of the City's Fire Department excluding the Chief, Deputy Chief, Battalion Chiefs, Captains and all other fire officers.

The current collective negotiations agreement has an expiration date of June 30, 2005. The parties commenced negotiations for a new agreement in May 2005 and reached an impasse. The impasse remained despite several mediation sessions before this interest arbitrator. During this time the City successfully concluded negotiations with several other bargaining units including PBA Local No. 4, the Police Superior Officers and the Fire Superior Officers.

At the risk of oversimplification, the general framework of this dispute is as follows. The FMBA, in its arguments and documentary submissions, asserts that the City's proposals to the FMBA, are not comparable in their economic terms to the public safety settlements. Despite the City's reliance on these settlements by the FMBA, it alleges that the City has not proposed terms that are consistent with the other public safety settlements. The Union also seeks terms that exceed these settlements based upon external comparisons it makes with other municipal fire departments and because of its claim, supported by an expert's financial report (Dr. Caprio) that the City has the ability to fund its proposals. In response, the City asserts that the FMBA's economic proposals not only exceed the terms of the settlements the City reached with the above public safety units but that they also exceed the settlements the City has reached in all of its thirteen (13) already voluntarily settled contracts. In the City's view, an award which breaks this pattern of settlement would represent an invitation to the PBA and the two Superior Officers units to renegotiate their agreements upward, thus, penalizing the City for reaching these agreements. Such an award would, in the City's view, reward the FMBA for engaging in protracted negotiations for the sole purpose of breaking the pattern of settlement. Moreover, the City contends that the FMBA's proposals, if awarded, would cause adverse financial impact on the City, its residents and taxpayer and also interfere with its lawful spending and taxing limitations.



The bargaining unit consists of 202 Firefighters in eleven (11) companies. There are seven (7) engine companies, three (3) ladder companies and one (1) rescue company. There are also four (4) uniformed Firefighter positions assigned to the Department's communication function. As of July 2007, the total base pay was \$13,614,012, the average pay was \$67,396 and 78%, or 159 Firefighters, were at the seventh or top step. A large portion of the record is devoted to the work performed by the firefighters, their specialized training and the various technical functions they fulfill.

Eighty (80) firefighters are EMT certified after having received specific training. All are eligible for this certification. Recertification is required following initial certification. Those who are certified now receive a \$900 stipend. This stipend is in base pay but not for all compensation purposes. Under Article XL, the stipend "shall be paid in addition to, and in the same manner as, base salaries, but shall not be included in base salaries for the purposes of computing negotiated increases or longevity pay. Any negotiated increase in annual base salary shall not be applied to the EMT stipend set forth in this Article." The amount of the stipend would increase under the last offers of both parties. However, they disagree on the amount of the increase. The City has proposed to increase the stipend to \$950 in 2005, \$1,000 in 2006, \$1,100 in 2007 and \$1,200 in 2008. The Union seeks to increase the stipend to a 4% payment. The Union submits a listing of such payments in various municipal fire departments:

<b>Municipality</b>	<b>EMT Pay/Stipend</b>
West Orange	2% stipend added to base pay
Teaneck	2% stipend added to base pay
New Brunswick	1.25% stipend added to base pay
Clifton	\$2,700 added to base pay
Linden	8% stipend added to base pay
Hillside	6% stipend added to base pay
Ocean City	\$3,486
Maplewood	\$1,444 added to base pay
Belleville	\$2,650 for both the maintenance of EMT certification and for firefighters assigned to 1 <sup>st</sup> line ambulance duty
Ventnor City	\$1,500 added to base pay
Roselle	5% + \$1,000 (Ambulance Providers at 3%)
South Orange	\$1,250 added to base pay
Westfield	\$1,500 (Firefighters) \$1,633 (Fire Officers)
Wildwood	\$1,000 added to base pay
North Wildwood	\$1,000 added to base pay
Ridgewood	\$3,471 added to base pay
Bergenfield	\$1,526.62 added to base pay
Hackensack	\$1,250 added to base pay
Harrison	\$270 EMT parity stipend; \$120 EMT certification payment; \$54.90 stipend pertain to being assigned to ambulance

The Department has a technical rescue team. It is the only department in Union County that provides such a team. The Team was established in 1996. It currently consists of seventy six (76) firefighters. A minimum of 72 contact training hours are required to in areas including the performance of Trench rescue operations, confined space rescue operations, building collapse rescue operations, rope and rigging, high angle, shoring flood and surf water rescue

operations, vehicle extrication, and machinery entrapment rescue operations. The training and operational standards for tech rescue are based upon guidelines set forth by FEMA, UASR and UASI. Firefighters assigned to the Team do not currently receive any additional compensation for performing these specialized functions. However, each party has proposed that a stipend be provided. They disagree on the amount and whether the amount should be placed in base pay. The City has proposed an annual stipend of \$700 in 2006, \$1,200 in 2007 and \$1,500 in 2008. The stipend would not be in base pay. The FMBA has proposed stipends of 2% in 2005, 4% in 2006, 6% in 2007 and 7% in 2008, all to be added to base pay.

The Department has worked towards developing a hazardous materials response team (HAZMAT) since 2004. Most cities do not have this function. One does exist in nearby Newark. The Department projects that up to fifty-two (52) Firefighters will be on this Team and assigned to three (3) Fire Companies. To be assigned to this team each Firefighter must undergo specialization in Hazmat Awareness, Operations and Technician training. Categories of training include Transportation (rail, trade and container) WMD (nerve/germ, radiological and bombs), Informational Technology, and Metering Operations and Maintenance. No stipend or compensation is currently provided. Each party has proposed that a stipend be established for members of the HAZMAT Team. However, similar to the other stipends they disagree on the amount and whether the amount should be added to base pay. The City has proposed a stipend of

\$1,200 in 2007 and \$1,500 in 2008, not to be added to base pay. The FMBA has proposed a stipend of 2% in 2005, 4% in 2006, 6% in 2007 and 7% in 2008. These stipends would be added to base pay under the Union's proposal.

One area of disagreement between the parties in the area of stipends is whether a stipend should be provided for First Responder duties. The Union contends that all Firefighters are required to perform First Responder duties when they arrive at the scene of an EMS related incident and that a stipend should be provided due to the exceptionally large amount of emergency medical service calls that the Department handles. The Union refers to continuous training that First Responders receive and contends that their responsibilities have expanded. The Union points to a 2005 report from Chief Sisk reflecting that the Department responded to 6,649 incidents, of which 383 were working fires and 814 were EMS related. In addition, the Union submits that the Firefighters respond to a substantially greater number of EMT incidents than many County Departments who pay higher EMT/EMS payments such as Hillside and Roselle. The Union proposes that there be a First Responder stipend of 4% of base pay to be added to base pay. The City does not propose the payment of a First Responder stipend. It contends that the Union has not justified such a payment. In substantial part, the City relies upon the fact that another organization, the Elizabeth Emergency Medical Benevolent Association, also performs emergency medical services and that the Union has overstated its involvement in the number of EMT calls it responds to. For this reason, the City asserts that the

Union's reliance on a comparison that links stipends to total call volume is inappropriate.

In addition to the amount and whether the amount should be included in base pay, the issue of stipends requires consideration as to the number of employees who would be eligible to receive them. The qualifications that would be required to receive a stipend (training, certification, and assignments to a specific company responsible for the specific mission), and the conditions or standards for the transfer or bidding into or out of the position that offers the stipend have been stated in each party's positions on these issues in their final proposals and need not be restated here.

