

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Arbitration Between:

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**CITY OF EAST ORANGE**

“Public Employer,”

- and -

**FOP LODGE NO. 111**

“Union.”

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2001-51

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the City:**

Avis Bishop-Thompson, Esq.  
DeCotiis, Fitzpatrick, Gluck & Cole, LLP

**For the FOP:**

Stephen C. Richman, Esq.  
Markowitz & Richman

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the East Orange FOP Lodge No. 111 [the "FOP"]. As the result of an election that occurred on July 20, 2000, the FOP was certified as the exclusive representative of all sworn police officers below the rank of Sergeant employed by the City of East Orange [the "City"]. Prior to this certification, the rank and file Police Officers were represented by PBA, Local No. 16 [the "PBA"]. The PBA had been the party to a collective negotiations agreement with the City effective July 1, 1996 through June 30, 1999. Prior to the election, the PBA, together with the SOA which represents all sworn police officers in the ranks of Sergeant, Lieutenant and Captain, engaged in pre-interest arbitration mediation before me. After the election, and pursuant to an appointment to serve as interest arbitrator in the rank and file unit, I conducted several pre-arbitration mediations between the City and the FOP. Because the impasse remained, the matter proceeded interest arbitration.

A formal interest arbitration hearing was held on May 13, 2003, at which the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from City Auditor Dieter P. Lerch. At the hearing, the parties also agreed to incorporate the testimony of Lerch regarding the City's financial history in the interest arbitration between the City and the PBA (Superior Officers). At the close of the hearing the record remained open until May 27, 2003 for the inclusion of additional

documentary evidence. On September 19, 2003 I issued an Interest Arbitration Award covering the City's Superior Officers.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party. Post hearing briefs were submitted by both parties and transmitted by the arbitrator to each party on or about August 20, 2003.

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

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

#### **The FOP**

1. Term of Contract – the FOP seeks to enter into a seven (7) year contract for the period of July 1, 1999 through June 30, 2006.
2. Wages
  1. Effective July 1, 1999, 2.5% increase in base salary
  2. Effective July 1, 2000, 2.5% increase in base salary
  3. Effective July 1, 2001, 2.5% increase in base salary

4. Effective July 1, 2002, 3.5% increase in base salary
  5. Effective July 1, 2003, 3.5% increase in base salary
  6. Effective July 1, 2004, 4% increase in base salary
  7. Effective July 1, 2005, 3.5% increase in base salary
3. Holidays – Effective January 1 of the calendar year after the issuance of this arbitration award, holidays will be folded into base pay.
  4. Effective July 1, 2003, reduce starting salary to \$29,910.00 for probationary police officers.
  5. Effective July 1, 2003, for all police officers hired thereafter, modify number of steps on salary guide from 5 to 6 by adding a first step of \$34,910.00 before being placed on existing steps of the salary guide.
  6. Dues deduction – Pursuant to N.J.S.A. 52:14-15.9(e) the employees represented in this bargaining unit may not request payroll deduction for the payment of dues to any labor organizations other than the duly certified majority representative. Existing written authorizations for payments of dues to any other labor organization shall be terminated effective upon issuance of this arbitration award.
  7. A joint labor management committee shall be established to address operational concerns of the department. The FOP shall submit an agenda of issues to be discussed within thirty (30) days of the issuance of the arbitration award period. The committee shall be convened within thirty (30)

days thereafter and shall meet quarterly during the term of this agreement.

8. Change all references in collective negotiations agreement from PBA to FOP.

### **The City of East Orange**

1. Term of Contract

The City of East Orange seeks to enter into a seven (7) year contract with the FOP for the period of July 1, 1999 through June 30, 2006.

2. Wages/Salary

July 1, 1999 – 1.0% increase in base salary

July 1, 2000 – 1.0% increase in base salary

July 1, 2001 – holiday pay fold-in

July 1, 2002 – 3.5% increase in base salary

July 1, 2003 – 3.5% increase in base salary

July 1, 2004 – 4.0% increase in base salary

July 1, 2005 – 3.5% increase in base salary

3. Holiday Pay

Effective July 1, 2001, include holiday pay in base salary

4. Longevity

Longevity shall remain the same.

5. Health Benefits

- A. Effective July 1, 2002, all employees presently covered under an HMO would have their co-pay for doctor visits increased from \$5.00 to \$10.00.
- B. Effective July 1, 2002, modify the current health benefits to the following two-tier prescription plan: employees would pay a \$5.00 co-pay for generic drugs; and a \$10.00 co-pay for formulary drug.

6. Probationary Salary

- i. Effective January 1, 2002, all new hires will be hired at a probationary salary of \$25,000.00 to be received by them through the completion of their working test period. Upon said completion, new hires would then be placed at the first step of a new six-step salary guide.
- ii. Effective January 1, 2002, the salary guide is a six-step guide after the probationary level. The first step of the salary guide will be a salary of \$34,910.

7. Shift Bid

The City proposes the elimination of Section 13 pertaining to the shift bid system.

