

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

CITY OF NEW BRUNSWICK

“Employer,”

- and -

FMBA LOCAL 17

“Union.”

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2007-092

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Kathryn Hatfield, Esq.
Bauch, Zucker, Hatfield, LLC
of counsel and on the brief

For the Union:

David I. Fox, Esq.
Lynsey A. Stehling, Esq.,
of counsel and on the brief
Fox & Fox, LLP

This proceeding was convened as a result of an impasse between the City of New Brunswick [the "City"] and FMBA Local 17 [the "Union" or "FMBA"], an employee organization representing all rank and file firefighters in the City's fire department.

The record in this matter closed on or about July 1, 2009 after lengthy and repeated unsuccessful attempts by the parties to reach a voluntary resolution. Following two mediation efforts, interest arbitration hearings were held on December 5, 2007 and July 31, 2008. Following the submission of expert economic reports from each party, post-hearing briefs were filed on or about July 1, 2009, at which time the record was closed.

The parties did not mutually agree on an alternate procedure. According, the terminal procedure in this matter is conventional arbitration. N.J.S.A. 34:13A-16d(2), which allows an arbitrator broad authority to render an award without being limited to choosing any portion of a final offer submitted by either party.

As required by statute, each party has submitted a final offer for the arbitrator's consideration. The City's final offer is follows:

FINAL OFFER OF THE CITY OF NEW BRUNSWICK

1. **Article III, Duration of Agreement:** 3 years – January 1, 2007 to December 31, 2009.
2. **Article VI, Sick Time, Section 5:**

- A. Change major illness period to six (6) months.
 - B. While out on major illness benefits shall not accrue.
 - C. Increase amount of time charged to accumulated sick time to 240 hours.
3. **Article VI, Sick Time, Section 7:** Sick call out shall be charged hour for hour.
4. **Article X, Health Benefits and Hospitalization:**

Section 1: Add new paragraph as follows:

Effective April 15, 2008, each employee shall contribute toward the cost of the health care premium. Such contribution shall not be less than 10% of the premium for whatever plan the employee chooses. For employees hired after April 15, 2008, the City shall pay the cost of the health care premium, less 10% for new hires. New hires shall be responsible for the entire premium cost for spouse and/or dependent health coverage.

Section 2. Add the following at the end of the paragraph "and that the retiree shall be responsible for any Medicare premiums."

Section 3. Dental:

Modify paragraph as follows:

The City agrees to provide all full time employees, their spouse and dependents with dental coverage. Specifically employees may choose to participate in either the Dental Option Plan, the PPO Plan or the Manage Dental Choice Plan. Effective April 15, 2008, any increases in the premium rates over the 2007 rate shall be borne by the employee.

Section 4. Vision Care and Prescription Plan

Delete 3rd paragraph and modify as follows:

Effective April 15, 2008, the prescription co-pay shall be as follows:

- \$10.00 co-pay for generic drugs
- \$20.00 co-pay for preferred brand name drugs
- \$30.00 co-pay for non-preferred brand name drugs

Co-pays will be doubled for 90 day supply via mail order, i.e. \$20.00/\$40.00/\$60.00.

Effective April 16, 2008, employees shall no longer be able to submit co-pay reimbursement requests through Aetna.

5. **Article XVII, Wages:** Increase salaries by the following:

Effective January 1, 2007 – 3.5% increase

Effective January 1, 2008 – 3.5% increase

Effective January 1, 2009 – 3.5% increase

EMT Stipend: Add language stating that a firefighter who loses his/her EMT Certification shall lose the stipend and shall be required to pay the costs associated with re-certification.

FINAL OFFER OF THE FMBA

1. **Five (5) Year Contract** – The FMBA is seeking a five (5) year CNA, from January 1, 2007 through December 31, 2011.

2. **Salary Increases** – The FMBA proposes the following increases for the CBA.

January 1, 2007 – 5 ½% across-the-board salary increase;

January 1, 2008 – 5 ½% across-the-board salary increase;

January 1, 2009 – 5 ½% across-the-board salary increase;

January 1, 2010 – 5 ½% across-the-board salary increase; and

January 1, 2011 – 5 ½% across-the-board salary increase;

The FMBA is seeking the above salary increase to be applied to all steps in the Firefighter salary guide as set forth in Article XVII, Wages.

3. **EMS Pay** – Pursuant to Article XVII, Wages, members of the FMBA who are EMT certified receive a differential in the amount of 1 ¼% of their base salary. This payment has not been increased since January 1, 1998. As set forth above, the FMBA responds to a large number of EMS calls, the number of which has increased substantially every year. Accordingly, the FMBA is seeking to increase the current stipend to 2 ½% a year. This proposal is reasonable because a large number of municipalities that provide the above services, which include, but are not limited to Roselle, Hillside, and the like, receive compensation of at least 2 ½% of their annual salary.

4. **Senior Duty Pay** – The PBA, pursuant to Article XIX, Salary Guides, Section f, receives a 3% differential upon the completion of fifteen (15) years of continuous service with the City. The FMBA should be afforded the same benefit as the PBA.
5. **Holidays** – The PBA, pursuant to Article XVII, Holidays, receives compensation for 16 holidays. The above compensation is equal to 128 hours, or 8 hours per day, at the officer's individual hourly rate. See page 18 of the PBA CNA. Article XC, Holidays, of the FMBA CNA provides for only 13 holidays with an hourly rate of 9.69 hours per holiday which is lower than the actual holiday hours for a day for firefighters. Notwithstanding this, the holiday hours in base pay for firefighters are 126 and 128 for police officers. The FMBA CNA should be adjusted to reflect 16 holidays at 9.69 hours.
6. **Clothing Allowance** –The FMBA currently receives \$580 per year for the cleaning and maintenance of uniforms, pursuant to Article IX, Uniforms and Equipment, Section 1. The FMBA also receives \$431 for the replacement for clothing and equipment per year pursuant to Article IX, Uniforms and Equipment, Section 2. The FMBA, in total, receives compensation in the amount of \$1,011 per year. The FOA, however, pursuant to Article IX, Uniforms and Equipment, receives \$1,100, in total, for the same clothing allowance payments. The FMBA is seeking to increase the above-mentioned payments so that the FMBA members receive the same total clothing allowance currently received by the FOA.

The PBA, in its most recent Memorandum of Agreement, received an increase from \$50 to \$100 in connection with the City's reimbursement for the replacement of a watch or time piece that was damaged in the line of duty. The PBA also received an increase from \$100 to \$150 for the replacement of eyeglasses or contact lenses that was damaged in the line of duty. The FMBA should be provided the same increase in the above reimbursement. See PBA MOA, dated September 2006.

7. **Sick Time Buyout** – Currently, all firefighter hired after November 1, 1990, are entitled to a accumulated sick leave payout not to exceed \$15,000 upon retirement. See Article V, Sick Time, Section 2a of the FMBA CNA. The PBA, on the other hand, is provided a sick time payout cap of 481 hours calculated at the member's hourly rate. See Article VI, Sick Time, Section 5, Subsection D of the PBA CNA. The FMBA is seeking to raise the buyout cap so that the FMBA is entitled to the PBA's cap of 481 hours to be calculated at the member's hourly rate.
8. **Health Benefits – Widow Benefits** –The FOA, pursuant to Article X, Health Benefits and Hospitalization, Section 1, receives continued benefits for any widow and dependants of a deceased employee for a minimum of

two (2) years after the death of an employee. The FMBA is seeking to incorporate the same language into their CNA.

9. **Health Benefits – Option Plans** – Currently, the FOA, in Article X, Health Benefits and Hospitalization, Section 1, receives the following benefit: “The City shall pay 65% of the costs, for option plans [e.g. HMO], which are selected by the employee.” This language has not been incorporated into the FMBA’s CNA. The FMBA is seeking to incorporate this language into its CNA. Currently, the FMBA is required to pay for any increased costs for option plans that are selected by the employee. See Article X, Health Benefits and Hospitalization, Section 1 of the FMBA’s CNA.

10. **On-Call Payment** – The PBA, in its most recent MOA, incorporated the following new section into its CNA:

An officer whose assignment requires that he/she be available on an on-call basis to respond to an incident or crime during off hours shall receive four (4) hours overtime pay for each on-call rotation of seven (7) calendar days. This compensation shall be in addition to overtime compensation for the actual unscheduled work performed.

Certain members of the FMBA are required to on-call with pagers also. Specifically, two (2) members per shift, or eight members a month, are required to remain on-call while they are off duty. The above members should, therefore, receive the same compensation set forth above. In addition to the above, the FMBA is seeking to clarify the current on-call policy within the Fire Department.

11. **Tuition Reimbursement**– The PBA recently incorporate a provision into the successor CNA relating to tuition reimbursement. The FMBA should be provided the same benefit.
12. **Rest Period** – Currently, firefighters are required to engage in a ten (10) hours rest period before and after each twenty-four (24) hour shift unless there is an emergency. See, Article V, Hours of Work and Overtime, page 13 of the FMBA CNA. The FMBA is seeking to change the language so that firefighters are required to take a ten (10) hour rest period before and after each thirty-eight (38) hours consecutively worked.
13. **Mutual Swaps** – Firefighters are allowed up to six (6) “mutual swaps” a year. See, Article V, Hours of Work and Overtime, page 13 of the FMBA CNA. The FMBA is seeking to increase the number of “mutual swaps” from six (6) to eight (8) per year.

14. **Personal Days** – The FMBA, pursuant to Article VI, Personal Days, of the FMBA CNA, is allowed on certain holidays, which include, December 24, 25, and January 1, to use a personal day to be granted on the basis of seniority. The FMBA is seeking to include Thanksgiving and Easter among the days in which members are allowed to utilize personal days.
15. **Personal Day/Vacation Day Selection** – The FMBA is seeking to revise/clarify the current practice relating to the use of personal days and vacation days within the Fire Department. Currently, the City only allows five (5) fire officers and rank-and-file firefighters to take time off, whether it be related to the use of a vacation day or a personal day, during a given tour. The FMBA is seeking to clarify the current policy relating to the use of personal days and vacation days so that a member of the FMBA's ability to utilize a personal day is not reduced based upon an officer's selection of time off.
16. **Wage Computation** – See page 23 of the Fire Officers CNA. This present practice of computation should be incorporated into the FMBA's CNA.
17. **Grievance Procedure – Step 4** – The Grievance Procedure for binding arbitration proceeds through PERC. The reference, therefore, to the rules of the New Jersey State Board of Mediation in Newark should be changed to PERC. Of course the PERC location could either be Trenton to Newark.
18. **Vacations** – The parties have agreed on the specifics of a language change pertaining to the manner in which vacation hours allocated for new hires. Attached is a copy of Article XII at pages 21 and 22 of the CNA.

The parties have agreed the language set forth below would appear on the attached Article to be inserted immediately after subparagraph E:

“The calculation of the hours to which employees are entitled under this Article shall be based on the anniversary date. Therefore, on the anniversary date after one year on the job an employee will, as is set forth hereinafter, receive 144 hours vacation time. This will be credited to his account for the calendar year in which the anniversary occurs. If at that time that vacation time or any additional vacation time which is given cannot be schedule during the calendar year in which the anniversary date occurs, the balance will be added to the following calendar year's entitlement beginning January 1. This practice will apply to the other anniversary dates which are after 3 years: 240 hours; after 10 years: 288

hours: after 14 years: 336 hours; and after 16 years: 396 hours.”