The City and the Union disagree on contract duration. The City has proposed a four (4) year term effective July 1, 2005 through June 30, 2009. The FMBA proposes a six (6) year contract effective July 1, 2005 through June 30, 2011. The City relies on the pattern of settlement setting four (4) year contract durations with thirteen units. The FMBA cites the fact that a four (4) year agreement would expire on June 30, 2009, thus returning the parties quickly to the negotiations table.

On the issue of salary, the Union has proposed annual increases of 5% effective July 1 of each contract year. The Union has submitted substantial documentary evidence concerning the City's financial posture and comparability

data to support its wage proposal. The Union also submits a compendium of voluntary settlements and interest arbitration awards from 2005, 2006 and 2007 and a PERC salary analysis showing that the 3% wage proposal from the City is well below the averages for those years. The Union also submits private sector wage data that it asserts shows similar disparity. The Union offers a concise summary of its justification that flow from its extensive documentary submission that focuses upon the following:

- (1) The FMBA's Financial Expert submitted a Financial Report regarding the City's sound fiscal condition and its ability to pay for the FMBA's proposals: (2) The "norm" in negotiated and/or awarded salary increases for Police and Fire employees inside and outside of Union County. (3) Elizabeth Firefighters perform comparable public safety functions to the Elizabeth Police officers, yet work more hours per year than Elizabeth Police Officers. (4) The City has received substantial funding from the Port Authority for the use of the City's Police and Fire personnel, which could be applied to fund the FMBA's Final Offer.

As demonstrated by the FMBA Financial Expert, Dr. Raphael Caprio, the City of Elizabeth is fiscally sound and can, in fact, provide the FMBA with the percentage increase requested, as well as the other stipends that were requested in the FMBA's final position.

The salary percentage increases offered by the City are considerably lower than the "norm" of recent Police and Fire contracts which were voluntarily settled and those which were Interest Arbitration Awards.

The Union also provides a comparability analysis of maximum pay for firefighters in Union Township, Hackensack and Hoboken, all of which have greater maximum pay. The Union puts special emphasis on Newark Fire where 4% increases were agreed to as well as stipends in areas such as D-Con Unit,

Arson Squad, Diver Team, Haz-Mat, and a night differential payment for all employees on line duty of \$1,253. The FMBA further contends that the Agreements between the City and the PBA, the Fire Superior Officers Association and the Police Superior Officers Association also provided substantial enhancements such as increases in detective pay, night differentials and rank differentials.

The City has not formally proposed the level of salary increases it seeks. However, it has provided evidence, argument and a cost out of the parties' respective salary proposals premised upon a 3% increase in each of four years. This is consistent with its position that the salary increase for the FMBA should mirror the internal pattern of settlement within the City. The City describes the Union's proposals as being "prohibitively exorbitant." Citing the Union's overall proposals for salary, stipends, shift/night differential and the base pay impacts of "roll-ins", the City submits that the total cost of the FMBA's proposals over the life of the contract is over \$6,700,000 over a four-year term and \$11,134,000 for its six-year proposal. These figures exceed the City's by many millions of dollars. The City contends that the cost of the Union's proposals go far beyond what the City has budgeted and would result in an annual tax increase of \$440.00. The City also submits socio-economic and demographic data for the City of Elizabeth that reflects the attractiveness of the terms of the FMBA contract compared to what is received by City residents. The City cites poverty and unemployment data reflecting its claimed inability to fund the Union's proposals. The City

emphasizes, regardless of its ability to pay, that it has an established pattern of settlement that requires an adoption of wage increases at the 3% level. The City also argues that the existing levels of pay for its firefighters compares very favorably with other paid fire departments and that this undermines the Union's claim for increases at the 5% level. The City submits the following charts on this point:

**MUNICIPAL COMPARISON  
TOP PAY**

<b>MUNICIPALITY</b>	<b>2003 TOP SALARY</b>	<b>2004 TOP SALARY</b>	<b>2005 TOP SALARY</b>
CRANFORD	\$63,725.03	\$66,114	\$68,759
<b>ELIZABETH</b>	<b>\$67,361</b>	<b>\$71,456</b>	<b>\$73,599</b>
JERSEY CITY	\$69,517	\$71,950	\$74,468
LINDEN	N/A	N/A	\$74,678
WESTFIELD	\$65,482	\$68,101	\$70,825
UNION TWP.	Pre 1996: \$76,855 Post 1996: \$72,931	N/A	N/A
RAHWAY	\$62,960	\$64,226	\$67,148
ROSELLE	\$67,473	\$70,030	\$72,628
HILLSIDE	\$62,086	To 6/30/04 \$65,190	To 6/3/05 \$69,427
<b>Average</b>	<b>\$66,442</b>	<b>\$68,152</b>	<b>\$71,133</b>

Further, the City submits that its Firefighters also compare favorably with those employed by the State's largest municipalities pointing out that the top step of \$71,456 in Elizabeth is above the largest cities' average top step of \$71,367:

**MUNICIPAL COMPARISON  
TOP PAY**

<b>MUNICIPALITY</b>	<b>2003 TOP SALARY</b>	<b>2004 TOP SALARY</b>	<b>2005 TOP SALARY</b>
<b>ELIZABETH</b>	<b>\$67,361</b>	<b>\$71,456</b>	<b>73,599 (proposed)</b>
HACKENSACK	\$76,709	\$79,969	\$83,367



JERSEY CITY	\$69,517	\$71,950	\$74,468
NEWARK	\$68,218	\$70,946	N/A
PATERSON (pre 1999) (post 1999)	\$70,520 \$68,460	\$72,636 \$70,514	N/A
TEANECK	\$70,498	\$73,318	\$76,617
CAMDEN	N/A	N/A	\$67,662
TRENTON	\$59,343	\$61,420	\$63,569
<b>Average</b>		<b>\$71,367</b>	<b>\$73,136</b>

There are some additional economic issues in dispute. One is with respect to night-shift differential. The Union has proposed a differential in the amount of 2% on July 1, 2005 that progressively moves to 4% on July 1, 2008. The Union relies on a comparison with the PBA. The PBA has night differential that increased to \$1,650.00 on July 1, 2005 and then steadily increased to \$2,400.00 on July 1, 2008. The FMBA also notes that urban departments such as Trenton, Newark and Kearny receive a shift differential. The City rejects the proposal and submits that the parity argument is misplaced. The City submits the firefighters, unlike the PBA, work at night as part of their normal 24/7 schedule while only police officers who are assigned to night shifts receive the benefit. The City also objects to the costs of the proposal estimating that it would cost \$1,780,950.00 over six years, a figure that is far in excess of the costs for the PBA benefit.

The FMBA also proposes the addition of four 24-hour tech days per year beginning July 1, 2005. The days could be cashed in at the end of the year if some or all are not used. The FMBA supports its proposal with evidence that its members are involved in a substantial amount of training and that, unlike

firefighters in most municipalities, they do not receive any personal days. The City rejects this proposal claiming that firefighters already have a generous work schedule and that four additional days away from the fire station would be unreasonable and a strain on manpower. In addition, their ability to cash-in an additional four days would, according to the City, add undue financial pressure on the City's budget.