The City and the Union have offered testimony and considerable documentary evidence in support of their last offers. Each submission was expert and comprehensive in nature. The entire record of the proceeding must be considered in light of the statutory criteria. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (8) which I find relevant to the resolution of these negotiations. I am also required to indicate which of these factors are deemed relevant along with an analysis of the evidence on each relevant factor. If one or more factors are deemed irrelevant, I must satisfactorily explain why they are not relevant. 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.

### **BACKGROUND**

The City of East Orange is an urban municipality. The record reflects a high crime rate and a high unemployment rate. East Orange is one of 22 municipalities in Essex County. The City encompasses an area of approximately 4 square miles and has a population of approximately 72,847. According to the statistics of the U.S. Census Bureau, the median household income in the City is approximately \$26,810 per year, a sum considerably less than the median household income in Essex County (\$39,823) and statewide (\$47,903). Per capita income in the City is approximately \$12,376, which is one of the lowest in Essex County. Poverty levels in the City mirror those statewide with approximately 9% of its adult residents and 13% of its children living below the poverty level. The statewide average is 9% of adults and 14.8% of children live below the poverty level. At the same time, the City's unemployment rate was 6.4% in 2000, compared with unemployment rates of 4.7% countywide and 3.8% statewide.

According to the New Jersey State Police Uniform Crime Report, the City had a total crime index, including both violent and non-violent crime, of 5,344 in 2001. That total included 1,417 violent crimes and 3,927 non-violent crimes in the City in 2001. Violent crimes included 13 murders, 32 rapes, 685 robberies and 687 aggravated assaults. As a result, the crime rate is 76.5 per 1000 population, with a violent crime rate of 20.3 per 1000 and nonviolent crime rate of 56.2 per 1000.

The City is currently in the process of recovering from a deep fiscal crisis. The crisis was most severe in fiscal year 1999, when its \$14,279,793 deficit, combined with deficits of \$1,886,000 in fiscal year 1997 and \$6,587,650 in fiscal year 1998, lead the State of New Jersey to take over its financial operations pursuant to the Government Supervision Act. City Auditor Dieter Lerch calculated that by the close of fiscal year 1999, the City's actual fund balance was a true deficit of \$21,868,152. The State takeover permitted the City to pay off its deficit (unfunded expenditures) over a five year period. According to Mr. Lerch, the deficit had been reduced to \$8,103,171 by June 30, 2001.

Mr. Lerch testified that the City has been successful in reducing its deficit through a combination of tax increases, aggressive tax collection campaign and state aid through the Distressed City Aid Act. Mr. Lerch also testified that about half of the City's budget is funded by its tax levy and the remaining half through state aid.

In September of 2001, the City entered into an agreement with the State Division of Local Government Services that conditioned the further receipt of State aid on a reorganization of its Police Department. That Agreement stipulates that the full staffing complement for Superior Officers is eight Captains, 21 Lieutenants and 43 Sergeants. That Agreement provided further that the City should have a full complement of 284 rank and file police officers and one Deputy Chief and one Chief of Police.

Notwithstanding this history of an adverse financial posture, the record reflects that the City does have assets in terms of its location and mass transportation that allow for future growth and a more positive financial outlook for the future. In Mayor Robert Bowser's April 30, 2003 State of the City address he described the City as "on the move" and pointed out that the tax collection rate has increased from 76% in 1999 to 93% in the current fiscal year. The Mayor also cited other indicia of economic growth including a planned hotel/conference center and culinary arts/hotel management school. New housing is also planned and there is an increase in multi-family building permit activity in the City from a low of 2000 permits to 12,000 permits reported in 2003.

## **POSITIONS OF THE PARTIES**

### **Position of the FOP**

The FOP asserts that the interest of police officers in receiving a fair wage need not conflict with the City's goal of continued economic development and fiscal health. The FOP contends that application of the statutory criteria should lead to an award adopting its final offer.

Noting that the City's residents have a strong interest in police officers receiving a fair contract with equitable wage increases, the FOP points to the police officers' efforts to reduce the crime rate. The FOP points to the crime rate of 76.5 per 1000 people, similar to the crime rate in neighboring municipalities of Newark, Irvington and Orange. The FOP contrasts this level of crime rates in suburban communities such as Montclair which had a violent crime rate of 4.0 per 1000 and Caldwell which had a violent crime rate of 0.3 per 1000 in 2001.

The FOP asserts that a disparity has developed between the wages of the City's police and police in other urban and suburban municipalities and that is this disparity is allowed to widen, morale will suffer, and in turn the level of safety could decline if the experience level of the City's police is decreased. The FOP points out that low morale and the resulting turnover among police officers harms public safety by lowering the number of experienced police officers on the street. The FOP also points to the correlation between the number of police officers and the crime rate. For example, the FOP notes that from 1999 to 2000 the number

of police officers increased slightly from 265 to 279 and the crime index remained relatively stable around 5064, but in 2001 the number of officers decreased to 249 and the crime rate increased to 5,344. The FOP reiterates that the City's economic revitalization depends upon a safe environment to live, work and conduct business.