BACKGROUND

The City of New Brunswick is one of 25 municipalities in the County of Middlesex and serves as a county seat. In 2007, its population was 48,973, ranking it fourth in population behind Woodbridge Township, Edison and Old Bridge Township. The City has experienced growth since 2000 when its population was 41,885. City documents accurately define New Brunswick as a hub of central New Jersey given its easy access to major highways, toll roads, rail lines and the location of major corporations, Rutgers University, multiple hospitals and the busy business district housing County government facilities, the arts and dining establishments. Its real property valuation consists mainly of residential property (51%), commercial (25%) and industrial (10%).

The City negotiates with five employee bargaining representatives. In addition to FMBA Local 17 representing rank and file firefighters, FMBA Local 217 represents fire superiors. Law enforcement representatives include PBA Local 23 representing rank and file police officers and PBA Local 23A representing police superiors. Blue and white collar employees are represented by the Municipal Employees Association (MEA).

The overriding and central basis for this impasse is the parties' disagreement over whether contract negotiations over the term of this agreement

should result in the FMBA achieving parity with the PBA. This, it defines, as either receiving identical value in the respective contract's economic terms or equivalency in value between the more recent PBA Agreement (2006-2009) and the new FMBA Agreement (2007-2009 City proposal or 2007-2011 FMBA proposal). As is evident from the parties' submissions on the many economic issues that are at impasse, the FMBA supports many of its proposals with argument that there should be common treatment between the FMBA and the PBA. The City responds that the FMBA's premise is flawed because the concept of parity has never existed between the FMBA and the PBA, that the City's proposals are reasonable and must stand on their own and that a more appropriate comparison is between the FMBA and the FOA. In addition to this, the parties also disagree on many issues which stand independent of parity and focus on internal comparability, financial impact, external comparability with other paid fire departments and equitable considerations. The FMBA has also objected to insurance premium sharing, an issue that was addressed by legislation during the course of this proceeding.

For the purposes of clarity, I set forth the issues in dispute as follows along with a brief summary of each party's position on the issue in dispute. In the Discussion section of this decision I set forth my award on these issues and incorporate the following summaries in that analysis.

Article III – Duration

The City proposes a contract duration of three years, effective January 1, 2007 through December 31, 2009. The FMBA proposes a five year agreement effective January 1, 2007 through December 31, 2011.

According to the City, the FMBA did not present any objection to a three (3) year Agreement other than to state its proposal for a five (5) year Agreement. In the City's view, a five year Agreement would not serve the interests of the public because it locks the City into wage increases which, under the FMBA's proposal, could have an adverse impact on the interests and welfare of the public due to the substantial increases sought.

The FMBA contends that an Agreement extending through December 31, 2011 is appropriate because due to the protracted nature of negotiations, an award of its proposed length would effectively cover less than two prospective years, thereby promoting stability and continuity in labor relations.

Article XVII – Wages

The parties have offered extensive argument and evidence on this issue. While all have been considered, I will offer a concise summary of their positions.

The City proposes to increase salaries by the following:

Effective January 1, 2007 – 3.5% increase
Effective January 1, 2008 – 3.5% increase
Effective January 1, 2009 – 3.5% increase

The FMBA proposes the following increases to be applied to all steps in the firefighter salary guide as set forth in Article XVII, Wages.

January 1, 2007 – 5 ½% across-the-board salary increase;
January 1, 2008 – 5 ½% across-the-board salary increase;
January 1, 2009 – 5 ½% across-the-board salary increase;
January 1, 2010 – 5 ½% across-the-board salary increase;
January 1, 2011 – 5 ½% across-the-board salary increase; and
January 1, 2012 – 5 ½% across-the-board salary increase.

The FMBA offers several justifications for its salary proposal and supports its argument with documentary evidence on each point. The FMBA, in support of its proposals, asserts the following:

- (1) The FMBA's Financial Expert submitted a Financial Report and Supplemental 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 Middlesex County;
- (3) Firefighters perform comparable public safety functions to New Brunswick Police Officers, yet work more hours per year than New Brunswick Police Officers;
- (4) Police Officers receive a salary that is substantially greater than the salary received by members of the FMBA; and
- (5) The City settled with the PBA for the 2006 through 2009 calendar year, providing PBA members with a 4% increase in 2006 and a 4.5% increase for 2007-2009, with an additional payment of \$1,085 rolled into base pay on January 1, 2008. That payment was incorporated into base salary prior to the 4.5% increase for the 2008 calendar year.

The City responds that the FMBA's salary proposal is unsupported by evidence of parity or by any of the statutory criteria. Citing testimony from its Business Administrator, Thomas A. Laughlin, 3rd, the City asserts that it has not negotiated pay increases based upon what other units have received and that any salary gap that may exist between the two organizations has flowed from separate negotiations and individual issues. The City points out that the contracts have different start and end dates, that there are significant differences in fringe benefits and that each unit has unique characteristics. It points to documents in evidence showing that percentage salary increases beginning in 2000 were not identical in any year except for 2002. The City further points out that its proposal offers similar value to the agreements that it made with the Fire Superior Officers who received 3.5% increases in contract years 2007 and 2008. To do otherwise, the City alleges, would result in an "extremely detrimental effect" within the fire department to its negotiations posture and morale.

The City further disputes the value of the municipalities that the FMBA has selected for comparison purposes alleging that the Union submitted no evidence concerning whether they are in fact comparable to the City of New Brunswick. Even if they were to be compared, the City asserts that the FMBA's wage proposals far exceed what was negotiated in the other municipalities.

The City also contends that the FMBA's proposals would have adverse financial impact on its budget and on other remaining obligations. The City

points out that its pension contributions between 2004 and 2008 have skyrocketed (1,091%) as well as the cost of providing health benefits (59.3%). In the meantime, the City submits evidence that CMPTRA aid from the State of New Jersey decreased by 9.2% between 2004 and 2008 and specifically by \$955,000 in 2008, representing the equivalent of 7.34 municipal tax points. These and other factors are said to have caused huge municipal tax rate increases: \$0.21 in 2007 and \$0.17 in 2008, the largest such increases over the last twenty years.

EMS Pay

Currently, members of the FMBA who are EMT certified receive a differential in the amount of 1 ¼% of their base salary, an amount that has not been increased since January 1, 1998. The FMBA seeks to increase the current stipend to 2 ½% a year effective January 1, 2007. The FMBA asserts that this proposal is reasonable because a large number of municipalities that provide EMS services are claimed to receive compensation of at least 2 ½% of their annual salary, including West Orange, Teaneck, Clifton, Linden, Hillside, Ocean City, Maplewood, Belleville, Ventnor City, Roselle, South Orange, Westfield, Wildwood, North Wildwood, Ridgewood, Bergenfield, Hackensack.

In support of its proposal, the FMBA offers the following argument:

Currently, there are 65 rank-and-file Firefighters employed by the City. See FMBA Exhibit No. 54. Of that number, 61 Firefighters are EMT certified. Id. The current pay for the maintenance of the EMT Certification

and the performance of EMT duties ranges from \$373 for a Step 1 Firefighter to \$943 for a top pay Firefighter. Id. FMBA President James Keefe submitted a Certification with respect to the background of EMT duties and pay. Id. The following background information is relevant in assessing the need to increase the EMT payment in the manner set forth above:

....the Fire Department does not maintain any ambulances within the Fire Department. As a result, Firefighters do not provide transport services. The Fire Department does, however, maintain EMS equipment on each and every apparatus so that all Firefighters are able to provide medical assistance when responding to calls that may require medical assistance. Ambulance transport services are provided by either Robert Wood Johnson Hospital or Saint Peter's University Hospital.

The Fire Department is required to respond to all of the following medical calls: cardiac arrest situations, motor vehicle accidents, lift assists, and any and all situations wherein an ambulance is unable to respond to a medical call from either Robert Wood Johnson Hospital or Saint Peter's University Hospital. It is critical to note that Firefighters also respond to all fire and medical calls within the area known as "Rutgers Village". "Rutgers Village" is comprised of approximately 300 homes.

The FMBA's proposal is especially reasonable when reviewing the large number of gruesome medical calls that all Firefighters are required to respond to. In that regard, Firefighters have responded to some of the following incidents: stabbing incidents, gun shot incidents, drug overdoses, motor vehicle accidents, domestic violence incidents, decapitations, murder-suicides, incidents where individuals have been hit by trains, mentally distressed and/or violent patients, and a large number of other gory situations.

Id.

The FMBA further asserts that it is entitled to special consideration in the area of wages, specifically EMT payments, because of the difference in pay between the FMBA and other Fire Departments in Middlesex County and throughout New Jersey for the performance of these EMT duties. As set forth in numerous FMBA's Exhibits, and as will be addressed herein, the New Brunswick Fire Department responds to and handles an exceptionally large amount of emergency medical service calls. The amount of work performed during these medical calls, include all the important EMS related calls, and comprises a significant percentage of fire runs.

The FMBA, through the submission of documentary evidence, demonstrated that the Fire Department has either been required to respond to the following EMS calls or could have been required to respond to the following EMS calls: 1. 2003 - 826 calls; 2. 2004 - 854 calls; 3. 2005 - 821 calls; 4. 2006 - 861 calls; and 5. 2007 through October 20, 2007 - 688. See FMBA Exhibit Nos. 58-63. The number of calls set forth above, are well in excess than the number of EMS related calls received by a large number of municipalities which compensate their Firefighters with substantially greater EMS payments. The above-referenced number of EMS calls responded to by the New Brunswick Fire Department has continued to increase every year, as evidenced above. As it is clearly set forth in the chart provided below, New Brunswick FMBA receives one of the lowest EMS payments for the work performed while responding to medical calls. Many of these municipalities, as set forth in the charts submitted by the FMBA, perform minimal EMS duties and receive greater stipends. This alone demonstrates that the FMBA should be provided the requested stipend. ...

The City contends that the FMBA's proposal to increase the EMT stipend is not supported by the record and submits a list of municipalities for comparison purposes, including Hackensack, Edgewater, Union, Summit, Newark, Jersey City, Linden, Springfield, Bergenfield, Atlantic City, Plainfield, Westfield and Long Branch. The City submits the following argument:

A review of the EMT stipends provided to the above comparables demonstrated that only five of the municipalities even offer stipends, with New Brunswick's stipend being the third highest or right in the middle. The FMBA, however, may argue that these municipalities are not the appropriate comparisons for EMT stipends. Rather, it has selected a different set of municipalities to support its argument that it is entitled to a higher EMT stipend than that currently being offered. Again, however, the FMBA has provided no independent information required by N.J.A.C. 19:16-5.14 to support its comparability position. The FMBA, instead, simply throws portions of various collective negotiations agreements at the Arbitrator and basically says "Here, look at these contracts, they provide more in the way of an EMT stipend and we should get more." The Arbitrator, however, must reject this argument as there is no objective basis for comparing those municipalities to New Brunswick.

Moreover, the exhibits provided by the FMBA to support their request for an increase in the City's current EMT stipend are incomplete and irrelevant. For example, the FMBA has taken portions of Memorandums of Agreement or contracts and does not provide the Arbitrator with the complete or accurate picture of the total compensation provided to those other bargaining units. (See Exs. 67-77). As such, the Arbitrator should reject the FMBA's exhibits and comparisons as inappropriate and unsupported.