The FMBA has proposed to permit employees to hold over vacation time which is unused for two years effective July 1, 2007. It contends that employees are now required to utilize all of the vacation time in the year in which it is earned or the time is forfeited, unless the provision is waived by the Business Administrator and the Fire Director. The FMBA's proposed change would allow employees to carry over any unused vacation time for two (2) years. The FMBA states that PBA receives greater vacation time and that a large majority of municipalities do not impose the existing restrictions that exist in Elizabeth on their fire employees. The City contends that the FMBA's proposal runs counter to the regulations governing vacation holdover for public employees. It points to N.J.A.C. 4A:6-1.2 (F) that states that vacation leave not used in a calendar year because of business necessity shall be used during the next succeeding year only. It cites a provision, unmentioned by the FMBA, that the Fire Director may, upon approval, allow one (1) year's accumulation to be carried into the next succeeding year.

As part of the City's internal settlement pattern it has proposed that the FMBA accept changes in the existing prescription drug co-payment program. The claimed pattern is as follows. Effective January 1, 2004, employees shall pay a prescription co-pay of \$5.00. Effective March 1, 2006, the prescription drug plan shall be as follows: (i) Retail (Up to a 30 day supply) - generic mandated unless there is no generic equivalent with generic co-pay of \$5.00 and brand name co-pay of \$5.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost, in addition to a \$5.00 co-pay; (ii) mail order (Up to a 90 - day supply) - generic co-pay - \$0.00, brand name - \$0.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost. A doctor's certification must be prepared stating the generic is not acceptable. The FMBA has sought improvements from the levels proposed by the City but, at minimum, it seeks that the City not be allowed to seek reimbursement for the increased co-pays, as it conceivably could if the City proposals were made effective as it has proposed, on March 1, 2006.

The City and the FMBA each have a proposal concerning the "Buy Back of Holidays". The City proposes that employees may cash in up to 72 hours of holiday pay while the union proposes that the Buy-Back time be increased to 88 hours. They have similar proposals regarding the "Buy-Back" of vacation time.

Currently, under Article X, Section 7 employees may cash in up to 72 hours of holiday time. The FMBA has also proposed that it be allowed to hold over holiday time until December 31, rather than April 1, of the following year. The Agreement is silent on cashing in vacation time.

The FMBA contends that its cash-in proposal would allow for a comparable benefit as is received by the PBA wherein, in Article X, Section 1 of the PBA Agreement, it claims that a police officer is allowed to cash up to 88 hours. The City urges denial of the proposal based upon fiscal reasons.

One major non-economic issue in dispute concerns training. The city proposes a comprehensive set of procedures for training, set forth as follows:

### **Training**

1. Employees requesting to attend a fire related school must submit the request to the Division of Training who then in return will forward the request to Fire Headquarters for approval by the Fire Director and/or Chief of the Department.
2. The Department shall make every effort to grant school/training when manpower is permitting on the days that the requesting employee is scheduled to work.
3. No reimbursement or compensation of any kind will be granted to employees permitted to attend a fire related school.
4. When the Department sponsors and/or initiates fire related schools, compensatory time shall be given to any employee that chooses to attend. Compensatory time at the rate of one and one half hours will be granted for every hour worked in excess of his/her regularly assigned work week.
5. Employees may be assigned to the Training Division at the discretion of the Fire Director and/or Fire Chief. Employees assigned to the Training Division shall be placed on the 4-3 work schedule described in Section 2 of Article VII, or, in the

City's discretion, the 5-2, eight (8) hour per day, five (5) days a week Monday through Friday, work schedule for a total of forty (40) hours per week for the duration of their assignment to the Training Division. Employees will be compensated for holidays that occur during their assignment to the Training Division in accordance with Article X "Holidays", Section 4 of this Agreement.

6. Employees regularly assigned to Firefighting duties who are temporarily assigned to the training Division are placed on the 4-3 or 5-2 work schedule will not be permitted to utilize vacations during their assignment to the Training Division.
7. Employees who are "ordered" to attend training and not reassigned to the Division of Training shall be compensated at the rate of one and one half hours for every hour worked over their assigned workweek.
8. Travel time will be reimbursed in compensatory time at straight time for a minimum of one half hour for each direction totaling one hour per day for each day the employee attends school. Travel time will not be reimbursed for the days that the employee would have normally been scheduled to work.
9. Employees shall be granted ten hours school/training the night before or after training is scheduled unless more time is required for travel.
10. When employees attend Department sponsored training reimbursement for mileage will be at the IRS rate per mile traveled. Not included in the travel distance is the distance the member would have traveled to work on their normal scheduled shift.
11. Tolls will be reimbursed provided receipts are submitted. No meals will be reimbursed.
12. UASI training shall be handled in accordance with the Side Agreement dated July 1, 2006 (copy attached).

The FMBA seeks rejection of the City's training proposals. It offers many reasons. They include but are not limited to the following. The Union objects to broadening the approval process. Employees are now only required to receive advance written approval from the Fire Director to receive reimbursement for the cost of tuition. It objects to the language allowing the adjustment of employee schedules for training asserting that an employee's ability to attend training would

be limited. It also objects to language that would not allow reimbursement for employees who attend a fire related school as being unreasonable and a departure from current practice. It also objects to language eliminating an employee's ability to choose between receiving cash or compensatory time for attending Department-sponsored or Department-initiated fire related schools for hours worked in excess of the regularly assigned workweek. It objects to language that would not allow an employee to choose between compensatory or compensatory time (at time and one-half hours) for employees who are "ordered" to attend training and not reassigned to the Division of Training. In their submissions, the parties have referred to a settlement agreement which reflects that a voluntary settlement had been reached prior to the hearings on the training issue which is consistent with the City's proposal.

The FMBA seeks the denial of a City proposal concerning compensation for Acting Captains. The City seeks to freeze the Acting Captain rate until the time the rate is equal to or less than the rate of a First Year Captain. If the rate is lower than the First Year Captain, the rate would be adjusted to reflect the rate of a First Year Captain. The First Year Captain rate is the lowest of the three Captain steps that are contained in the Fire Officers' agreement. The FMBA views the City's proposal as unreasonably denying adequate compensation for firefighters who are assigned to act in the capacity of a Captain and a violation of the contract and past practice.

The differences between the parties arise, in part, because of their respective views concerning the state of the City's finances and how this factor should affect the merits of their economic proposals. The City paints a bleak portrait as to its finances while the Union sees the City as in a more favorable position. Each party has offered a comprehensive report and analyses of the financial issues with emphasis on the financial impact of their respective proposals in the public, the budget cap and the newly enacted amendment concerning the tax levy cap. I will proceed to concisely summarize the main points asserted by each party.

The City, through the testimony of Anthony M. Zengaro, its Chief Financial Officer and Comptroller, submits that it has been beset by a structural deficit of \$15,000,000 causing an annual \$600 tax increase. This is attributed to the expiration, in 2008, of a one-time revenue from the Port Authority related to the sale of wetlands. Zengaro states that the City has been informed by the State of New Jersey that the City's state and will be reduced by \$2,000,000 in 2008. He notes that the City's socio-economics are weak due to a per capita income equal to 50% of the State in 2000, an 18% poverty rate, a 10% unemployment rate, the existence of many tax exempt social agencies and low income subsidized housing properties and the existence of tax exempt properties amounting to 47%. Zengaro acknowledges the existence of revenue surplus, as was noted in the FMBA's financial report. However, he discounts the utility of its use to fund the FMBA's proposals. He states that the fund balance should not be used for that

purpose because financial instability would arise from spending revenue surplus without maintaining consistent revenues and reducing debt service. He believes that the City cannot spend the amounts required by the FMBA's proposals without usurping the limitations imposed on the City by the budget and tax levy caps.