Turing to the comparison of wages, salaries and other conditions of employment, the FOP contends that the wages and conditions of employment of the City's police officers lag behind police employed in similarly situated municipalities. The FOP asserts that comparable municipalities include the State's other urban centers of Trenton, Elizabeth, Paterson, Jersey City, and Newark. The FOP compares the relative population and crime rates of each of these cities to those in East Orange. However, the FOP emphasizes that both total compensation and the rate of increase in these cities is higher than that provided in East Orange. The FOP points out that the average maximum base salary provided to police in the "big six" cities is as follows:

|      |          |
|------|----------|
| 1999 | \$56,912 |
| 2000 | \$58,649 |
| 2001 | \$60,650 |
| 2002 | \$62,797 |
| 2003 | \$65,181 |
| 2004 | \$68,879 |

In contrast, the FOP points out that the maximum base salary for the City's police officers in 1999 when their agreement expired was \$52,311. The FOP calculates that to simply maintain the existing 8.1% disparity in wages with officers

employed by the big six cities, East Orange police officers would need wage increases of 3.03% in 2000, 3.42% in 2001; 3.54% in 2002; 3.80% in 2003 and 4.02% in 2004. The FOP detailed wage increases in the big six cities as follows:

**Maximum Base Salary without Longevity for Police Officers  
Urban Six**

| City        | 1999   | 2000   | %    | 2001   | %    | 2002   | %    | 2003   | %    | 2004   | %    |
|-------------|--------|--------|------|--------|------|--------|------|--------|------|--------|------|
| Camden      | 55,664 | 57,334 | 3.00 | 59,054 | 3.00 | 60,826 | 3.00 | 63,283 | 4.04 | 66,162 | 4.55 |
| Elizabeth   | 55,514 | 57,735 | 4.00 | 59,900 | 3.75 | 62,296 | 4.00 | 64,632 | 3.75 |        |      |
| Jersey City | 59,994 | 62,064 | 3.45 | 64,236 | 3.50 | 66,484 | 3.50 | 68,811 | 3.50 | 71,220 | 3.50 |
| Newark      | 57,613 | 59,774 | 3.75 | 61,866 | 3.50 | 64,031 | 3.50 | 66,592 | 4.00 | 69,255 | 4.00 |
| Paterson    | 58,519 | 60,275 | 3.00 | 62,083 | 3.00 | 64,256 | 3.50 | 66,665 | 3.75 |        |      |
| Trenton     | 54,170 | 54,711 | 1.00 | 56,763 | 3.75 | 58,892 | 3.75 | 61,100 | 3.75 |        |      |
| Average     | 56,912 | 58,649 | 3.03 | 60,650 | 3.42 | 62,797 | 3.54 | 65,181 | 3.80 | 68,879 | 4.02 |
| East Orange | 52,311 |        |      |        |      |        |      |        |      |        |      |

The FOP calculates that even if the FOP's final offer was awarded, the current 8.1% disparity would expand slightly by 2005.

The FOP also compares the compensation of City police officers to compensation of other police officers in Essex County, which include both urban centers such as Newark, urban suburbs such as Caldwell and Maplewood and suburbs, all with relatively high population densities. The FOP provided the following chart of increases to maximum base salaries in Essex County.

| Jurisdiction    | 1999 | 2000 | 2001 | 2002 | 2003 | 2004 | 2005 |
|-----------------|------|------|------|------|------|------|------|
| Belleville      |      |      | 3.7% | 3.8% |      |      |      |
| Bloomfield      | 3.9% | 4.0% | 4.0% | 3.9% | 3.8% | 3.9% | 3.8% |
| Caldwell Boro   | 4.4% | 4.2% | 4.2% | 4.2% |      |      |      |
| Cedar Grove     | 4.2% | 4.5% | 6.1% | 5.0% |      |      |      |
| Essex Fells     |      |      | 4.0% | 4.0% |      |      |      |
| Fairfield       | 3.8% |      |      |      |      |      |      |
| Glen Ridge Boro | 4.2% |      |      |      |      |      |      |
| Irvington       | 3.0% | 2.8% | 2.8% | 3.3% |      |      |      |