The FMBA's exhibits also should be rejected as pure argument. Prior to the actual exhibit, the FMBA provides a preliminary statement identifying the exhibit and arguing its relevance. With regard to the exhibits submitted to support its EMT position, the preliminary statements indicate that the exhibit is being submitted to show that the FMBA's proposal for an EMT stipend is "reasonable." The City does not dispute that an EMT stipend, in and of itself, may be reasonable. However, the issue before the Arbitrator, here, is not whether an EMT stipend is reasonable but the amount of the stipend. The City has a stipend in place and it is the City's position that the current amount of the stipend, which increases each year as a firefighter's salary increases is reasonable and the FMBA has not submitted any evidence whatsoever to show that comparable municipalities receive more in EMT stipends and that the FMBA is not appropriately compensated in this regard.

The City has also proposed, as part of its salary proposal, that language should be added to the Agreement stating that a firefighter who loses his/her EMT Certification shall lose the stipend and shall be required to pay the costs associated with re-certification. The City offers the following justification for this proposal:

The addition of this language will encourage firefighters to make sure that they are complying with recertification requirements and making themselves available for training. Again, firefighters should not be permitted to continue collecting an EMT stipend when they have lost that certification due to their own failure to make sure it is up to date. This proposal serves the interest of the public by ensuring that firefighters have a vested interest in maintaining EMT certifications in a current status.

The FMBA objects to this proposal and states that:

A cursory review of the previously submitted Exhibits pertaining to EMT payments demonstrate that the large majority, if not all of the municipalities across the State do not require Firefighters to pay any costs associated with becoming re-certified as an EMT if they lose their Certification. Moreover, the City has failed to submit any documentary evidence which demonstrates why this proposal should be awarded. Accordingly, the City's proposal is unreasonable and should not be awarded.

Senior Duty Pay

The FMBA proposes that its members receive a 3% differential upon the completion of fifteen (15) years of continuous service with the City. The FMBA's justification for the proposal rests upon the fact that such senior differential is contained in the PBA Agreement at Article XVII, Section F. In addition to this argument, the FMBA refers to other fire departments where senior duty pay is currently being received. The FMBA submits an Eligibility Timetable showing that if this benefit were to be awarded retroactively, it would only affect 11 firefighters out of 65 in 2007 or 17% of the unit. Three additional employees would be affected in 2008 and less than one-half of the unit would be affected if a five-year contract were to be awarded. This is said to minimize the cost impact of this proposal.

The City urges rejection of this proposal defining it as simply representing an additional and unwarranted 3% longevity payment after 15 years of service.

The City notes that a firefighter now receives an 8% longevity payment with 16 years of service. The City argues that the FMBA's comparability data is not complete because it does not consider whether the claimed comparable municipalities who receive a senior differential also receive longevity payments similar to what firefighters receive in New Brunswick.

Article XV – Holidays

The FMBA seeks to increase the existing holiday pay benefit to reflect that its members receive similar holiday pay to that presently received by the PBA. The PBA, pursuant to Article XVII, Holidays, receives compensation for 16 holidays at 8 hours per day for a total of 128 hours. In contrast, Article XV, Holidays, of the FMBA Agreement provides for only 13 holidays with an hourly rate of 9.69 hours. Thus, the holiday hours in base pay for firefighters are 126 compared to 128 for police officers. The FMBA seeks 16 holidays at 9.69 hours for a total of 155 hours.

The City terms the FMBA's proposal as absurd and without support. The City rejects any argument based upon parity similar to what it has set forth with respect to the FMBA's salary proposal.

Article IX – Uniforms and Equipment

Under Article IX, firefighters receive \$580 per year for the cleaning and maintenance of uniforms and \$431 per year for the replacement of clothing and

equipment. These sums equal \$1,011 per year. The FMBA seeks adjustments to these payments based upon recent agreements the City negotiated with the PBA and FOA. It submits the following arguments:

The FOA, however, pursuant to Article IX, Uniforms and Equipment, receives \$1,100, in total, for the same clothing allowance payments. The FMBA is seeking to increase the above-mentioned payments so that the FMBA members receive the same total clothing allowance currently received by the FOA.

The PBA, in its most recent Memorandum of Agreement, received an increase from \$50 to \$100 in connection with the City's reimbursement for the replacement of a watch or time piece that was damaged in the line of duty. The PBA also received an increase from \$100 to \$150 for the replacement of eyeglasses or contact lenses that was damaged in the line of duty. The FMBA should be provided the same increase in the above reimbursement. See PBA MOA, dated September 2006.

The City urges rejection of these proposals noting that the FMBA has submitted no support for these proposals other than the fact that the referenced changes were made in the other two agreements.

On-Call Payment

The FMBA seeks a new provision to provide compensation to firefighters who are required to be on call. The justification for this proposal is to seek common treatment with the PBA whose most recent Agreement with the City incorporated the following new section into its Agreement:

An officer whose assignment requires that he/she be available on an on-call basis to respond to an incident or crime during off hours shall receive four (4) hours overtime pay for each on-call rotation of

seven (7) calendar days. This compensation shall be in addition to overtime compensation for the actual unscheduled work performed.

The FMBA explains that “certain members of the FMBA are required to be on-call with pagers also. Specifically, two (2) members per shift, or eight members a month, are required to remain on-call while they are off duty. The above members should, therefore, receive the same compensation set forth above.” In addition to the above, the FMBA seeks to clarify the current on-call policy within the fire department.

The City urges rejection of this proposal. It submits that:

Other than setting forth its proposal, the FMBA has presented no competent evidence to support an award of this proposal. There is no evidence in the record or for that matter the parties’ current (2003-2006) Agreement which discusses on-call status or even that such a policy exists. Because the FMBA has presented nothing to support an award of this proposal, it must be rejected by the Arbitrator.

Article V – Sick Time Buyout

The FMBA seeks an improvement in the present sick leave payout upon retirement. Specifically, the FMBA seeks to increase its \$15,000 sick time buyout cap to 481 hours to be calculated at the members’ hourly rate. The FMBA makes the following argument in support of this proposal:

The FMBA, pursuant to Article V, Sick Time, Section 2, Subsection a, receives the following sick time buyout benefit:

The following conditions shall apply to firefighters hired after 1 November 1990: these firefighters shall be entitled to receive 50% of the value of their accumulated unused sick leave up to a maximum payment not to exceed \$15,000 per employee which may be taken in lump sum payment at retirement.

The PBA, on the other hand, is provided a sick time payout cap of 481 hours calculated at the member's hourly rate. See FMBA Exhibit 12, Article VI, Sick Time, Section 5, Subsection D of the PBA CBA. More specifically, the PBA provision provides as follows:

The following conditions shall apply to members hired after 1 November 1990: These members shall be entitled to receive the value of accumulated unused sick leave up to a maximum of 481 hours calculated at the member's hourly rate. The hourly rate will be calculated by adding the officer's base salary plus any longevity benefit and then dividing this number by 2080, the number of hours worked annually. Terminal leave may be taken in a lump sum payment at retirement.

The FMBA is seeking to raise the buyout cap so that the FMBA is entitled to the PBA's cap of 481 hours to be calculated at the member's hourly rate. As noted above, parity concepts have been recognized in the municipality, and as such, this proposal relating to the sick time buyout provision is reasonable and should be awarded.

The City urges rejection of the FMBA's proposal. It notes that the PBA also had a cap of \$15,000 on the buyout of accumulated sick leave but that the recent change was part of an overall agreement containing concessions that the FMBA has refused to make. In the absence of any evidence of proof that there must be parity on this issue between the FMBA and the PBA, the City seeks the denial of the proposal.

Article X – Health Benefits – Widows Benefits

The FMBA is seeking to incorporate the same contract language regarding continued benefits for widows and dependents that was included in the FOA Agreement. The FMBA explains the basis for its proposal:

The FOA collective bargaining agreement memorializes the parties' agreement relating to widows benefits. Namely, Article X, Health and Hospitalization, Section 1, provides as follows, in pertinent part:

The City agrees to continue benefits to the widow and dependents of a deceased employee for a minimum of one year after the death of the employee. Effective upon the execution of this Agreement, the City agrees to continue benefits to new widows and dependents of a deceased employee for a minimum of two years after the death of the employee. Said benefits include hospitalization, dental, major medical, prescription and vision.

The FOA CBA later provides that the benefit extends to widows/dependents for a period of two (2) years.

The City opposes this proposal. It notes that:

The Fire Officers Agreement was voluntarily resolved and contained a number of givebacks by the Fire Officers, including a change in the prescription plan. Moreover, while it is clear from the FMBA's presentation that they are more than willing to accept all of the benefits received by the Fire Officers, they are unwilling to accept the 3.5% increases the Fire Officers received in each year of their Agreement. The FMBA cannot pick and choose which benefits they want and not be expected to give something back in return. Because the FMBA has provided no basis whatsoever for the award of this proposal, the Arbitrator should reject it.

For the similar reasons the City set forth in opposition to the FMBA's proposal regarding widow benefits, the City requests that this proposal be

denied. It further notes that this language does not appear in the PBA Agreement.

Article X – Health Benefits – Option Plans

The FMBA currently pays for any increased costs for option plans that are selected by the employee. In contrast, the FOA, in Article X, Health Benefits and Hospitalization, Section 1, receives the following benefit: “The City shall pay 65% of the costs, for option plans [e.g. HMO], which are selected by the employee.” The FMBA seeks to add this benefit into its Agreement while the City, for similar reasons set forth above, seeks its denial.

Article XXVIII – Tuition Reimbursement

The FMBA proposes that it should be provided the same benefit on tuition reimbursement that the PBA recently incorporated into its Agreement. In support of this proposal, the FMBA offers the following:

Currently, the FMBA receives the following educational benefit, pursuant to Article XXVIII, Miscellaneous, Section 4:

It is understood and agreed by the City, that time off shall be provided to employees who wish to attend Fire Department Schools, courses and/or seminars. It is further understood by the parties that prior approval must be obtained, however, said approval will not be unreasonably denied. Upon the successful completion of courses by members of the Fire Department furthering their education in firematics, said employee shall be reimbursed the amount of tuition and fees and books of said course by the City.

The above provision pertains solely to fire related courses. The FMBA is seeking to include an additional provision in the above Article that would be similar to what was agreed upon by the PBA and the City in their most recent successor CBA. It appears that the language set forth below does not limit tuition reimbursement to police related sciences.

The PBA, in its most recent MOA, incorporated the following new section into its collective bargaining agreement:

Officers shall be eligible for the following tuition reimbursement program:

- 50% reimbursement
- grade "B" or better
- reimbursement at rate not to exceed actual cost or equivalent credit at Rutgers University, whichever is lower;
- any employee seeking to exercise his/her rights under this Article shall obtain prior approval from the City Administrator before registering for any college course.

Based on the foregoing principals of peer parity, the FMBA's proposals to incorporate a similar tuition reimbursement provision into the FMBA's CBA which would authorize payment for FMBA members to attend courses other than those relating to the fire sciences is reasonable and should be awarded.

The City seeks the denial of the FMBA's tuition reimbursement proposal. It notes that the FMBA's existing provision is identical to the language contained in the FOA agreement and MEA agreement, each of which require that reimbursement must be for courses that are job related. In light of this, and also the City's posture that parity not be awarded to the FMBA, it submits that the FMBA has not met its burden to prove any change in the existing provision.