The FMBA does not agree with the City's bleak financial assessment and relies upon a financial report from its expert, Dr. Ralph Caprio. Dr. Caprio opines that "the City of Elizabeth is comfortably able to fund the FMBA request in its entirety; it is able to do so without any negative impact and do so in a manner consistent with all of the criteria to be considered by PERC." Among Dr. Caprio's main points is his observation that the City's overall real property value compares favorably with other "urbanized" county seats and comparable municipalities. He also notes that the City is ranked first in the county in total taxable value, a figure that exceeds \$8 billion in market value. Dr. Caprio points out that the City receives an extraordinarily large amount of school aid per capita, a fact that is said to relieve pressure off of the City's municipal government tax obligations. Based upon his examination of the data he concludes that the City receives twice the capital resources from other than the residential property tax when compared to the next largest recipient in the county and six to seven times the amount of a typical municipality. In respect to the budget cap, Caprio concludes that the FMBA's proposals can be funded without interfering with its statutory spending limitations:



Similarly, Elizabeth, as stated in earlier, has a predictable pattern of appropriation cancellations. Between 2002 and 2007, approximately \$32 million in appropriations were cancelled (Exhibit 13). In 2007 alone, almost \$6 million in appropriations were cancelled. This is an amount that is in the base CAP calculation, but now used. It is my conclusion that equivalent over-budgeted appropriations of similar magnitude, which have averaged more than \$5 million annually, exist in the current budget and CAP calculation, and are therefore available for settlement of a labor agreement with the FMBA.

The City and the FMBA have also addressed the remaining criteria in their respective presentations. Each submits, through both explicit and implicit reference, that the interests and welfare of the public are more in line with their own last offers. Each recognizes that this criterion embraces spending and taxing limitations. In addition, the City asserts that the additional spending required under the FMBA proposed will not result in an improvement in the level of services nor enhance efficiency or morale. The City sees no deficiencies in these areas under the existing terms of the agreement. Moreover, the City sees its offer as improving these indicators. The FMBA emphasizes that the economic enhancements it seeks are based upon rewarding firefighters for the unique dangers and risks they face in serving a dense, urban environment laden with hazards and risks. These include duties performed at the ports of Elizabeth, Liberty International Airport, mutual aid pacts with other urban municipalities and the specialized functions such as EMS/EMT, hazmat and tech rescue.

Each party submits costs of living data. The FMBA submits data reflecting a 3.5% increase in the CPI for 2007 in the New York-New Jersey region. The

City submits data for New York-Northern New Jersey and Long Island reflecting a 2.5% increase between July 2006 and July 2007 as well as a 2.4% increase for the same time period for urban consumers.

The City submits that the continuity and stability of employment will be maintained and enhanced by the adoption of its last offer while the FMBA's last offer is in complete contrast to the current economic climate in Elizabeth, in New Jersey and in the country as a whole. The City notes that the Fire Department experiences a very low turnover rate and enjoys a secure and stable work environment. The City presents evidence that since July 1, 2005 there have been six (6) retirements, one (1) death, six (6) promotions and sixteen (16) new hires and that there has been no threat of job loss.

The Union responds that the City's offer is not commensurate with the job duties and functions they perform. It also notes that the City's population increased by 9.6% between 1990 and 2000 from 110,000 to 120,000, thereby increasing the productivity and efficiency of the Fire Department. It submits that the continuity and stability of employment would be jeopardized by not sufficiently rewarding the firefighters for their dangerous work and health risks they face.

In respect to the criteria concerning the overall level of compensation and benefits received, each offers sharply different contentions. The FMBA concludes, from the evidence it has submitted, that it has shown that the benefits

and overall compensation received by the firefighters are considerably less than those received by other police and fire departments and that the adoption of the City's final offer would aggravate these inequities. The City disagrees. It cites contractual provisions shown a \$67,396 base pay in 2005 supplemented by longevity, 168 hours of holiday pay, 96 hours of bereavement pay, health insurance including prescription and dental benefits, five (5) to ten (10.5) and one-half twenty-four (24) hour shifts of paid vacation time and stipends that it contends exceed such allowances in any other city unit. The City also contrasts these benefits and compensation levels with the low per capita income (\$15,114) received by the City's residents.

After due consideration of the fully developed record, I proceed to decide the issues in dispute.

### **DISCUSSION**

The FMBA and the City have submitted substantial documentary evidence, testimony and oral and written argument in support of their last offers.<sup>1</sup> I am required to make a reasonable determination of the disputed issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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<sup>1</sup> The City has objected to the FMBA's submission of exhibits reflecting settlement discussions and offers. I sustain the objection and have excluded these documents from consideration.

- (1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.).
- (2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:
  - (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
  - (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.
- (3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
- (4) Stipulations of the parties.
- (5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq ).
- (6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a

municipality, the arbitrator or panel of arbitrators shall take into account to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element, or in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

- (7) The cost of living.
- (8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.
- (9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

The issues in dispute are primarily economic in nature. These include, among other things, wage increases, stipends for specialized training, certifications and assignments, prescription insurance, night/shift differentials, and holiday/vacation payments. The record reflects that all of the enumerated criteria are relevant to a disposition of these issues.

While I must assess the merits of the disputed proposals individually, I refer to criterion N.J.S.A. 34:13A-16g (8). This criterion directs that consideration be given to factors ordinarily or traditionally considered in the determination of wages and benefits. Such factors require that consideration be given to the totality of the changes to be made to an existing agreement. This is a valid consideration in this case due to the fact that the many economic issues cause an overall financial impact. Consideration of the totality is consistent with the statutory requirement that the arbitrator determine whether the total net annual economic changes for each year of the agreement are reasonable under all of the criteria. Thus, any decision herein to award or to deny any individual issue in dispute will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the totality of the terms of the entire award.

I first address the issue of contract duration. The City seeks a four year contract duration based upon having symmetry with the contracts that fall within its pattern of settlement argument. The FMBA seeks a contract of six years duration. It cites the fact that this agreement, under the City's proposal, would expire on June 30, 2009. This would thrust the City and the FMBA back into negotiations very soon after the issuance of this Award.

The respective positions on this issue each contain persuasive elements. The FMBA's argument for a longer contract would normally be the more attractive option. However, its argument must be balanced against the reality that four year agreements have been in place for the bargaining units that are the most comparable to the FMBA unit as well as all thirteen bargaining units. The FMBA is the sole unit seeking a contract duration that goes beyond the City pattern. The City's finances over this four year period have been structured to accommodate the costs linked to labor agreements that expire on June 30, 2009. The fact that this set of negotiations, unlike the others, pursued a different path towards ultimate resolution does not represent a sufficient basis for an extension of the contract period beyond the terms set forth in other agreements. For these reasons, I adopt the City's proposal that this agreement extend from July 1, 2005 through June 30, 2009.

I next turn to the major economic issues that are in dispute.