|                           |      |      |      |      |      |      |  |
|---------------------------|------|------|------|------|------|------|--|
| <b>Livingston</b>         | 3.7% | 3.8% | 4.0% | 4.0% | 4.0% |      |  |
| <b>Maplewood</b>          | 4.0% | 3.6% | 3.3% | 4.0% |      |      |  |
| <b>Millburn Twp</b>       | 4.0% | 3.7% | 3.8% | 3.8% | 3.8% |      |  |
| <b>Montclair</b>          | 3.9% | 4.2% | 4.3% |      |      |      |  |
| <b>Newark</b>             | 4.5% | 3.7% | 3.5% | 3.5% | 4.0% | 4.0% |  |
| <b>North Caldwell</b>     |      |      | 4.0% | 4.0% |      |      |  |
| <b>Nutley</b>             | 4.0% | 3.5% |      |      |      |      |  |
| <b>City of Orange Twp</b> | 3.0% | 3.7% | 1.5% |      |      |      |  |
| <b>Roseland</b>           | 7.6% | 4.0% | 4.5% |      |      |      |  |
| <b>S Orange Village</b>   | 3.0% | 3.5% | 3.5% | 4.0% | 4.0% |      |  |
| <b>Verona</b>             | 4.2% | 5.0% | 6.1% |      |      |      |  |
| <b>West Caldwell</b>      |      | 4.0% |      |      |      |      |  |
| <b>West Orange</b>        | 3.0% | 3.2% | 3.5% |      |      |      |  |
| <b>Median</b>             | 4.0% | 3.8% | 4.0% | 4.0% | 4.0% |      |  |
| <b>East Orange</b>        | 3.5% |      |      |      |      |      |  |

According to the FOP, aside from Newark, the single municipality most comparable to East Orange is Irvington with a similar population and density, as well as similar crime rates. The FOP points out that in 1999 the maximum base salary for Irvington's police officers was \$58,872 or \$6,561 more than the maximum base salary of \$52,311 in East Orange. The FOP notes that Irvington's police officers will receive percentage increases of 3.0% in 1999, 2.8% in 2000, 2.8% in 2001 and 3.3% in 2002. The FOP calculates that its final offer would maintain, but not exacerbate the wage disparity between Irvington and East Orange.

The FOP contends that the City's proposal to reduce the starting salary from \$39,920 to \$25,000 would further exacerbate wage discrepancies between the City and comparable big six and Essex County municipalities. To that end, the FOP compares starting salaries among the Big Six cities which range from \$36,610 in Elizabeth and \$34,100 in Jersey City to Trenton (in 1997) an academy rate of \$22,000, increased to \$27,285 at the probationary step.

Noting that at the time the brief was filed, an Interest Arbitration Award covering Police Superior Officers was pending, the FOP points out that the City's Firefighters, who earned a top base salary of \$52,439 in 1999 received wage increases of 1.0% in 1999, 1.0% in 2000, 0.0% in 2001, 3.5% in 2002, 3.5% in 2003, 4.0% in 2004 and 3.5% in 2005. The FOP also points out that in lieu of a wage increase in 2001, the Firefighters were awarded a fold-in of their holiday pay into their base salary. As a result, the base salary of Firefighters increased by \$4,114 in real terms, and by FY 2003, Firefighters earned a top rate of \$61,710. The FOP adds that the City's Fire Officers received the same percentage increases and likewise, had their holiday pay rolled into their base salaries in 2001. Given that the value of the holiday fold-in for Firefighters is based upon 12 hours of pay versus eight hours of pay for police officers, the FOP emphasizes that City Firefighters and Fire Officers received a greater total wage increase than police officers under the City's proposal. Additionally, the FOP points out that the holiday fold-in for Firefighters and Fire Officers was not reduced for employees with over 22 years of service as is proposed by the City.

Although asserting that increases received by non-uniformed public employees in East Orange are less relevant, the FOP recounts that the City's white collar/clerical/professional unit received increases of 2.5% in 1997, 3.0% in 1998, 3.5% in 1999, a lump sum payment of \$1,500 for 2000-2001 (not included in the base), 2.0% in 2002, 2.5% in 2003 and 3.0% in 2004. The FOP notes that



non-bargaining unit non-uniformed employees received similar increases during this period. Accordingly, the FOP reiterates that its final offer would allow City police officers to maintain but not erase existing wage disparities with police officers in Big Six municipalities and with other Essex County municipalities.

Emphasizing that both the City and the FOP have proposed to fold holiday pay into base salaries, the FOP focuses on the differences between the two holiday fold-in proposals. The FOP explains that under the current Agreement, police officers with under 22 years of service receive 14 days of holiday pay, calculated at a rate of 8 hours per day. However, the FOP continues, police officers who have completed 22 years of service have their holidays reduced from 14 to one, and at the same time, their longevity is increased from 8% of base salary to 14% of base salary. The FOP points out that under the City's proposal, police officers with less than 22 years of service would have all 14 holidays folded into their base salary, while officers who have completed 22 or more years of service would have only one holiday folded into their base pay. Under the FOP's proposal, all police officers would have 14 holidays folded into base salary irrespective of their years of service.

The FOP explains that the effect of the City's proposal is to reduce the existing wage gap between police officers with 20 and 22 years of service. The FOP calculates that currently, police officers with 22 years of service receive \$523 more in total compensation than police officers with 20 years of seniority.

According to the FOP, under the City's proposal this difference would be reduced to \$332 in 2001-2002 after the respective holidays are folded into base pay. If longevity payments are not taken into consideration, the FOP calculates that police officers with 20 years of service will receive a higher base salary (\$56,236) under the City's proposal than would police officers with 22 years of service (\$53,567). In contrast, the FOP asserts that its final offer would maintain officers completing 22 years of service at a higher base salary than police officers completing 20 years of service after the 14 days of holiday pay are folded into base salary.