Wage Computation

The FMBA seeks to incorporate into its Agreement the identical language contained in the FOA agreement. According to the FMBA, the FOA, pursuant to Article XVII, Wages, has incorporated the following language into its Agreement:

WAGE COMPUTATION: Wages shall be calculated in the following manner: 42 hours per week time 52 weeks equal 2184 hours. Base pay plus longevity divided by 2184 hours will establish the hourly rate. Subtract the hourly rate of an Acting Deputy Chief, from a Deputy Chief's rate, multiply that number by 10 hours a day and 14 hours for a night, and this will establish the pay rate for an upgrade.

The FMBA contends that similar language should be incorporated into the parties CBA so that the computation of wages could be easily determined by Firefighters and others who review the parties' agreement. It also submits that the proposal would not financially impact the City.

The City sees no need to change language that exists in the current FMBA Agreement that already determines Acting Lieutenant Pay. Thus it requests a denial of the proposal in the absence of an FMBA explanation of the need or purpose that warrants a change to the current language.

Article V – Rest Period

The FMBA proposes to change language regarding the rest period. The existing language now states that:

There shall be a ten (10) hour rest period before and after each twenty-four (24) hour shift unless there is an emergency.

The FMBA seeks revised language providing:

There shall be a ten (10) hour rest period before and after each thirty-eight (38) hours consecutively worked.

The FMBA argues that because the FMBA and the FOA work the same shift, that no problems have occurred as a result of this rest period policy for FOA members and its proposal should be awarded.

The City objects to this proposal. It submits the following argument in opposition:

Despite the fact that many of the FMBA's exhibits attempt to paint a picture of the extreme hazards and risks faced by firefighters, the FMBA then turns around and requests that the amount of consecutive hours they can work without a rest period be increased from twenty-four to thirty-eight hours. In other words, FMBA members want to be able to work much longer shifts before being required to rest. This proposal makes no sense whatsoever, especially in light of the FMBA's own exhibits. Certainly, the public interest is not well served by an exhausted fire fighting force. Because the FMBA cannot demonstrate that the statutory factors support this proposed changes, the FMBA's proposal must be denied.

Article V - Mutual Swaps

Currently, firefighters are allowed up to six (6) "mutual swaps" a year. The FMBA is seeking to increase the number of "mutual swaps" from six (6) to eight (8) per year.

Specifically, the FMBA seeks to revise the existing language to provide:

Swaps will be limited to eight (8) times per year with no more than three swaps outstanding at any time. All benefit time shall be converted to hours and one day shall equal twelve (12) hours.

The FMBA argues that:

The FMBA's proposal will not have a financial impact upon the City. Moreover, the City has failed to submit any evidence that demonstrates that the current number of mutual swaps authorized have posed any operational problems within the Fire Department. In addition to the above, it is critical to note that a large number of municipalities, including but not limited to, Atlantic City, Camden, Morris, Kearny and Edison provide for a better mutual swap benefit. See FMBA Exhibit Nos. 107-111. Accordingly, the FMBA's proposal is reasonable and should be awarded.

The City opposes the proposal. It submits the following:

Currently, the parties' Agreement permits firefighters to take up to six (6) swaps per year. While the FMBA seeks to increase swaps to eight (8) per year, they have not provided any basis to warrant this change other than by pointing to other Fire Departments who may allow more swaps than currently permitted by the City's Fire Department. The number of allowable swaps is really an administrative matter that should be left to the discretion of the Fire Director in consultation with the FMBA. It should not be an issue mandated by the Arbitrator. Accordingly, the City would urge the Arbitrator to deny the FMBA's proposal.

Article VI – Personal Days

The FMBA seeks to add Thanksgiving and Easter among the days in which its members are allowed to utilize personal days. Currently, the FMBA receives the following personal day benefit:

Personal days may be taken on December 24, 25, 31 and January 1 on the basis of seniority; however, the City shall not have to grant said days if it would necessitate the payment of overtime.

The FMBA explains the basis for its proposal:

The FMBA is seeking to revise the above language so that FMBA members are authorized to take personal days on Thanksgiving and Easter based on seniority. Currently, the use of personal days on any day with the exception of the days listed above is granted on a first come first serve basis. This proposal would not financially impact the City, especially since the language specifically states that the use of the personal day cannot cause overtime. Firefighters are among the few employees who are required to work on the above-referenced holidays. This benefit should be granted to alleviate the burden of the need for many FMBA members, especially those with seniority who have already worked on a number of holidays in the past to work on a holiday which most employees enjoy as a day off. Accordingly, the FMBA's proposal relating to the ability to use personal time based on seniority during the above-referenced holidays is reasonable and should be awarded.

This comment should be read in conjunction with the comments on limitations on the use of personal days and vacation days, which is set forth immediately below.

The City opposes this proposal and offers the following in support of the denial:

FMBA members are granted sixty hours of personal time each year. The Agreement further provides that personal days may be taken on December 24, 25, 31 and January 1. The FMBA's proposal would include Thanksgiving and Easter among the days when personal time could be used. Again, as with the issue of swaps, the use of personal time is appropriately an administrative matter that should be left to the determination of the Fire Director. This is especially so in light of the next FMBA proposal which seeks to increase the number of firefighters permitted to use personal and vacation time. Because these issues are interrelated, and because the FMBA has not demonstrated that the statutory factors support an increase in the use of personal and vacation time in light of minimum manning constraints, this proposal should be denied.

Personal Day/Vacation Day Selection

The FMBA seeks to revise/clarify the current practice relating to the use of personal days and vacation days within the Fire Department. Its justification is as follows:

The City allows five (5) Fire Officers and rank-and-file Firefighters to take time off, whether it be related to the use of a vacation day or a personal day, during a given tour. As will be set forth below, the FMBA is seeking to clarify the current policy relating to the use of personal days so that a member of the FMBA's ability to utilize a personal day is not reduced based upon a Fire Officer's selection of time off.

By way of background, the Fire Department is comprised of 65 Firefighters and 16 Fire Officers. 21 Firefighters and Fire Officers are scheduled to work during a given tour. The City requires 16 Firefighters and Fire Officers to be present during a given shift. Of the 16, 13 are Firefighters and 3 are Fire Officers. As set forth above, 5 Firefighters and Fire Officers are allowed to use a vacation day or personal day during each tour.

Even though the Fire Department is comprised of 77% Firefighters and 23% Fire Officers, the Fire Officers receive a greater percentage of time off as it relates to the use of personal time. As such, the FMBA is seeking to clarify the above practice so that

FMBA members receive a greater number of time off slots than the Fire Officers.

The contract provision pertaining to personal days is set forth in Article VII. Firefighters receive 60 hours per year by way of "personal days."

Article VII on Personal Days also stated that as to personal days: "The City shall not have to grant said days if it would necessitate the payment of overtime." Since personal days are picked on the basis of Departmental seniority, and are the days which are remaining after vacations are selected in the last two months of the year for the following year, a disproportionate number of days go first to Officers so that the likelihood of days which are desired by Firefighters causing overtime is unnecessarily great. Accordingly, there should be, of the five slots allowed for time off on a mandated basis, at least one slot for each tour, allocated to personal days for Firefighters.

On the other hand, the vacation day issue was resolved by enforcing the existing provision of the contract. The grievance, which was submitted as FMBA Exhibit No. 94, simply enforced the contractual requirements so that there are a minimum of three vacation picks for the entire year for Firefighters. This means that there is, of the five openings, potential selections for Officers, but that one of such five days should always be for personal days, regardless of whether it is used by a rank-and-file Firefighter or Fire Officer.

Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

The City urges rejection of the FMBA's proposal. In support of denial makes the following arguments:

There is nothing in the parties' Agreement which addresses the selection of personal or vacation days. Rather, the use of these days is subject to the Fire Director's managerial right to determine minimum manning and the number of firefighters, including officers, permitted to be off on a given day. ... In other words, the FMBA seeks to have the Arbitrator determine how many firefighters should be permitted off on a given day without regard to the number of fire officers being permitted to take time off. The FMBA's proposal is a

back door attempt to dictate minimum manning issues. Because the issue of how many firefighters should be allowed time off cannot be decided in a vacuum without regard to minimum manning considerations, the Arbitrator should not grant the FMBA's proposal.

Article XII – Vacations

The FMBA proposes a modification to language regarding vacations. According to the FMBA, the parties have agreed on the specifics of a language change pertaining to the manner in which vacation hours allocated for new hires. The FMBA submits that the parties have agreed to the following language which should appear at Article XII, immediately after subparagraph E:

“The calculation of the hours to which employees are entitled under this Article shall be based on the anniversary date. Therefore, on the anniversary date after one year on the job an employee will, as is set forth hereinafter, receive 144 hours vacation time. This will be credited to his account for the calendar year in which the anniversary occurs. If at that time that vacation time or any additional vacation time which is given cannot be schedule during the calendar year in which the anniversary date occurs, the balance will be added to the following calendar year's entitlement beginning January 1. This practice will apply to the other anniversary dates which are after 3 years: 240 hours; after 10 years: 288 hours: after 14 years: 336 hours; and after 16 years: 396 hours.”

The City submits that it does not object to the above proposed language insofar as it would address vacation selection issues associated with new hires. However, the City does object to the last sentence of this proposal which states: “This practice will apply to the other anniversary dates which are after 3 years: 240 hours; after 10 years: 288 hours: after 14 years: 336 hours; and after 16 years: 396 hours.” According to the City:

This last sentence is not necessary and does not apply to new hires. Rather, with the addition of this sentence, the FMBA is attempting to gain additional benefits for its current members not otherwise intended by the parties in their attempt to voluntarily resolve a vacation selection issue peculiarly applicable to new hires. As such, the City agrees to the proposed language as long as the last sentence is deleted.

The City also requests that “a “sunset” provision be added to require the new hire to use the balance of the first year’s vacation entitlement by the conclusion of the calendar year in which the employee’s third anniversary occurs.”

Article XVIII – Grievance Procedure – Step 4

The FMBA proposes to clarify language currently set forth at Article XVIII, Step 4. The provision requires that a demand for the arbitration of an unresolved grievance be submitted in accordance with the rules of the New Jersey Public Employment Relations Commission (PERC). Notwithstanding this language, the provision states that the selection of an arbitrator and the conduct of the hearing be pursuant to the rules of the New Jersey State Board of Mediation. The FMBA asserts that changing the language referencing the New Jersey State Board of Mediation to PERC would eliminate any confusion with respect to the agency that would appoint arbitrators to decide unresolved grievances. The City does not oppose this proposal.

Article VI– Sick Time, Sections 5 & 7

The City proposes language that would place limits on the use of the existing Major Illness provision. The Agreement, at Article VI defines a Major Illness as:

An illness or injury which is not service related and requires hospitalization for six (6) calendar or more days, or non-elective surgery, or an ailment of contagious disease requiring a leave of thirty (30) or more calendar days which would render a member unfit for light duty. The first one hundred twenty (120) hours of an approved major illness claim will be charged against a firefighter's accumulated sick time.

Pursuant to the above, once the 120 hours (which equates to five working days) has expired, the firefighter then receives full pay up to one year without any additional impact on accrued time. Specifically, the City proposes the following changes to the above contract language:

- A. Modify Section 5a to six (6) months in a 12 month period instead of 12
- B. Modify Section 5f to provide a definition of the types of illnesses or injuries excluded from the definition of Major Illness to include, but not be limited to, motor cycling, skiing, bungee jumping, snowmobiling.
- C. Modify Section 5f to provide that benefits shall not accrue while on Major Illness.