The FMBA and the City have each addressed the statutory criteria in support of their respective positions and have done so comprehensively. The award must represent a reasonable determination of the issues in dispute. The statute requires that all relevant factors be considered and weighed to allow for a balancing of all of the relevant criteria when making a reasonable determination of the disputed issues. In my evaluation of the evidence on the disputed issues in this proceeding, I find that all of the criteria are relevant but that the most

significant weight must be given to the factors that deal with the interests and welfare of the public, internal comparability between the FMBA and other units within the City (including the terms of the public safety agreements) and the financial impact of the terms of the Award on the governing body, its residents and taxpayers. The issues in dispute here very clearly implicate N.J.S.A. 34:13A-16g (2)(a), (b) and (c). This multifaceted criterion allows for consideration to be given to comparisons with public employees employed by the City, those employed in the private sector and those performing similar services in the same or comparable jurisdictions. Among these comparability fields, internal comparisons are the more significant on the record of this proceeding. Equally significant is the interests and welfare of the public (N.J.S.A. 34:13A-16(g)(1)) because this single factor embraces the statutory spending and taxing limitations set forth in N.J.S.A. 34:13A-16(g)(5) & (9), as well as financial impact considerations contained in N.J.S.A. 13A-16(6).

In evaluating the comparison arguments, I cannot sustain the Union's position that the comparisons between the firefighters and external labor agreements in municipalities elsewhere should be the governing principle. Pattern of settlement has been shown to be a longstanding reality within the City. The FMBA has a burden to establish that the pattern must be disregarded and, despite the forceful presentation it has made, it has not met this burden. Substantial weight must be given to the City's contention that new terms for the FMBA be reasonably consistent with the modifications agreed to in its other



units. However, strict adherence to each detail of contracts that constitute the pattern is neither required nor appropriate on all economic issues given the record evidence that the agreements in each of the City's other units contain certain differences that accommodate unique circumstances that were present in each of those units. By way of example, the law enforcement profession requires that attention be given to terms that are commonly understood to apply only to police officers such as the detective differential. Fire Officers have an interest in rank differential, a concept not applicable to rank and file firefighters. These observations favor an award that honors the internal pattern with respect to across the board increases while permitting adjustments in the FMBA unit that will accommodate issues that recognize the unique work and specializations that exist in fire science and in the fire service for firefighters. Notwithstanding the need to consider special circumstances that exist in the FMBA unit, the issues must be addressed in a manner that does not create present or future adverse financial impact on the City nor undermine the principle of pattern.

The respective proposals of the parties each seek primary support based upon considerations of comparability. However, the comparisons sought by each involve different sets of employees and jurisdictions. The City's emphasis has been on internal comparisons with its thirteen (13) bargaining units including those in public safety while the FMBA's focus is on terms and conditions of employment, and adjustments to same, in municipalities elsewhere, including Union County. From the City's view, its proposal of 3% per year is consistent

with its internal pattern of settlement while the FMBA's position is that its 5% proposal will make its comparability standing more equitable with departments outside of Elizabeth and the greater intensity of the work performed in Elizabeth. Under the facts of this case, the City's position on comparability is more persuasive than that of the FMBA. In the absence of such strong evidence of an internal pattern of settlement it may be that a salary award might not be identical to the pattern because other record evidence on the salary issue might be given more weight. However, the record shows the existence of a strong pattern within the City's public safety and in non-public safety units. At the time that the record was closed, the City had executed contracts with the Recreation Department Supervisors Association, the Recreation Maintenance Workers Association, the Elizabeth Superior Officers Association, the Policemen's Benevolent Association, the Elizabeth Local No. 4, the Elizabeth Fire Superior Officers Association, IAFF Local 2040, AFL, CIO, the City Hall Supervisors Association, the Elizabeth City Yard Workers, and the Union Council No. 8 New Jersey, Civil Service Association. In addition, the City references contracts that have been agreed to, but not yet executed with the Emergency Medical Benevolent Association, the City Yard Supervisors Association, the Elizabeth Public Health Nurses Association, and the Police Mechanics and Electricians Association. All of the above units have agreed to 3% across the board wage increases, the contract duration and the revised prescription drug program. The only remaining unsettled unit is the FMBA, the employee organization involved in this proceeding. The pattern of the across the board settlements governs the salary

issue. Accordingly, I conclude that salary increases of 3% on July 1, 2005, July 1, 2006, July 1, 2007, and July 1, 2008 represents the most reasonable determination of the salary issue. These adjustments will modify the existing salary schedule as follows:

	July 1, 2005	July 1, 2006	July 1, 2007	July 1, 2008
1 <sup>st</sup> 6 months of employment	\$42,028	\$43,289	\$44,588	\$45,925
2 <sup>nd</sup> 6 months of employment	\$50,277	\$51,786	\$53,339	\$54,939
2 <sup>nd</sup> year of employment	\$56,878	\$58,584	\$60,341	\$62,152
3 <sup>rd</sup> year of employment	\$62,094	\$63,956	\$65,875	\$67,851
4 <sup>th</sup> year of employment	\$64,968	\$66,917	\$68,925	\$70,993
5 <sup>th</sup> year of employment	\$67,845	\$69,880	\$71,977	\$74,136
6 <sup>th</sup> year of employment	\$70,729	\$72,851	\$75,036	\$77,288
7 <sup>th</sup> year of employment	\$73,600	\$75,808	\$78,082	\$80,424

The cost of the salary increases that have been awarded is \$402,750 in 2005, \$414,833 in 2006, \$427,277 in 2007 and \$440,096 in 2008 for a total impact of \$1,684,956 without factoring in cumulative cost. The \$1,684,956 is consistent with the City's proposal.

An additional element of the settlement pattern is the issue of the prescription co-pay. The record reflects that changes were made in those settlements to prior prescription drug co-payment program. The FMBA has not been subject to those changes due to the absence of a settlement. Uniformity in this program is in the interests and welfare of the public in that the City will have

predictability in its cost projections and more effective administration of the plan. I award the City's proposal. I note that some of the changes in the plan were effective March 1, 2006. I do not find it reasonable to award the changes that fall within the pattern of settlement and then have those changes applied retroactively to the FMBA. Accordingly, and notwithstanding the language that I have awarded, the changes shall be prospective and effective after the date of this award. Accordingly, the prescription drug co-payment program is modified as follows:

Effective January 1, 2004, employees shall pay a prescription co-pay of \$5.00. Effective March 1, 2006, the prescription drug plan shall be as follows: (i) Retail (Up to a 30 day supply) - generic mandated unless there is no generic equivalent with generic co-pay of \$5.00 and brand name co-pay of \$5.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost, in addition to a \$5.00 co-pay; (ii) mail order (Up to a 90 - day supply) - generic co-pay - \$0.00, brand name - \$0.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost. A doctor's certification must be prepared stating the generic is not acceptable.

It is significant that the 3% settlement pattern does not represent the totality of the economic changes that were made in the public safety labor agreements that are included in the pattern of settlement. As has been observed above, these units that fall within the settlement pattern have also incorporated into their settlements certain differences that accommodated unique circumstances that were present in each of these units. By way of example, the PBA agreement increased the Detective – First Grade stipend compensation to

\$3,100 per year as well as the Detective – Second Grade stipend to \$2,500 per year. These payments are part of base pay. The Night Differential stipend for eligible officers increased by \$1,000 in \$250 increments over the four years. The Fire Superior Officers Association negotiated improved new rank differentials having the impact of raising salary levels beyond the across the board increases. Calculations of the increases in the rank of Captain and Battalion Chief show increases exceeding 3% and are base pay increases. The Police Superior Officers Association received a night shift stipend that increased to \$2,100 in 2005, \$2,350 in 2006, \$2,600 in 2007, and \$2,850 in 2008. The record does not reflect whether these payments are in base pay but they are in addition to the across the board increases. The FMBA has offered sound reasons, supported by the record evidence that certain economic enhancements that are linked to the performance of specialized work are justified to accompany the across the board increases of 3% annually. The City does not disagree that the 3% wage increases bar additional economic modifications for the recognition of specialized work and training. It, as well as the FMBA, has proposed the addition of stipends but the parties disagree on the amounts and whether they should be base pay placements.