The FOP maintains that the East Orange Firefighters Agreement supports adoption of the FOP's holiday fold-in proposal. Specifically, before this contract, Firefighters received 14 holidays per year, calculated at 12 hours per day, or 2184 hours of holiday pay annually. The FOP points out that in a 1992 interest arbitration award, Arbitrator Scheinman increased longevity payments for Firefighters with 22 years of service to 14% of base salary consistent with the amount earned by the City's Police Officers. See City of East Orange, PERC Docket No. IA-92-21 (1992) at p. 11. The FOP emphasizes that in Arbitrator Schneiman's Award, he did not order a commensurate reduction in the amount of holiday pay received by Firefighters. Likewise, the FOP notes that in Arbitrator Zausner's recent Award, pay for Firefighters increase to \$57,607, or 8.0% in 2001 as a result of the fold-in of holiday pay for all Firefighters, including those with over 22 years of service, with no reduction in longevity pay. The FOP

contends that its holiday pay fold-in proposal would put the City's Police Officers and Firefighters on an even playing field and the FOP is entitled to the same benefit as the Firefighters.

The FOP objects to the City's proposal to increase co-payments for doctor's visits and prescription drugs from \$5 to \$10. Acknowledging that these increases have been awarded to the Firefighters, the FOP argues that a 100% increase is harsh and unwarranted in this unit.

The FOP maintains that the percentage wage increases it proposes are comparable to those received by police and fire employees throughout New Jersey. Additionally, the FOP asserts that comparison of wages paid in the private sector are of limited value in interest arbitration proceedings concerning police officers. However, the FOP notes that private sector wages increased by 4.5% in Essex County and by 4.3% in New Jersey in 1999. In 2000 private sector wages increased by 3.45% in Essex County and by 6.9% in New Jersey. Similarly, the FOP notes that in 2001 private sector wages increased by 4.3% in Essex County and by 1.2% in New Jersey.

Addressing the overall compensation criterion, the FOP calculates that total compensation presently received by City Police Officers at the top step including salary, longevity, uniform allowance and holiday pay is \$57,608, or

approximately 8.4% less than the total compensation received by a police officer employed by the Big Six cities.

The FOP points out that the parties' stipulated to include the prior testimony in the interest arbitration proceeding between the City and its Superior Officers of City Auditor Dieter Lerch on the financial history of the City.

Turning to the lawful authority of the employer, the FOP points out that the City has not claimed that it is restricted by CAP limitations in paying for this Award. The City notes that Mr. Lerch did not testify about the applicability of any CAP limitations. In any event, the FOP calculates that under the CAP law, the City's total allowable operating appropriations for 2003 are \$81,751,868 and it has appropriated \$77,358,984 or more than \$4,000,000 less than its CAP limitation.

Addressing the City's argument that it remains in poor economic straits and can not afford the costs of the FOP's proposal, the FOP notes that the City is in the midst of an economic recovery, and anticipates a \$1,500,000 budget surplus in 2003. The FOP also points to improvements in the tax lien collection rate from 2.9% yielding \$371,107 in 1998 to 12.4% in 2002, yielding \$2,547,863. The FOP asserts that the City's argument that the funds obtained through its aggressive tax lien collections and sales are being used to pay down accumulated debt, unfunded expenditures and deferred wages, including

subsidies to its water utility is not persuasive. The FOP points out that much of the City's accumulated debt will be paid off by June 30, 2003 and its new Moody's bond rating of Baa3 has enabled it to refinance existing debt at lower interest rates providing \$12,500,000 in additional savings. The FOP asserts that the water utility deficits appear to be aberrations in an otherwise profitable utility.

Addressing the City's assertion that the cost of the FOP's economic proposals over the seven year contract term would exceed the cost of the City's economic proposals by \$4,178,256, the FOP notes that the disparities are relatively small in the first years of the agreement (\$171,692 in 2000 and \$352,866 in 2001) growing to \$808,082 in 2005 and \$835,428 in 2006 as the City's economic condition improves. The FOP considers these differences moderate and affordable, but asserts nonetheless that they are inflated. The FOP asserts that these figures are based upon a fixed 216 police officers and do not reflect "slippage" resulting from retirements of senior officers and their eventual replacement with lower paid recruits. According to the FOP, this slippage would provide considerable savings.

Additionally, the FOP's proposal to reduce the starting salary of probationary police officers from \$39,910 to \$29,910 effective July 1, 2003 and to add a new first step on the wage scale with a rate of \$34,910 at that time would further compound the cost savings to the City. The FOP calculates that replacing a senior officer earning between \$50,000 and \$60,000 per year with one earning

\$29,910 will result in a savings of \$20,000 to \$30,000 per year for just one officer. Additionally, the FOP points to the cost savings that would result if the City's proposals to increase co-payments for certain doctor's visits and for prescription drugs are awarded.