According to the City, it is not seeking to eliminate Major Illness, but simply to place some limits on its use. It alleges that the use of Major Illness has caused scheduling difficulties and large overtime expenditures. In sum, it argues that the

limitations it seeks will ensure that Major Illness is used in the manner that was originally intended and reduce unnecessary costs.

In addition to the modifications to Section 5, the City also proposes to modify Section 7 to provide that sick call out shall be charged on an hour for hour basis. The Agreement currently provides as follows:

Effective January 1, 2005, firefighters working a 24/72 schedule who report off duty due to illness within 12 hours from the start of a shift will be charged sick time for those hours actually not worked. Firefighters who report off sick after 12 hours of work will not be charged sick time for the remaining hours of work.

According to the City, the language is overly generous. The City submits that to reward a firefighter for working through 12 hours of his 24-hour shift and not docking any sick time if he manages to work one additional minute could potentially encourage the unnecessary use of sick leave.

The FMBA seeks the denial of the City's proposals as set forth in A, B and C above. It responds individually to these proposals. In respect to proposal A, the FMBA responds:

The City is seeking to limit the use of major medical, as defined above, so that instead of the employees being authorized to remain on paid sick leave for one year, the benefit will be limited to six (6) months. Notwithstanding this proposal, the FOA and the PBA maintain the current major illness benefit in the amount set forth above.

The City failed to produce any credible documentary evidence to support its contention that this proposal should be awarded. Instead, the City, in an August 29, 2008 Certification of Business

Administrator, Thomas A. Loughlin, III, provides, without providing any supporting documentation, that the benefit has caused tremendous scheduling difficulties and huge overtime expenditures. As noted above, no evidence was submitted to demonstrate that the City has incurred extra costs based on this benefit. Thereafter, BA Loughlin contends that the change is necessary to “ensure that Major Illness is used in the manner originally intended.” No documentary evidence was submitted to demonstrate what the alleged “original intent” was. It can only be assumed that the intent was simply, as stated in the CBA, to provide FMBA members with a benefit based on the dangerous job duties performed by Firefighters.

The past practice has been that the benefit can be extended beyond a year if warranted. The language currently provides the City with a procedure to follow to utilize when the City believes it is necessary to require an employee under this provision to return to work after being on paid leave for an extended period of time under this provision. This procedure is sufficient to ensure that Firefighters are not extending their use of paid leave beyond an appropriate period of time. The City has failed to demonstrate any abuse of this provision by FMBA members.

As noted above, and as noted in various Exhibits, FMBA members perform dangerous and labor intensive job duties which sometimes, periods of over time, lead to off duty injuries which are the result of engaging in certain Firefighter job duties for a long period of time. For instance, a Firefighter might injure his/her back while off duty, but the injury may have been the result of and/or exacerbated by the carrying of heavy equipment on their back while responding to incidents for a number of years. It is, therefore, imprudent to eliminate this benefit, which was heavily negotiated a number of years ago.

In respect to Section B, the FMBA offers the following in support of its denial:

The FMBA is currently allowed to continue accruing all benefits, with the exception of certain sick time as set forth above and immediately below, during periods of major illness. We incorporate the arguments set forth immediately above with respect to the reason as to why this proposal should not be awarded. Again, it is critical to note that this benefit was not only heavily negotiated and

still part of all other public safety union CBA's, but it is an important benefit for Firefighters because of certain injuries Firefighters might incur to since the job is labor intensive and dangerous.

The FMBA seeks the denial of the City's proposal in Section C above.

The FMBA also urges denial of the City's proposal with respect to Section

7. It submits the following:

The City has failed to submit any documentary evidence as to why this proposal should be awarded in this Interest Arbitration. Further, no documentary evidence has been submitted by the City which demonstrates that this benefit has been abused. The purpose of the implementation of the above language was to address, among other things, certain situations in which Firefighters may be exposed to substances/agents which render them incapable of performing their job duties during the latter portion of their shift. As has been set forth herein and throughout the FMBA's Exhibits, the Fire Department responds to a large number of EMS related calls. As a result, Firefighters are exposed to a large number of substances/agents that may cause them to get sick during the shift. This includes, but is not limited to, bacterial agents and gasses which may cause a Firefighter to get sick. The exposure may not be serious enough to warrant a Workers Compensation report, but instead requires the employee to leave after a certain amount of work hours. Due to the physical requirements of the job, a Firefighter, in a particular situation, may not be able to adequately respond to a fire or other incident if they are ill. This warrants full pay without the need to utilize accrued time.

Article X – Health Benefits and Hospitalization

The City seeks to modify terms that concern medical, dental and prescription insurance and co-pays to be borne by unit employees. The City proposes the following:

Section 1: Add new paragraph as follows:¹

Effective April 15, 2008, each employee shall contribute toward the cost of the health care premium. Such contribution shall not be less than 10% of the premium for whatever plan the employee chooses. For employees hired after April 15, 2008, the City shall pay the cost of the health care premium, less 10% for new hires. New hires shall be responsible for the entire premium cost for spouse and/or dependent health coverage.

Section 2. Add the following at the end of the paragraph "and that the retiree shall be responsible for any Medicare premiums."

Section 3. Dental:

Modify paragraph as follows:

The City agrees to provide all full time employees, their spouse and dependents with dental coverage. Specifically employees may choose to participate in either the Dental Option Plan, the PPO Plan or the Manage Dental Choice Plan. Effective April 15, 2008, any increases in the premium rates over the 2007 rate shall be borne by the employee.

Section 4. Vision Care and Prescription Plan

Delete 3rd paragraph and modify as follows:

Effective April 15, 2008, the prescription co-pay shall be as follows:

\$10.00 co-pay for generic drugs

\$20.00 co-pay for preferred brand name drugs

\$30.00 co-pay for non-preferred brand name drugs

Co-pays will be doubled for 90 day supply via mail order, i.e. \$20.00/\$40.00/\$60.00.

Effective April 16, 2008, employees shall no longer be able to submit co-pay reimbursement requests through Aetna.

The FMBA urges rejection of all of the City's proposals to revise health benefits and hospitalization. It rejects any attempt by the City to implement any

¹ The City has modified this proposal to require a 1% of salary contribution towards health insurance effective January 1, 2009.

form of a health care contribution by firefighters. The FMBA offers the following lengthy arguments in support of denial:

A. Employee Health Care Contributions. ... In support of its assertion that a health care contribution should be awarded, the City relies on the fact that the City's exclusionary employees and members of the MEA have agreed to a health care contribution. See FMBA Exhibit No. 176. This argument must, however, fail based upon the Certification of FMBA Executive Vice-President, Robert Brower, as well as for the other reasons set forth in the FMBA's submissions and for the reasons set forth herein.²

...

As noted above, the only appropriate comparison for Firefighters is other public safety employee, such as police officers and fire officers. Since neither of these units within the City are contributing towards health care premium costs, FMBA members should not be required to contribute to health care costs. Firefighters perform dangerous jobs and should, at the very least, be provided fully paid health benefits. Notably, the City failed to submit any evidence which demonstrates that other Fire Departments or Police Departments are contributing towards health care premiums. As such, it would be inappropriate to require the FMBA to contribute to health care premium costs.

B. Medicare Part B Reimbursements. In its Final Position, the City seeks to require retirees to pay the cost of Medicare premiums. It is not clear as to whether the City now seeks to include this proposal in this Interest Arbitration since it was not addressed in BA McLaughlin's Certification. Notwithstanding that, it is clear that this proposal should not be awarded because the City failed to submit any documentary evidence which demonstrates that this proposal should be awarded. It is clear, however, that this proposal should not be awarded because the FMBA, only recently negotiated lifetime benefits for retirees. The FMBA provided the City with substantial give-backs in order to obtain benefits upon retirement. The City should not now be able to reduce retiree benefits for current employees. Obviously, the FMBA cannot negotiate on the behalf of retirees, and as such, this benefit could not be applied to those individuals.

² The certification is lengthy and need not be detailed herein.

C. **Dental.** In its Final Position, the City seeks to limit dental benefits currently received by members of the FMBA. It is not clear as to whether the City now seeks to include this proposal in this Interest Arbitration since it was not addressed in BA McLaughlin's Certification. Notwithstanding that, it is clear that this proposal should not be awarded because the City failed to submit any documentary evidence which demonstrates that this proposal should be awarded. Although the benefit is not specifically set forth in the parties CBA, the FMBA receives the same dental benefits that other public safety employees within the City are provided. All public safety employees continue to enjoy this limited dental benefit, and as such, the FMBA should continue to maintain this benefit.

D. **Vision Care & Prescription Care.** In its Final Position, the City seeks to increase the prescription drug co-pay in the manner set forth above. While it is certainly true that other unions within the municipality have agreed to the implementation of the increased prescription drug co-pay, the FMBA cannot agree to this prescription co-pay increase without providing the FMBA with parity adjustments sought in other areas involving health benefits and other economic and non-economic benefits. More specifically, the FMBA is seeking the same benefit as the FOA with respect to widows benefits. In that regard, widows of FOA members receive fully paid health benefits for 2 years. The FMBA is seeking the same benefit.

The City has failed to submit any evidence with respect to comparisons of other prescription drug co-payments made by other public safety employees within Middlesex County and throughout the State. In fact, the CBA's submitted by the City in this Interest Arbitration demonstrate that the prescription drug co-payment proposal sought is excessive.

E. **AETNA Co-Pay Reimbursement Program.** In its Final Position, the City seeks to eliminate the AETNA reimbursement program currently received by members of the FMBA. This proposal should not be awarded because the City failed to submit any documentary evidence which demonstrates that this proposal should be awarded. Additionally, this proposal should not be awarded because all other public safety units within the City continue enjoy this benefit. As discussed in greater detail below, it is of no consequence that the non-public safety group(s) gave up this benefit since there has never been parity between non-public safety groups and the FMBA. BA Loughlin, in his Certification, admits that the cost savings of this proposal would be "minimal".

That statement alone demonstrates that this proposal should not be awarded since the benefit to the City would be nominal at best.

The CBA between the FMBA and the City further demonstrate that the FMBA is solely comparable with public safety unions. In that regard, Article X, Health Benefits and Hospitalization, acknowledges that the City has a right to negotiate an increase in prescription co-pays with the FMBA if other "any other uniformed public safety unit" agrees to an increase in the prescription co-pay. This clearly demonstrates parity concepts between the FMBA and the PBA and FOA, and further demonstrates that there is no comparability, and therefore, parity between the FMBA and non-uniformed groups such as the MEA and others within the City.

DISCUSSION

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

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 et seq).

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

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment.

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I will apply that principle as part of my analysis to the issues in dispute. The burden to be met must be at a level beyond merely seeking change without sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. In other words, there may be merit to awarding or denying a single issue if it were to stand alone, but a different result may be reached after assessing its merits within the context of an overall award. These principles are also consistent with the statutory requirement to determine the net annual economic change required by the award.