The City and the FMBA have differences and commonalities with respect to stipends. An EMT incentive of \$900 per year already exists in the agreement at Article XL. Each party proposes an increase in this stipend. The FMBA's proposal significantly exceeds the City's. There is no dispute that the stipend

would continue to be in base pay as is required by Article XL. Currently, there is no Hazmat stipend. However, the City proposes a stipend in 2007 and 2008 but does not seek the placement of the stipend in base pay. The FMBA seeks a Hazmat stipend of much greater value than proposed by the City, seeks that it be paid in each of the four years and, unlike the City, proposes that the stipend be placed into base pay. The FMBA has also proposed that certain procedures be set into place concerning assignments and retention to the Hazmat team that the City does not agree with. The City and the FMBA also propose a stipend for those assigned to Tech Rescue. This stipend also does not currently exist. The City proposes to pay a stipend in 2006, 2007 and 2008 and not to place the stipend in base pay. The FMBA seeks a stipend of much greater value than proposed by the City, seeks that it be paid in each of the four years and also proposes that the stipend be placed into base pay. The FMBA has also proposed that certain procedures be set into place concerning assignments and retention to the Tech Rescue team. The City has not agreed to these procedures. The FMBA also seeks a new First Responder/EMS payment and to place the stipend in base pay. The City does not propose a First Responder stipend.

The City's proposal concerning the EMT stipend is reasonable and is awarded. The EMT stipend shall be increased from \$900 to \$950 effective July 1, 2005, to \$1,000 effective July 1, 2006, to \$1,100 effective July 1, 2007 and to \$1,200 effective July 1, 2008. The EMT stipend shall continue to be considered

as a base pay payment for the same purposes as is stated in Article XL. The FMBA's proposal that the payment be expanded as base salary "for all purposes" is denied. In other words, the scope of the impact of base pay placement shall remain as is and not be expanded. The cost of the improvements in the EMT stipend is an additional \$4,000 in 2005, an additional \$4,000 in 2006, an additional \$8,000 in 2007 and an additional \$8,000 in 2008. The cumulative cost of these increases over a four year period is \$52,000. The cost is consistent with the City's proposal.

As stated above, the City and the FMBA have proposed that employees serving on the Hazmat and Tech Rescue Teams receive stipends. Neither specialization currently receives a stipend. Compensation for these assignments will promote firefighter participation in technical training and be a reward for the actual and potential additional risks and hazards associated with the work. These have been documented in the record. The FMBA has argued for higher payments and for the payments to be considered as base payments. I first address the amounts of the payments. While I am not confined to choosing between the proposals, the City's offers of \$1,200 in 2007 and \$1,500 in 2008 for Hazmat and \$700 in 2006, \$1,200 in 2007 and \$1,500 in 2008 for Tech Rescue are not unreasonable. The units are relatively new and expanding. The Union's proposal that increases annually towards a 7% stipend in each area are not reasonable. As the respective teams earn more experience, a stipend of greater value may be warranted based upon greater evidence of the work that eventually

gets performed. The FMBA's contention that the stipends be considered as part of base pay for those assigned to the teams does have merit. As stated above, the EMT stipend is already part of a firefighter's base pay, although Article XL limits the scope of the base pay payment. The stipend is compensation for specialized work performed. Similar logic applies with respect to the Hazmat and Tech Rescue stipends. The importance of this work has been noted in both submissions made by the City and the FMBA. The placement of this stipend into base pay for those who are assigned to the units will provide an additional reward and incentive for the training and certifications that may be required as well as for the performance of the work. This furthers the interests and welfare of the public who benefits from the protections provided by these teams. The scope of the base pay payment shall be the same as set forth in Article XL for the EMT stipend and language reflecting the same shall be placed into the agreement. That is, the stipends shall be paid in addition to, and in the same manner as, base salaries, but shall not be included in base salaries for the purposes of computing negotiated increases or longevity pay. Any negotiated increase in annual base salary shall not be applied to the Hazmat stipend or the Tech Rescue stipends.

Except for the impacts of placing the stipends into base pay, the costs of the stipends in 2007 and 2008 are consistent with the City's proposals. In 2007, the annual Hazmat stipend will cost \$62,400 and will cost \$78,000 in 2008. In 2007, the annual Tech Rescue stipend will cost \$91,200 and in 2008, the cost



will be \$114,000. The cost impact of base pay placement for the limited purposes as set forth above at an estimated cost of 17.5% calculated on an overall cost of \$243,000 yields a cost of \$48,600. As an offset to this cost, I do not award the City's proposal for a \$700 stipend in Tech Rescue effective July 1, 2006. This will provide a cost offset to the City of \$53,200.

The stipends with respect to Tech Rescue and Hazmat raise issues with respect to eligibility. All of these issues, including but not limited to assignment to and from, removal, qualifications and bidding cannot be definitely resolved in this award. I do award the guideline that a firefighter must be trained, certified and permanently assigned to the fire company or unit that is responsible for performing the Tech Rescue or Hazmat duty. The number of firefighters available for assignment to these respective units shall not exceed 76 and 52 respectively. Stipends shall be paid up to these numbers assuming that training and certification requirements are met. Once an employee has been assigned to a unit, he or she shall not be involuntarily transferred from the unit except for reasons including discipline, failure to meet performance standards set by the Department or failure to continue to meet training and certifications set by the Department. Initial assignment in the units shall be by seniority among those who the Department deems qualified based upon the training and certification requirements that it makes known to the Union. I award a joint committee for the purpose of review and discussion of these and any remaining procedural issues.

The City and the FMBA disagree on whether there should be a First Responder/EMS payment. The presentation of the FMBA documents the amount of the specialized work performed, the training associated with the work and the inherent dangers of the duties performed in the densely populated and urban environment of Elizabeth. A stipend, in base pay, for the limited purposes set forth in Article XL, is reasonable and justified but not at the level sought by the FMBA. I award a stipend of \$800 effective July 1, 2008. The stipend would apply unit-wide inasmuch as all unit personnel are required to perform these duties. The cost of the stipend is \$161,500. This award is not inconsistent with the City pattern as the record evidences individualized improvements in base pay above the 3% pattern such as in the adjustments in the top step grades for ranks in the Fire Officers unit. This amount represents the only cost that exceeds the City's last offer on all issues it has proposed over a four year period. Based upon the overall financial evidence in the record, this amount clearly falls within the City's financial abilities and obligations. As an offset to this cost, and as part of the salary award, I award a new hire salary schedule effective on the date of this award. The schedule will freeze the salary steps for the first and second six months of employment steps at the 2007 levels and provide an additional step at the eighth year of employment level. This represents an additional year towards the achievement of the salary maximum. The salary steps between the second six months of employment and the eighth year of employment shall be set by equal dollar amounts. Based upon a new hire moving through to new hire salary schedule the City will achieve a savings of \$33,161 per employee, a savings that

will represent a reasonable cost offset to the City especially in light of the fact that 78% or more of unit employees are currently at the maximum level of pay.