The FOP asserts that the cost of its economic proposals will have minimal impact on the City's taxpayers. Assuming *arguendo* that the cost differential between its proposal and the City's proposal is approximately \$4,000,000, the FOP points to the total of approximately \$25,500,000 in distressed city aid the City has received from the State. The FOP cites the City's FY 2003 budget which anticipates an additional \$3,500,000 in distressed city aid in 2003. Additionally, the FOP notes that reduced employer contributions to the Police and Fire Retirement System have resulted in a cost savings to the City of \$1,940,513 in FY 2001. Citing the testimony of Mr. Lerch, the FOP maintains that the City's taxpayers currently are responsible for approximately 50% of the City's revenue and that percentage is expected to remain constant. Accordingly, the FOP asserts that City taxpayers would bear only 50% of the cost of any wage increases. The FOP calculates that based upon the City's approximation of a \$4,000,000 cost of its wage proposal, its proposal would cost each City resident an additional \$4.08 per year at most. Accordingly, the FOP maintains that adoption of its economic proposal would not have an adverse impact upon the City, its residents and taxpayers.

Addressing the cost of living criterion, the FOP notes that the CPI-U for the New York-Northern New Jersey-Long Island metropolitan area rose by 2.2% for 199, 3.1% in 2000, 1.7% in 2001 and 3.1% in 2002. The FOP maintains that its proposed wage increases are consistent with the increases in CPI. According to the FOP, the City's proposal fails to keep pace with increases in the CPI.

The FOP asserts that the continuity and stability of employment criterion supports its final offer. The FOP asserts that the City's proposal would lower morale, which would in turn, increase turnover. In particular, the FOP asserts that the City's proposal to create a new starting salary effective July 1, 2002 would have a draconian impact on current new hires who would receive a retroactive pay cut.

The FOP contends that its non-economic proposals will support a stable work environment. Specifically, the FOP proposes that negotiations unit employees be prohibited from requesting payroll deduction for the payment of dues to any other labor organization besides the FOP and to terminate any such existing dues authorizations upon the issuance of this Award. The FOP asserts that this proposal would add stability to the negotiations unit the recent acrimonious election campaign.

The FOP asserts that its proposal to establish a labor-management committee to discuss operational concerns would add to stability. The FOP

maintains that it has operational concerns it seeks to address with the City outside the formality of interest arbitration. The FOP asserts that quarterly meetings of such a committee would allow for opportunities to discuss concerns and would eliminate any perception among negotiating unit employees that the City was not listening to their concerns.

Finally, the FOP seeks to change references to the PBA contained in the predecessor agreement to the FOP as the current certified representative.

### **Position of the City**

The City asserts that review of the statutory criteria shows its final offer to be fair and reasonable under the operative circumstances. Citing statistics demonstrating that it is largely a community composed of low income minority residents, with the attendant problems including high crime rates and high levels of unemployment, as well as decreasing ratables and increasing property taxes, the City maintains that its final offer is reasonable in light of these difficult circumstances. These statistics were reviewed at great length in the Award covering the City's Superior Officers and need not be repeated here.

The City also notes that in recent years, the unemployment rate in East Orange has been considerably higher than in the remainder of Essex County and Statewide. The following table illustrates the unemployment rate for East Orange as compared to Essex County and the State of New Jersey:



|              | 1997 | 1998 | 1999 | 2000 |
|--------------|------|------|------|------|
| East Orange  | 8.7% | 7.5% | 7.7% | 6.4% |
| Essex County | 6.5% | 5.6% | 5.7% | 4.7% |
| New Jersey   | 5.1% | 4.6% | 4.6% | 3.8% |

The City argues that the slight improvement in its fiscal conditions in 2001 does not erase the continuing economic plight in the City. To that end, the City points out that the New Jersey Office of State Planning consistently ranks East Orange in the top 100 of the Municipal Distress Index (MDI)<sup>1</sup>, an index of socioeconomic distress. The City notes that as a distressed municipality, it has repeatedly been required to apply to the NJ Department of Community Affairs (DCA) for approval to exceed the statutory limitations to carry debt. According to the City, in 1999 it was required to operate under the supervisory powers of the State pursuant to the Government Supervision Act. Under that Act, the State imposed a hiring freeze.

As additional support for fiscal problems facing East Orange, the City points to the testimony of its Auditor, Dieter P. Lerch. Mr. Lerch testified that the tax levy has increased 29% since 1998, compared to the CPI, which has increased by 13%.

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<sup>1</sup> The MDI is an index of socioeconomic distress in which the ranking of municipalities is one of a number of factors used for determining priority in the Statewide Policies for Public Investment Priorities as well as for priority for municipal strategic revitalization planning under Statewide Policies for Urban Revitalization in the New Jersey State Development and Redevelopment Plan adopted in 1982. The MDI has also been used since 1979 as one of several factors in distributing need-based funds.