The FMBA and the City have each addressed the statutory criteria in support of their respective positions. The award must represent a reasonable determination of the issues in dispute. The statute requires that all 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,³ internal comparability between the FMBA and other units within the City (including the terms of the most recent PBA and FOA agreements) and the financial impact of the terms of the Award on the governing body, its residents and taxpayers. While also relevant, the proposals and arguments made on the issues in dispute require that less weight shall be given to the cost of living, the continuity and stability of employment and the overall compensation and benefit scheme currently included in the parties' agreement.⁴

Duration

At the outset, a determination must be made on contract duration. The record of this proceeding dictates that an Agreement providing for a four year contract duration is reasonable and appropriate. Under the City's proposal, the Agreement would terminate on December 31, 2009 while, under the FMBA's proposal, the Agreement would terminate on December 31, 2011. While stability and continuity in labor relations is a principle recognized in the statute, a reasonable determination of the major economic issues in dispute requires that an award be rendered for one contract year beyond what the City has proposed

³ Subsumed within this criterion are subsections (g)(5) and (g)(9). Statutory spending limitations and caps on tax levy require adherence by the City to these laws. The terms of the Award may not require the City to exceed its spending and taxing limitations.

⁴ This latter criteria is relevant to the extent that the parity issue has been presented.

and one contract year less than what the FMBA has proposed. The record of this proceeding allows for a determination on issues that can be resolved through December 31, 2010.

Article X – Health Benefits and Hospitalization

Widows Benefits

The FMBA has proposed two individual changes to its Health Benefits and Hospitalization provision set forth in Article X. In both instances, the language sought would provide consistency with terms that are set forth in the FOA agreement. In Article X, Section 1 of the FOA agreement, the City extended the continuation of benefits to the widow and dependents of a deceased employee from a minimum of one year after the death of an employee to a minimum of two years. This benefit does not currently exist in the FMBA Agreement. The community of interest on this issue within the department is self evident. I find it reasonable to provide internal consistency between the FOA and FMBA Agreement on this issue. Accordingly, I award the following language to Article X, Section 1 of the FMBA Agreement:

Effective upon the execution of this Agreement, the City shall provide benefits to new widows and dependents of a deceased employee for a minimum of two years after the death of the employee. Said benefits include hospitalization, dental, major medical, prescription and vision.

Health Benefits – Option Plans

Also in Article X, Section 1 of the FOA agreement, the City is required to pay 65% of the costs, for option plans (e.g., HMO), which are selected by the employee. In contrast, under Article X, Section 1 of the FMBA Agreement, if an employee selects an option plan such as an HMO, the increased costs are borne solely by the employee. The benefit to have City contributions for option plans does not currently exist in the FMBA Agreement yet it exists in the FOA agreement. It is reasonable to provide internal consistency between the FOA and FMBA agreement on this issue. Accordingly, I award the following language to Article X, Section 1 of the FMBA Agreement effective as soon as is practicable:

The City shall pay 65% of the costs, for option plans (e.g., HMO), which are selected by the employee.

Article X – Health Benefits and Hospitalization

Section 1

The City proposes changes to four sections of Article X. The first proposal would add a new paragraph entitled Section 1. Originally, the City sought employee contributions towards the cost of health care premiums at a level of 10% of premium cost. New hires would be responsible for the entire premium cost for spouse and/or dependent health coverage. During the pendency of this dispute, the City revised its proposal to require employees to pay 1% of salary towards health care premiums. During the course of this proceeding, legislation was enacted requiring employees to contribute 1.5% of salary towards health

insurance premiums effective May 21, 2010. Given the fact that this legislation applies to unit employees, I award language in Article X that reflects this existing statutory requirement as an obligation of the parties:

Unit employees shall be required to contribute towards health insurance premiums as required by law.

Section 2

The City has proposed to add language to the end of the paragraph in Section 2 requiring retirees to be responsible for any Medicare premiums. This provision is absent in any of the collective negotiations agreements between the City and any of its public safety unions and the City, in light of the City's longstanding obligation, it has not provided sufficient justification for its inclusion in this Agreement. The language sought is not awarded.

Section 3 - Dental

The City seeks to modify language regarding dental benefits set forth in Section 3. Specifically, the City seeks to remove language that provides the FMBA with the same dental coverage as that provided to the FOA and also to require that any increases in premium rates be borne by the employee. The record does not provide sufficient justification for the addition of the language that the City proposes and the language sought is not awarded.

Section 4 – Vision Care and Prescription Plan

The City has proposed to increase prescription co-pays for generic drugs, preferred brand name drugs and non-preferred brand name drugs as well as for ninety-day supplies by mail order. The City also seeks to remove an existing benefit that gives an employee the ability to submit co-pay reimbursement requests through Aetna. The City's position relies heavily upon the inclusion of the terms of its prescription proposal in the agreements that it negotiated with the PBA that expires on December 31, 2009 and with the MEA that expires on December 31, 2010. It also relies on the removal of the AETNA reimbursement in the MEA Agreement. The FMBA's principle objection is that the City's proposal in either area should not be awarded without providing the FMBA with all of the parity adjustments it seeks in the other economic and non-economic areas. I believe the interests and welfare of the public will be served by the City achieving common benefit levels in the administration of the prescription benefits between the FMBA and the aforementioned units on these issues. While the AETNA reimbursement deletion occurred only in the MEA unit, the expiration of the FOA Agreement in 2008 and the PBA Agreement in 2009 will, more than likely, result in this issue being the subject of negotiations in those units. Accordingly, I award the following language effective as soon as is practicable:

Section 4. Vision Care and Prescription Plan

Delete 3rd paragraph and modify as follows:

The prescription co-pay shall be as follows:

\$10.00 co-pay for generic drugs
\$20.00 co-pay for preferred brand name drugs
\$30.00 co-pay for non-preferred brand name drugs

Co-pays will be doubled for 90 day supply via mail order, i.e. \$20.00/\$40.00/\$60.00.

Employees shall no longer be able to submit co-pay reimbursement requests through Aetna.

Article XVII – Salary

Consideration of the salary issue in this proceeding requires the review of evidence concerning the City's financial status and budgetary requirements, external comparisons with fire departments in other municipalities and internal comparisons within the City and, in particular, with other units in the public safety department.

As has been already mentioned, the FMBA places much emphasis on obtaining parity with the PBA. The FMBA's submissions show that parity exists in certain municipalities, including Long Branch and Maplewood. Interest arbitration awards in those jurisdictions summarize the history of parity. The remaining agreements reflect that many do not have identical contract terms nor require parity. In New Brunswick, the record does not show that there is a history of parity between the two units. Top step pay and starting pay have been different at least dating back to 1993 through 2006, the last year of the FMBA agreement. The differences in top pay have ranged between from approximately \$800 in 1993 increasing to approximately \$2,000 in 2006 with top step pay taking

an additional year to reach in the fire department. A review of their respective agreements show other differences and different benefits received. One in particular is EMT payments (at 1 1/4%) received by the FMBA and a senior duty differential (3%) received by the PBA. The FMBA has more annual work hours but substantially more days off due to the nature of the FMBA 24 hour on and 72 hour off schedule.

In the contract years in dispute, the FMBA points to the wage settlements that were reached between the City and the PBA in 2006, 2007, 2008 and 2009. Wage increases were provided at levels of 4% in 2006⁵, 4.5% in 2007, \$1,085 + 4.5% in 2008 and 4.5% in 2009. The FMBA contrasts these results with the City's proposal to provide a 3.5% increase in each of contract years 2007, 2008 and 2009. The City more appropriately compares the FMBA to negotiated results reached within the fire department. In its last labor agreement with the FOA, wage increases were provided at levels of 3.25% in 2005 and 3.5% in each year of contract years 2006, 2007 and 2008. The City also reached agreement with its blue and white collar unit, the MEA, at levels of 3.25% in 2007, 3.5% in 2008, 4.5% in 2009, and \$1,350 across-the-board in 2010. The record does not reflect what the \$1,350 dollar amount translates to in percentage terms but it would appear to be valued at between 2 1/2% and 3%.

In addition to the parity issue, the parties have produced substantial evidence concerning the health of the City's finances. The FMBA relies on a

⁵ 2006 was the last year of the previous FMBA contract in which it received an increase of 3.5%.

submission from financial expert Thomas A. Banker. Mr. Banker reviewed, among many other things, municipal budgets, annual financial statements, county abstract of ratables, bond and other official statements. He analyzed the City's tax burden, its cash and surplus position, its debt levels, expenditures, cap limitations and numerous data on comparisons between the City's finances and other municipalities. His 40 page report is too comprehensive to summarize in its entirety. From his report, he offers the following conclusions:

Based on the information available for review, which covers through the budget of the 2007 fiscal year, New Brunswick (the "City") is in good financial condition by comparison to NJ municipalities generally, to the other municipalities within Middlesex County and to other comparable communities.

Based on tax data from 2007, the last year for which statewide data was available, the City annually asks its citizens for about \$1,231 in property tax per person, a level that is lowest in the county, 27th lowest in the entire state and less than half of the state average. This fortunate situation is the result of a redevelopment boom within the City that has fueled dramatic growth in the ratable base, which has leaped over 139% since 2000. That growth would be even higher, were it not for the City's use of "Payment-in-Lieu-of-Tax" ("PILOT") agreements for many of its new projects. Projects subject to a PILOT are not included within the ratable base. Had the PILOT projects been included in the ratable base, the growth since 2000 would likely be in excess of 170%. (see Exhibit C, entitled "PILOT History").

The City also has a strong cash position, a solid surplus position and a moderate level of municipal debt. Key indicators of fiscal performance are all positive, with consistently high rates of current property tax collections, revenue collection rates that are consistent with budget anticipations, expenditures consistently within budget, no over expenditures, and limited emergency appropriations. The City has lived within the CAP limitations without difficulty, and has been able to retain significant appropriation reserves at the conclusion of every budget year.

Detailed information regarding existing personnel was not provided for review. In the absence of that basis, I have estimated the approximate percentage difference between various scenarios for this proceeding. I believe the most valid of those comparisons is between the case in which the Union receives a settlement which is equivalent to that which was previously granted to the New Brunswick PBA and the case in which the union is granted that which it has proposed as its final offer.

I believe that this is a reasonable comparison since the PBA already enjoys a significant financial advantage over the FMBA. An award that reflects the same treatment for FMBA as already granted to the PBA would not bring the FMBA to parity, but it would prevent the FMBA from falling further behind to any significant degree. The alternative position, as proposed by the FMBA, essentially seeks to achieve parity with the PBA, which would of necessity require the FMBA to receive greater economic benefits than granted to the PBA.

After preparing this comparison, it is my estimate that the difference between these two positions would have an average 3.5% and 3.75% per year for three years for which the PBA contract is now in effect. The majority of that difference, if not the entirety of the difference, can conceptually be thought of as the amount necessary to move the FMBA towards a position of parity with the PBA. Precise achievement of parity would not take place by the end of that term, since the FMBA has essentially asked for two additional years on its new contract, during which additional time they project that they would be substantially at parity.

I have also estimated the approximate cost of each 1% difference between the parties as a cost of approximately \$121,000 per year. At that rate, the estimated differences discussed above would translate into tax increases of about one and one half cents per \$100 of equalized assessed value per year. To put that amount in perspective, since 2000, the equalized tax rate in New Brunswick has decreased by \$1.545 per \$100 of equalized assessed value, or roughly 100 times as much as the estimated annual increase outlined. It is my opinion that the difference can be managed by the City without unduly burdening its taxpayers or requiring any significant reduction in the delivery of municipal services and will full compliance with both the continuing appropriation CAP law and the new revenue CAP law.