The new hire salary schedule shall read as follows:

	May 5, 2008 through June 30, 2009
1 <sup>st</sup> 6 months of employment	\$44,588
2 <sup>nd</sup> 6 months of employment	\$53,339
2 <sup>nd</sup> year of employment	\$57,208
3 <sup>rd</sup> year of employment	\$61,077
4 <sup>th</sup> year of employment	\$64,946
5 <sup>th</sup> year of employment	\$68,815
6 <sup>th</sup> year of employment	\$72,684
7 <sup>th</sup> year of employment	\$76,553
8 <sup>th</sup> year of employment	\$80,424

I do not award the FMBA's proposals concerning night shift differential nor tech days. The differential would add an additional 4% to each firefighter's base pay and the tech days would add an additional four (4) twenty-four (24) hour days of paid time off or cash if not used at the end of each year. The City has urged rejection of these proposals as not having merit based upon various considerations. The objections as to merit need not be fully addressed because the net impact of these proposals on the total overall net economic value of the Award would go so substantially beyond the allowable limits of financial impact and beyond the reasonable consistency required between this Award and the internal patterns of settlement that it would be unreasonable to include them in the Agreement during this contract term.

Subsumed within this analysis is a disposition denying the FMBA's general proposal that all special payments be incorporated into base pay for all

purposes. The only payments or stipends that shall be placed into base pay, other than those that may have previously existed and remain unaltered, are those awarded in the above analysis.

An additional economic issue in dispute concerns compensation to be paid to Acting Captains. The City has proposed to add Section 3 to Article XIV:

The Acting Captain rate shall be frozen until the time the rate is equal to or less than the rate of a first year Captain. If the rate is lower than the first year Captain, that rate shall be adjusted to reflect the rate of the first year Captain.

Currently, under Section 1, "any firefighter assigned to a Captain's position on an acting basis shall be paid for such work at the Captain's base rate of pay..." The FMBA alleges in this proceeding, and in pending grievances and unfair labor practices, that the City has broken a practice that pays an Acting Captain at the Third, or highest, step of the Captain's pay. The FMBA claims that the City has ceased this practice after the latest wage adjustments were made to the Elizabeth Fire Superior Officer's Association contract. That contract provides for Fire Captain Step 1, Step 2 and Step 3. The City's proposal to freeze the Acting Captain rate is that the practice caused this rate to have a higher monetary value than that of an Acting Battalion Fire Chief and Acting Deputy Fire Chief and that this is an inequitable situation because the Acting Fire Captain manages far fewer personnel per shift. After due consideration of the record on this issue, I do not find adequate support in the City's position to alter the manner in which the City compensates a firefighter who serves as an Acting Captain

under the standards set forth in Article XIV. This award to require payment at the Third Step of Fire Captain's pay shall be prospective and effective on the date of this award.

I next turn to the issues that concern holiday and vacation buy back. The City's objections to setting cash-ins at eighty-eight (88) hours rather than seventy-two (72) hours do not outweigh the merits of the FMBA's proposals. The ability to increase the hours to eighty-eight (88) could in fact serve the City's staffing needs by relieving absences due to paid time off. Moreover, the FMBA's proposal appears to be consistent with the changes made in the PBA agreement. I award the holiday/vacation buy back of eighty-eight (88) hours effective July 1, 2007.

The FMBA has also proposed to extend the time in which holiday and vacation leave can be taken. Currently, at Article XVII, Section 5, vacation time must be used in the vacation years in which it is earned or it is forfeited. This requirement can be waived by the Department and one (1) year's accumulation may be carried into the next succeeding year with the approval of the Fire Director. It is not unreasonable to allow a vacation carryover, by contractual right, for an additional year after the vacation year in which the vacation was earned. No evidence has been presented that would show that this would have a negative impact on departmental operations. Accordingly, it is awarded effective July 1, 2007. The language that requires approval or waivers shall be

deleted. For similar reasons, I find it reasonable for the City to give employees the right to hold over holiday time to December 31 of the following year instead of April 1 of the following year. This proposal is awarded effective July 1, 2007.

The training issue has been the subject of much discussion between the parties. While these discussions have touched upon differences on certain points, the governing principles are those set forth in a Settlement Agreement executed by the City and the FMBA on July 1, 2005. This agreement has been referred to as the USAI Side Agreement. It is reflected in the City's proposals. It is awarded as well as any existing contract language and practice on this issue to the extent that the Side Agreement shall govern and override any existing contract language and practices that may be to be contrary.

The terms of the Award represent a reasonable determination of all disputed issues with due regard for the statutory criteria I have deemed relevant for the resolution of the dispute. The interests and welfare of the public have been given significant weight by virtue of an award that can be funded without adverse financial impact on the governing body, its residents or taxpayers and within the financial constraints required by the statutory limitations on the budget and tax levy. Significant weight has also been given to internal comparability by awarding terms consistent with the internal pattern of settlement coupled with economic enhancements that are reasonably consistent with those provided in the other public safety bargaining units. The continuity and stability of

employment for Elizabeth firefighters will be maintained by salary adjustments consistent with other public safety bargaining units in the City of Elizabeth and by providing incentives for participation in specialized technical teams where training and/or certifications are required.

Accordingly, and based upon all of the above, I respectfully submit the following Award:

**AWARD**

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

2. **Duration**

The duration of the Agreement shall be July 1, 2005 through June 30, 2009.

3. **Salary**

Each step of the salary schedule shall be increased by 3.0% on July 1, 2005, July 1, 2006, July 1, 2007, and July 1, 2008. All increases shall be effective and retroactive to their effective dates. The salary schedule shall read as follows:

	July 1, 2005	July 1, 2006	July 1, 2007	July 1, 2008
1 <sup>st</sup> 6 months of employment	\$42,028	\$43,289	\$44,588	\$45,925
2 <sup>nd</sup> 6 months of employment	\$50,277	\$51,786	\$53,339	\$54,939
2 <sup>nd</sup> year of employment	\$56,878	\$58,584	\$60,341	\$62,152
3 <sup>rd</sup> year of employment	\$62,094	\$63,956	\$65,875	\$67,851
4 <sup>th</sup> year of employment	\$64,968	\$66,917	\$68,925	\$70,993

5 <sup>th</sup> year of employment	\$67,845	\$69,880	\$71,977	\$74,136
6 <sup>th</sup> year of employment	\$70,729	\$72,851	\$75,036	\$77,288
7 <sup>th</sup> year of employment	\$73,600	\$75,808	\$78,082	\$80,424

For employees hired on or after May 5, 2008, the salary schedule shall read as follows:

	May 5, 2008 through June 30, 2009
1 <sup>st</sup> 6 months of employment	\$44,588
2 <sup>nd</sup> 6 months of employment	\$53,339
2 <sup>nd</sup> year of employment	\$57,208
3 <sup>rd</sup> year of employment	\$61,077
4 <sup>th</sup> year of employment	\$64,946
5 <sup>th</sup> year of employment	\$68,815
6 <sup>th</sup> year of employment	\$72,684
7 <sup>th</sup> year of employment	\$76,553
8 <sup>th</sup> year of employment	\$80,424

4. **Acting Fire Captain**

Article XIV, Section 1 shall be clarified to require that any firefighter assigned to a Captain's position on an acting basis shall be paid for such work at the rate of a Fire Captain – 3<sup>rd</sup> Year of Employment. This clarification shall be effective prospectively commencing on the date of this Award.