The City maintains that the “gray financial backdrop” that it has presented supports its final offer, which though “spartan,” will not negatively impact the interests of the public, other public safety employees or FOP bargaining unit members. To that end, the City asserts that a wage increase in excess of its final offer would impact costs in other areas, including other bargaining units. As noted above, the parties have stipulated to Mr. Lerch’s testimony in the interest arbitration proceeding involving the City’s Superior Officers. This testimony was discussed at length in the Award in that case (IA-1999-132) and need not reiterated here. However, the City notes that it does not have a true operating surplus because it is required to issue tax anticipation notes to meet its revenue needs. At present City has \$7 million in tax anticipation notes outstanding. At the same time, its revenue stream, from non-tax sources, such as the water utility system, have evaporated.

As a further gauge of its financial well-being, the City compares its assessed value of real property with other municipalities in Essex County. Noting that the trend in the City is a decrease in the value of taxable real property, the City points out that between 1997 and 2001 ratables decreased by almost \$27 million to \$302,664,600. At the same time, the City’s total tax levy has increased substantially over the past four years. The City calculates that its property tax levy increased approximately 29% from 1997 through 2001 while the

CPI increased by approximately 10.7%. The City compares the increase in its tax levy to the CPI as follows:

| <b>Year</b> | <b>Increase in City's Property Tax Levy</b> | <b>Increase in CPI</b> |
|-------------|---|------------------------|
| <b>1998</b> | 9.9%  | 1.7%                   |
| <b>1999</b> | 8.5%  | 2%                     |
| <b>2000</b> | 2.5%  | 3.3%                   |
| <b>2001</b> | 5.5%  | 3.3%                   |

The City points out that its financial difficulties also stem from the declining value of taxable properties. The City compares its true equalized tax rate of \$6.69 with those of other Essex County municipalities. According to the City, its equalized tax rate is in excess of three times the tax rate of some Essex County communities including Roseland, North Caldwell, Verona, Livingston and Cedar Grove. The City emphasizes that even Irvington, another distressed City in Essex County with the County's second highest tax rate of \$5.00, and Orange with a tax rate of \$4.59, both have property tax rates substantially lower than East Orange.

The City also points out that it has a severe delinquent property tax payment problem. According to the City, this problem is exacerbated by the fact that the amount of taxes owed on delinquent properties often exceeds their fair market value and properties are often abandoned or not marketable due to "environmental contamination." According to the City, by the end of 1998 it had placed tax liens of \$12,675,442, but had collected only \$371,017, or 2.9%. Pointing to Lerch's testimony, tax delinquencies increased dramatically in the

fiscal year ending 2001. At that time, the City issued tax liens for \$24,408,033 and collected only \$3,168,000, or 13%. The City asserts that it has aggressively foreclosed on tax liens, but the situation remains severe.

The City maintains that it relies heavily upon grants and State aid to provide for its current revenue needs. The City explains that it receives Distressed City Aid specifically for tax relief. The City notes that it received \$7 million in such aid for fiscal year 1999 \$9 million in Distressed City Aid for fiscal year 2000 and \$6 million for fiscal year 2001 for a total of \$22 million over the last three years. The City calculates that without this aid, the average homeowner would have paid an additional \$588 per year. According to the City, if this aid were to be removed, it would be faced with an additional 10% tax increase.

According to the City, State aid has not increased proportionately with its expenditures. When this is combined with the declining tax base, the City maintains that its new revenue sources are extremely limited. The City also points out that in the early 1990's two entries of promised State aid in the amount of \$4,150,000 were not disbursed. As a result of this financial situation, the City asserts that it must control costs wherever possible to limit the burden on its taxpayers.

The City argues that analysis of the interest and welfare of the public criterion compels adoption of its final offer because it avoids an onerous tax

increase while maintaining relatively competitive and internally consistent salary and benefits. The City asserts that it simply cannot afford the 2.5% wage increase proposed by the FOP in each of the first three years of the agreement.

Turning to the comparison of wages, salaries and conditions of employment, the City asserts that the documents introduced by the FOP demonstrate that salaries and direct monetary benefits, though slightly discounted, are comparable to the level of compensation received by police officers in other towns, as well as consistent with the overall economic trend in public and private employment generally.

The City argues that comparison of salary rates for other police in Essex County is not an appropriate comparison. The City asserts that most municipalities in Essex County are not distressed, and do not have the same high tax rate and high unemployment rate, low income levels and declining ratables base. Addressing the FOP's comparison with police officers top salary in Essex, Morris, Sussex, Union, and Warren Counties, the City notes that the vast majority of these municipalities are not considered distressed cities, and thus this evidence warrants little consideration. Looking to comparison of wages, salaries and conditions of other employees in the private sector, the City acknowledges that there are few private sector jobs comparable to that of an urban police officer, but notes that few other individuals with dangerous jobs can

retire after 25 years of service with a 65% pension, including full family health benefits.

The City notes that because it is an urban area it spends a higher proportion of its revenue on police services than do other Essex County municipalities. The City points to South Orange, the Essex County municipality with the highest median income, which spends \$5,144,119, less than one half of the county average on police services . The City asserts that its police officers receive adequate compensation given the fiscal constraints the City must address. The City asserts further that its police officers' compensation is generally on par with State and local government employees and private sector employees.