The City does not contest the factual data in the FMBA's financial submission. However, it offers the position that its financial condition and the economic conditions have deteriorated in recent past. The City's assessment of its financial condition was offered by Chief Financial Officer Douglas Petix and Independent Auditor John Loria. Between 2004 and 2008, the municipal tax levy increased by 27% and the municipal tax rate by 35.4%. Simultaneously, the City's net valuation taxable decreased by \$2,056,828. The City cites declining construction, declining real estate values and revenues and an increase in tax appeals. The City argues that its budgetary posture is disadvantaged by a large amount of tax exempt property which it calculates at 44% of all real property not subject to taxation. The City points out that in 2007, its municipal tax rate increased by \$0.21 or 13.4% and by an additional \$0.17 in 2008. Among the factors aggravating the City's financial posture include an almost \$4 million increase in City contributions into the PFRS between 2004 and 2008, a 59.3% increase in providing health benefits to all City employees and eligible retirees, or approximately \$4.5 million more between 2004 and 2008 and a \$955,827 dollar decrease in State aid in 2008 amounting to 7.34 municipal tax points. The City further points out that it has reduced its work force by 16 full-time positions in 2007 and by another 29 in 2008.

The City contrasts the reports of the financial experts and places great emphasis on the overall costs of the FMBA's proposals. On this point, it submits the following argument:

The parties have submitted economic expert reports in support of their respective positions. While the FMBA's expert presents an unrealistic rosy picture of the City's Assessment of Financial Condition is not biased and attempts to provide the Arbitrator with a factual overview of the City's economic future. In this regard, the cost comparisons between the parties' economic proposals cannot be disputed. The City has calculated that, assuming a five year contract term, the FMBA's 5.5% per year proposal will cost the City and its taxpayers an additional \$1,729,080.68. This cost translates into a 4.7 cent increase in the local tax rate based on 2008 net valuation taxable of \$1,301,404,451 with a "tax point" being equal to \$130.14. (See City's Assessment of Financial Condition, Ex. B). This increase does NOT include the FMBA's proposal for an additional 1 ¼% for EMTs, it would cost the City almost \$300,000 more over the term of the Agreement. (See City's Assessment of Financial Condition, Ex. D). Likewise, the inclusion of Senior Duty Pay would cost the City and its taxpayers almost \$275,000 over the course of the Agreement. Thus, an award of the FMBA's salary, EMT and Senior Duty Pay proposals would require the City and its taxpayers to find \$2,304,080.60. Staggeringly, this figure does not include any increased pension payments. Such additional costs cannot be supported by the City and are in the best interests and welfare of the public.

While the FMBA cannot dispute the numbers, they likely will argue that the City can afford the astronomical increases for the reasons outlined by their economic expert. While the City does not dispute that it has had success in redeveloping the City, this success does not necessarily translate into an unlimited ability to pay excessive salary demands.

The City offers additional reasons as to why the FMBA's salary proposal should be denied. The City focuses on private sector comparisons. While acknowledging that comparisons with firefighters focus mainly on public employment, the City believes that high unemployment rates and the deep recession weigh against the FMBA's position. The City points out that in 2007, under its proposal, a top step firefighter would earn \$78,046 compared to the average annual salary of a private sector worker in Middlesex which was more than \$20,000 less. The City also refers to the CPI which as of April 2009 was

2.7% for urban wage earners and clerical workers in the New York Northeastern New Jersey region. The City's terms its proposal as exceedingly reasonable in light of the fact that its proposal exceeds the CPI in 2009 by at least .8%.

The record does not reflect an overall settlement pattern among all of the City's bargaining units. The record does not show contracts of different duration that were negotiated during different time periods. The FOA contract was from 2005 to 2008, the PBA's from 2006 to 2009 and the MEA's from 2007 to 2010. A comparison of agreements also show that there is no history of parity between the FMBA and the PBA.

The parties' positions on salary flow from theories that give weight to different criteria. The FMBA's wage proposal, except for review of its demand for identical treatment with the PBA unit, is unsupported by the record or by application of the statutory criteria. It well exceeds the cost of living, is higher than virtually all of the evidence on internal and external comparability and, even assuming the City's financial ability, the costs of the FMBA proposals, if awarded, have been shown to cause adverse financial impact on the City, its residents and taxpayers. Even if the costs would not cause the City to exceed its lawful caps, the amounts the City has calculated that would be required to fund the FMBA's proposals would aggravate the City's ability to adhere to its statutory limitations on budgetary expenditures and its taxing authorities while simultaneously allowing the City to fund all of its remaining spending obligations. This is so

because the costs would, more than likely, have to be borne from surplus funds that could not be carried over into future budgets.

The City's proposal is more compatible with its overall financial requests, the cost of living and external comparability data. The City's proposal is consistent with the terms it negotiated within the fire department with the FOA unit for 2007 and 2008. I note that the City's overall financial proposal is essentially confined to salary and an award of the salary issue does not foreclose consideration of the FMBA's remaining proposals on their merits that relate to compensation.

The salary increases that I find to represent the most reasonable determination of the issue under the facts and circumstances present here for contract years 2007, 2008 and 2009 is the level of increases that parallel the terms agreed to between the City and the FOA unit for 2007 and 2008. This will provide members with increases of 3.5% for 2007, 2008 and 2009.

The FMBA contends that the salary determination must be in excess of the FOA agreement because firefighters receive a lower annual salary than the PBA, notwithstanding the fact that firefighters work a greater number of hours annually and also have a greater fringe benefit package. Notwithstanding the appeal of this, I find that during this contract term, greater weight must be given to the relationship regarding compensation within the fire department rather than

relationships that go beyond the department. The fact that these increases are also more compatible with the external comparability data is additional evidence that 3.5% increases in each year for 2007, 2008 and 2009 represents a reasonable determination of the salary issue.

In regards to contract year 2010, the relevant evidence regarding the City's finances, the decline in the cost of living, the continuing level of high unemployment and the decrease in salaries as reflected in the external comparability data in both the public and private sectors dictates a salary increase at a level below the first three years of the Agreement. I note that the comparability data under the interest arbitration statute, while limited in nature, show awards at 2.43%, and settlements where arbitrators have been appointed at 2.80%. For 2010, after consideration of all of the relevant evidence that relates to the statutory criteria, I award an increase of 2.5%. The overall increases, as applied to top step will result in a salary increasing from \$75,407 in 2006 to \$85,695 in 2010, an increase of \$10,288. The continuity and stability of employment shall be maintained by these modifications.

Although a precise calculation as to cost cannot be made due to changes in staffing levels, I have calculated the net annual economic change due to salary increases to be at \$171,535 in 2007, an additional \$177,515 in 2008, an additional \$183,820 in 2009 and an additional \$135, 850 in 2010.

EMS Pay

Under Article XVII, Wages, EMT certified members of the FMBA receive a differential of 1 ¼% of their base salary. The record reflects that the fire department responds to a high volume of EMS calls in addition to the performance of their traditional firefighting duties. The record further reflects that EMT payments received in New Brunswick are less for this type of work performed than in many large municipalities including West Orange, Teaneck, Clifton, Linden, Hillside, Ocean City, Maplewood, Belleville, Westfield, Ridgewood and Bergenfield. The stipend was last adjusted in 1998. This suggests that an enhancement of EMT payment is both justifiable and reasonable on its own merit and especially so in light of the increases to base pay achieved in the police department as well as the supplements to base pay that are not directly applicable to the fire department. Accordingly, I award an additional ¼% to the existing EMT stipend in each year of this four year Agreement. The costs of these modifications can be borne without adverse financial impact as shown by the financial report of Mr. Banker. The modification to the EMT stipend will cost \$19,511 in 2007, an additional \$20,194 in 2008, an additional \$20,901 in 2009 and an additional \$21,423 in 2010.

The City, in its salary proposal, seeks to add language stating that a firefighter who loses his/her EMT Certification shall lose the stipend and shall be required to pay the costs associated with re-certification. The Agreement, at Article XVII, (see Emergency Medical Technician Stipend) already states that the

City shall pay the stipend “to each firefighter certified as an Emergency Medical Technician (“EMT”) so long as that firefighter maintains the certification.” Based upon the existence of this language, I do not award the City’s proposed language concerning the loss of stipend. The language concerning the payment of costs associated with recertification appears to have been proposed based upon language in the Agreement that states that the City will continue the current practice with respect to bearing the cost of EMT training and providing compensatory time for training. This responsibility cannot reasonably be expected to be required if a firefighter has not made a reasonable effort to maintain the certification. Under that circumstance, the City should not have to bear the costs of recertification. To find otherwise would subject the City to unnecessary costs. Accordingly, I award the following language:

A firefighter who has lost his/her EMT certification and has not made reasonable efforts to maintain that certification, shall be required to pay the costs associated with recertification.

Senior Duty Pay

The FMBA proposes that its members receive a 3% differential upon the completion of 15 years of continuous service with the City. It bases its proposal on the fact that the PBA unit currently receives this benefit and claims that the same benefit be provided to the FMBA. This claim is based solely upon parity, and for reasons previously stated in this decision, this rationale represents an insufficient justification to compel the awarding of a proposal. Accordingly, the proposal is denied.

Article XVII – Holidays

The FMBA seeks to increase the number of paid holidays received from 13 to 16 based on the fact that the PBA Agreement allows for 16 holidays. While there is a difference in the number of holidays being received, the FMBA Agreement requires payment based upon 9.69 hours per holiday while the PBA Agreement requires payment based upon 8 hours per holiday. A comparison between the two reflects a difference of two additional hours annually for police officers. The FMBA proposal would result in firefighters receiving 27 additional hours of holiday pay above that received by the PBA. Because I find that the FMBA has presented insufficient justification to alter the existing scheme regarding holiday pay, the proposal is denied.

Article IX – Clothing Allowance

The FMBA proposes modifications to Article IX, Uniforms and Equipment, in Section 1 and Section 2. Pursuant to Section 1, the current benefit is \$580 per year for the cleaning and maintenance of uniforms. Pursuant to Section 2, each firefighter receives an annual allowance of \$431 for the replacement of clothing and equipment. The total of the two allowances, is \$1,011 per year. In contrast, the FOA receives an allowance totaling \$1,100 for the two allowances as a result of the modifications included in the 2005-2008 FOA Agreement. The FMBA proposes adjustments that would match the modifications made to the FOA

Agreement which would amount to an \$89 increase. An allowance which is consistent between the two units in the fire department is reasonable and justified. Effective January 1, 2009, I award a modification to Article IX, Section 2 to require a \$520 allowance, for the replacement of clothing and equipment. This will result in an overall allowance of \$1,100.

The FMBA also proposes to modify replacement allowances set forth in Article IX, Section 4. Section 4 provides a \$50 reimbursement for the replacement of a watch or timepiece damaged in the line of duty. Section 4 also provides a \$100 reimbursement for the replacement of eyeglasses or contact lenses damaged in the line of duty. The FOA Agreement includes this same benefit in its Agreement that expired on December 31, 2008. The PBA Agreement previously provided this same benefit but increased these amounts to \$100 and \$150 in its more recent Agreement that expired on December 31, 2009. I am persuaded that this identical benefit for the identical purposes should remain consistent among these units. Accordingly, I award a modification to these allowances and adjust them to \$100 and \$150 respectively effective January 1, 2010.