5. **Holidays – Article X, Section 7**

This section shall be modified to state the following: Effective July 1, 2008

Employees earning holiday time off under Section 1, above, may cash in up to eighty-eight (88) hours of holiday time, subject to the City's budgetary constraints, to be paid the first pay period in June. Day workers covered by this Agreement may cash in up to eighty-eight (88) hours of vacation time, subject to the City's budgetary constraints to be paid the first pay period in June. The hours cashed out shall be deducted from the employee's holiday time allotment, or in the case of day workers their vacation allotment. An employee seeking to cash out holiday time or vacation time under this Section must submit a written request to the



Director or his designee no later than June 1 of the year preceding the year in which cashing out is sought.

6. **Holidays – Article X, Section 6**

This section shall be modified to state the following:

Effective July 1, 2007, all holiday time off under Section 1, above, for a given calendar year must be used by December 31 of the year following the year in which the holiday time was earned or it shall be forfeited. Cases of special need will be referred to the Director.

7. **Vacation – Article XVII, Section 5**

This section shall be modified to include the following:

Employees shall have the right to hold over one year's accumulation of vacation leave into the next succeeding year.

8. **Training**

The parties shall incorporate the terms of the USAI side agreement into a contract. The terms are set forth in the City's proposal. Any existing contract language and practices shall be carried forward. However, the side agreement shall govern and override any existing contract language and practices that are to the contrary.

1. Employees requesting to attend a fire related school must submit the request to the Division of Training who then in return will forward the request to Fire Headquarters for approval by the Fire Director and/or Chief of the Department.
2. The Department shall make every effort to grant school/training when manpower is permitting on the days that the requesting employee is scheduled to work.
3. No reimbursement or compensation of any kind will be granted to employees permitted to attend a fire related school.
4. When the Department sponsors and/or initiates fire related schools, compensatory time shall be given to any employee that chooses to attend. Compensatory time at the rate of one and one half hours will be granted for every hour worked in excess of his/her regularly assigned work week.
5. Employees may be assigned to the Training Division at the discretion of the Fire Director and/or Fire Chief. Employees assigned to the Training Division shall be placed on the 4-3 work schedule described

- in Section 2 of Article VII, or, in the City's discretion, the 5-2, eight (8) hour per day, five (5) days a week Monday through Friday, work schedule for a total of forty (40) hours per week for the duration of their assignment to the Training Division. Employees will be compensated for holidays that occur during their assignment to the Training Division in accordance with Article X "Holidays", Section 4 of this Agreement.
6. Employees regularly assigned to Firefighting duties who are temporarily assigned to the training Division are placed on the 4-3 or 5-2 work schedule will not be permitted to utilize vacations during their assignment to the Training Division.
  7. Employees who are "ordered" to attend training and not reassigned to the Division of Training shall be compensated at the rate of one and one half hours for every hour worked over their assigned workweek.
  8. Travel time will be reimbursed in compensatory time at straight time for a minimum of one half hour for each direction totaling one hour per day for each day the employee attends school. Travel time will not be reimbursed for the days that the employee would have normally been scheduled to work.
  9. Employees shall be granted ten hours school/training the night before or after training is scheduled unless more time is required for travel.
  10. When employees attend Department sponsored training reimbursement for mileage will be at the IRS rate per mile traveled. Not included in the travel distance is the distance the member would have traveled to work on their normal scheduled shift.
  11. Tolls will be reimbursed provided receipts are submitted. No meals will be reimbursed.
  12. UASI training shall be handled in accordance with the Side Agreement dated July 1, 2006 (copy attached).

9. **Prescription Co-Pay**

Effective on the date of this award, the prescription co-pay program shall be as follows. Notwithstanding the language awarded below, the application of this new provision shall be prospective and not retroactive.

Effective January 1, 2004, employees shall pay a prescription co-pay of \$5.00. Effective March 1, 2006, the prescription drug plan shall be as follows: (i) Retail (Up to a 30 day supply) - generic mandated unless there is no generic equivalent with generic co-pay of \$5.00 and brand name co-pay of \$5.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost, in addition to a \$5.00 co-pay; (ii) mail order (Up to a 90 - day supply) - generic co-pay - \$0.00, brand name - \$0.00, provided that if the employee insists on a brand name when a generic is permissible, the employee agrees to pay the difference between the cost of the brand name and the generic cost.

A doctor's certification must be prepared stating the generic is not acceptable.

10. **Stipends**

A. EMT stipend

Effective July 1, 2005 – Increase annual stipend by \$50 from \$900.00/yr. to \$950.00/yr.

Effective July 1, 2006 – Increase annual stipend by \$50 from \$950.00/yr. to \$1,000.00/yr.

Effective July 1, 2007 – Increase annual stipend by \$100 from \$1,000.00/yr. to \$1,100.00/yr.

Effective July 1, 2008 – Increase annual stipend by \$100 from \$1,100.00/yr. to \$1,200.00/yr.

B. First Responder/EMS

Effective July 1, 2008 there shall be a \$800 stipend to each firefighter to be in base pay for purposes identical to that stated in Article XL.

C. Hazmat Stipend

Effective July 1, 2007 – Annual Stipend of \$1200.00

Effective July 1, 2008 – Annual Stipend of \$1500.00

The stipend shall be in base pay for purposes identical to that stated in Article XL.

D. Tech Rescue Stipend

Effective July 1, 2007 – Annual Stipend of \$1200.00

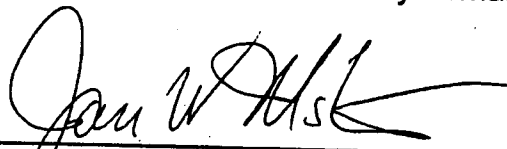
Effective July 1, 2008 – Annual Stipend of \$1500.00

The stipend shall be in base pay for purposes identical to that stated in Article XL.

11. **Tech Rescue/Hazmat Procedures**

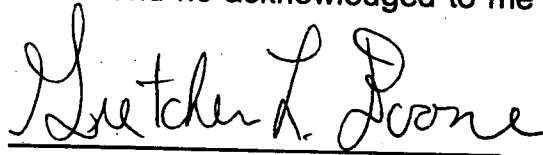
To qualify for the stipend, a firefighters must be trained, certified and permanently assigned to the fire company or unit that is responsible for performing the Tech Rescue or Hazmat duty. The number of firefighters available for assignment to these respective units shall not exceed 76 and 52 respectively. Stipends shall be paid up to these numbers assuming that training and certification requirements are met. Once an employee has been assigned to a unit, he or she shall not be involuntarily transferred from the unit except for reasons including discipline, failure to meet performance standards set by the Department or failure to continue to meet training and certifications set by the Department. Initial assignment in the units shall be by seniority among those who the Department deems qualified based upon the training and certification requirements that it makes known to the Union. I award a joint committee for the purpose of review and discussion of these and any remaining procedural issues.

Dated: May 5, 2008  
Sea Girt, New Jersey

  
\_\_\_\_\_  
James W. Mastriani

State of New Jersey        }  
County of Monmouth       }ss:

On this 5th day of May, 2008, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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