Article V – Sick Time Buyout

The FMBA seeks to modify the existing accumulated sick leave payout at retirement which, according to Article V, Section 2(A), cannot exceed \$15,000. The same cap of \$15,000 exists in Article V, Section 1(E) of the FOA Agreement

that expired in 2008. The FMBA's proposal is based upon a recent provision in the PBA Agreement that caps sick time payout at 481 hours of a member's hourly rate rather than by dollar amount. The existing provisions in the fire department contracts provide for terminal leave at a dollar amount, although sick leave is earned on the basis of fifteen (15) hours per month. There is reasonable justification for terminal leave benefits for the City's public safety employees to be consistent in nature. Due to the change in the PBA Agreement, it is not. I award the FMBA proposal to provide these terms effective on the date of this award. However, this award shall extend only to existing employees and the \$15,000 cap shall remain in effect for employees hired after the date of this award.

Wage Computation

The FMBA seeks to include language that defines wage computation in the same manner as exists in the FOA Agreement at Article XVII, Section 1. The FMBA Agreement, at Article VIII, currently sets forth language that calculates the hourly rate for overtime and the straight time daily rate for firefighters who serve as Acting Lieutenant. There is insufficient evidentiary support as to why the existing language in the FMBA Agreement should be changed. Accordingly, I do not award this proposal.

Article XVIII – Grievance Procedure – Step 4

Article XVIII, Step 4 requires that a demand for the arbitration of an unresolved grievance be submitted in accordance with the rules of the New Jersey Public Employment Relations Commission (PERC) but, in contradiction, states that the selection of an arbitrator and the conduct of the hearing be pursuant to the rules of the New Jersey State Board of Mediation. The FMBA's proposal to conform the language to PERC in both instances would eliminate the contradiction and the City does not oppose this proposal. Accordingly, it is awarded.

Article VI – Personal Days

The FMBA has proposed to include Thanksgiving and Easter among the days in which members are allowed to utilize personal days. Currently, members are allowed to use personal days on certain holidays, including December 24, 25 and January 1. The FMBA has provided insufficient justification as to why this existing benefit should be expanded. Accordingly, the proposal is denied.

Article VII – Personal Day/Vacation Day Selection

The FMBA seeks to revise/clarify the current practice relating to the use of personal days and vacation days within the fire department so that a member of the FMBA's ability to utilize a personal day is not reduced based upon a fire officer's selection of time off. The FMBA asserts that there is a current practice that only allows a total of five fire officers and rank and file firefighters to take

time off during a given tour. The record does not sufficiently reflect how the FMBA's proposal would impact the existing provisions set forth in Article VII (Personal Days) and Article XII (Vacations) nor its impact on the existing provisions relating to these benefits that exist for the FOA. Accordingly, I award no changes to the existing selection procedures.

Article XII – Vacations

The FMBA contends that the parties have agreed on the specifics of a language change pertaining to the manner in which vacation hours are allocated for new hires. The FMBA submits that the agreed upon language states:

“The calculation of the hours to which employees are entitled under this Article shall be based on the anniversary date. Therefore, on the anniversary date after one year on the job an employee will, as is set forth hereinafter, receive 144 hours vacation time. This will be credited to his account for the calendar year in which the anniversary occurs. If at that time that vacation time or any additional vacation time which is given cannot be schedule during the calendar year in which the anniversary date occurs, the balance will be added to the following calendar year's entitlement beginning January 1. This practice will apply to the other anniversary dates which are after 3 years: 240 hours; after 10 years: 288 hours; after 14 years: 336 hours; and after 16 years: 396 hours.”

The City agrees that the above sets forth agreed upon language except for the last sentence. Accordingly, in the absence of mutuality, I award the above language after subparagraph E with the exception of the last sentence. I do not award the City's request set forth in its post-hearing brief to provide a sunset provision language concerning a new hire's ability to use the balance of his/her first year's vacation entitlement.

Article XXVIII – Tuition Reimbursement

At Article XXVIII, Section 4, the Agreement currently provides for the reimbursement of tuition, fees and books. According to the FMBA, the language is limited to courses that concern fire science and that, in contrast, the PBA recently negotiated new language that does not limit reimbursement to law enforcement courses. The existing provision in the FMBA Agreement is identical to language in the FOA agreement. Moreover, the language in the PBA Agreement requires that unit members obtain prior approval from the City administrator before registering for any college course. The record contains no evidence as to the scope of the courses that the City administrator has approved under the PBA Agreement. Such evidence would be necessary in order to sustain the FMBA claim that the PBA Agreement allows for the approval of courses broader in scope. Based upon these considerations, I award no change to the existing provision.

Mutual Swaps

The FMBA seeks to expand the number of mutual swaps that are permitted from 6 to 8. The City objects based upon its view that this should be a matter left to administrative discretion. Given the absence of contract language on this issue and the City's position that additional swaps may be permitted by exercise of administrative discretion, I do not award the FMBA's proposal.

On-Call

The FMBA seeks on-call pay. It asserts that the fire department has an on-call policy requiring its members to be on call with pagers. It seeks compensation similar to what the PBA negotiated with the City in its most recent Agreement. While there may be similarities between the two departments on this issue, the record does not sufficiently detail the respective on-call policies of the departments and their effect on unit employees for the purpose of determining the merits of on call payments in the fire department. I decline to award this proposal and simply note that the FMBA may renew its request during the next round of negotiations.

Rest Period

The FMBA proposes to change existing language concerning rest periods. Currently, the Agreement states that "There shall be a ten (10) hour rest period before and after each twenty-four (24) hour shift unless there is an emergency." The proposed change is to make the 10 hour rest period applicable before and after each 38 hours of consecutive work. The proposal omits reference to emergency situations. The City objects to the proposal on the basis that the FMBA proposal allows for an additional 14 hours of work before being required to rest. Although the FMBA makes reference to its proposal being consistent with the rest period policy for the FOA, unlike the FMBA Agreement, no language

appears in the FOA agreement regarding this issue nor does the record reflect what the potential impact of this proposal would be on unit members or on the operations of the department. Accordingly, the proposal is denied.

Article VI – Sick Time

The City has several proposals with respect to the Sick Time provision set forth in Article VI. It proposes to change Section 7 by requiring that sick call out be charged on an hour for hour basis, to limit the use of major medical, as is defined in the Agreement, so that employees be authorized to remain on paid sick leave for six months rather than twelve months, to provide a definition of the types of illnesses or injuries to be excluded from the definition of Major Illness and to preclude the accrual of benefits while an employee is on Major Illness.

While the City asserts that all of these provisions are subject to abuse and can cause scheduling difficulties and large overtime expenditures, the record does not reflect any documentary support nor evidence that any of these provisions have been used in a manner that was not originally intended. While there can be no dispute that these provisions should be evaluated upon credible evidence being shown that an elimination or modification is reasonable because of abuse, overtime expenditures that burden the department's budgets, or significant operational difficulties, I have not been persuaded on this record that the changes the City seeks during this contract term are justified. Accordingly, the City's proposals are denied.

Accordingly and based upon all of the above, I respectfully enter the terms of the Award as follows:

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 which have been modified by the terms of this Award by mutual agreement of the parties.

2. **Duration**

There shall be a four-year agreement effective January 1, 2007 through December 31, 2010.

3. **Article X – Health Benefits – Widows Benefits**

Effective immediately, the following language shall be added to Article X, Section 1 of the FMBA Agreement:

Effective upon the execution of this Agreement, the City shall provide benefits to new widows and dependents of a deceased employee for a minimum of two years after the death of the employee. Said benefits include hospitalization, dental, major medical, prescription and vision.

4. **Article X - Health Benefits – Option Plans**

Effective as soon as is administratively practicable, the following language shall be added to Article X, Section 1 of the FMBA Agreement:

The City shall pay 65% of the costs, for option plans (e.g., HMO), which are selected by the employee.

5. **Article X – Health Benefits and Hospitalization**

The following language shall be added to Section 1:

Unit employees shall be required to contribute towards health insurance premiums as required by law.

6. **Article X – Vision Care and Prescription Plan**

Effective as soon as is administratively practicable, the following modifications shall be made to Article X:

Section 4. Vision Care and Prescription Plan

Delete 3rd paragraph and modify as follows:

Effective April 15, 2008, the prescription co-pay shall be as follows:

\$10.00 co-pay for generic drugs

\$20.00 co-pay for preferred brand name drugs

\$30.00 co-pay for non-preferred brand name drugs

Co-pays will be doubled for 90 day supply via mail order, i.e. \$20.00/\$40.00/\$60.00.

Employees shall no longer be able to submit co-pay reimbursement requests through Aetna.

7. **Article IX – Clothing Allowance**

Effective January 1, 2009, Article IX, Section 2 shall provide an overall allowance of \$1,100, based upon a \$580 allowance for the cleaning and maintenance of uniforms and \$520 for the replacement of clothing and equipment.

Effective January 1, 2010, Article IX, Section 4, Shall provide a \$100 reimbursement for the replacement of a watch or timepiece damaged in the line of duty and a \$150 reimbursement for the replacement of eyeglasses or contact lenses damaged in the line of duty.

8. **Article XII – Vacations**

Add the following new language:

“The calculation of the hours to which employees are entitled under this Article shall be based on the anniversary date. Therefore, on the anniversary date after one year on the job an employee will, as is set forth hereinafter, receive 144 hours vacation time. This will be credited to his account for the calendar year in which the anniversary occurs. If at that time that vacation time or any additional vacation time which is given cannot be schedule during the calendar year in which the anniversary date occurs, the balance will be added to the following calendar year’s entitlement beginning January 1.”

9. **Article XVIII – Grievance Procedure**

Section 3, Step 4, paragraph 2, shall be modified to state:

The selection of an arbitrator and the conduct of the hearing shall be pursuant to the rules of the New Jersey State Public Employment Relations Commission then in effect.

10. **Article XVII – Wages**

The salary schedules shall be increased by the following amounts, retroactive to their effective dates:

January 1, 2007 – 3.50%
January 1, 2008 – 3.50%
January 1, 2009 – 3.50%
January 1, 2010 – 2.50%

Emergency Medical Technician Stipend

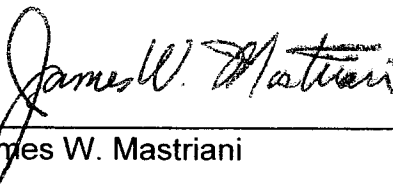
The EMT Stipend shall be increased by ¼% retroactive to January 1, 2007, by an additional ¼% retroactive to January 1, 2008, by an additional ¼% retroactive to January 1, 2009, and by an additional ¼% retroactive to January 1, 2010.

A firefighter who has lost his/her EMT certification and has not made reasonable efforts to maintain that certification, shall be required to pay the costs associated with recertification.

11. **Sick Time Buyout – Article V, Section 2(A)**

This section shall be amended, effective on the date of this award, to state that the accumulated sick leave payout shall be capped at 481 hours for existing employees. Employees hired after the date of this award shall continue to be capped in dollar amount at the level of \$15,000.

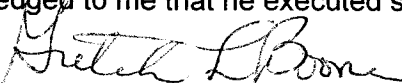
Dated: July 31, 2010
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 31st day of July, 2010, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



Gretchen L. Boone
Notary Public of New Jersey
Commission Expires 4/30/2014