The City maintains that the most comparable community for comparison of wages and benefits is Irvington, because of its geographic proximity and similar economic and fiscal pressures and similar urban environments. The City notes that it and Irvington are both in the top 100 for the Municipal Distress Index and are ranked in the top two positions for high equalized tax rates. The City asserts that Irvington provides the same or similar benefits to its police in terms of salary and other benefits, though its tax rate, as well as its rates of unemployment and poverty are substantially lower. Citing a recent settlement between the City of Irvington and PBA, Local 29 for the period from July 1, 1997 through June 30, 2000, [IA-99-25 (2001)], the City points out that the salary increase was an

aggregate of 11.75% over three years. The City also cites the recent FMBA Award, (City of East Orange and FMBA, Local No. 23, IA-2000-56) where the average increase was 2.8% per year over three years.

Noting that the Arbitration Award covering the City's Firefighters did not alter the longevity of the firefighters, the City urges the adoption of that award regarding longevity and its reasoning.

Again seeking an award consistent with that covering the Firefighters, the City urges adoption of the holiday pay fold-in effective July 1, 2001. The City notes that the effect of the holiday pay fold-in on longevity was not addressed in the FMBA Award. The City points out that at present, holiday pay factors in years of service and longevity and the City urges that holiday pay be folded in to base pay as presently provided in the parties' agreement. The City expressly points out that Article XI, Holidays provides:

1. Each employee having less than twenty-two years of service shall, on or before December 10 of the contract year, receive pay for fourteen (14) holidays per year. Holiday pay shall be computed by multiplying the regular hourly rate by eight (8) hours.
2. Employees who have completed twenty-two (22) years or more of service shall receive pay for only one holiday per year.

The City points out that patrol officers with more than 22 years of service receive a 6 % "bump" in longevity to recognize the difference in holiday pay. According

to the City, this was bargained to compensate for the one day of holiday pay that was not previously rolled into base salary. Additionally, the City asserts that longevity payments were to be considered remuneration for purposes of pension contributions, but not for holiday pay. The City argues that given the existing adjustment to compensation in the form of longevity and that no change in longevity was awarded in the FMBA award, the existing computation of the holiday pay should continue and merely be folded into base salary.

Again citing the FMBA interest arbitration award, the City points to the award covering health benefits:

Effective July 1, 2002, modify current health benefits provided to employees to provide: (1) a co-pay of \$5.00 for generic prescriptions and \$10.00 for brand name prescriptions and (2) increase HMO doctor visit from \$5.00 to \$10.00.

The City urges the adoption of the reasoning and the FMBA award regarding health benefits.

Addressing the documentation submitted by the FOP regarding overall compensation, the City asserts that such evidence is not directly relevant. Asserting the City's overall contractual benefits are competitive with some elements that may be marginally below the median, the City points to the pension, retirement, disability leave and medical benefits provided to police



officers in New Jersey. The City notes that those benefits are superior to other public employees in the state and to the private sector generally.

The City notes that the only stipulation is to the testimony of Dieter P. Lerch concerning the financial history of the City as testified to in the Interest Arbitration of the City of East Orange and the SOA, Docket No. IA -99-132.

The criterion covering the lawful authority of the employer addresses the restrictions imposed by the CAP law. The City relies upon Mr. Lerch's testimony as well as the detailed evidence pertaining its agreement with the State Division of Local Government to address its extreme fiscal distress.

Looking to the financial impact on the governing unit, its residents and taxpayers, the City reiterates its "crushing and systemic financial problems" that have caused a severe impact on its fiscal operations. Under the financial distress detailed by the City, it maintains that its Police Officers are adequately compensated and the excessive increases proposed by the FOP are not justified. The City points to Mr. Lerch's calculation that the FOP's proposal would result in an additional cost in base salary to the City of \$4,178,256 over the seven year period. According to Mr. Lerch, no funding was placed in the fiscal year 1999, 2000 or 2001 budgets. The City asserts that it would take a "severe financial hit" because funding for these years would necessarily come out of the 2002 budget.

The City contends that an award in excess of that awarded to the firefighters would create dissention among public safety bargaining units

Addressing the cost of living, the City points out that the CPI-U for the New York-Northeastern area increased by 3.1% in 2001, 3.7% in 2000 and 2.0% in 1999. The City contrasts the increase in the area CPI of 10.7% over the past five years with the FOP's proposal which would increase wages by 22% over seven years. Accordingly, the City asserts that its proposal is supported by the cost of living criterion.

The City asserts that its final offer is supported by the continuity and stability criterion. According to the City, the overall compensation provided to police officers has induced them to remain employed by the City, and their salaries and benefits are comparable to those provided by other police departments in communities with similar blighted economic conditions. The City argues that the FOP has not shown that the current level of compensation is insufficient to attract and retain qualified police officers.

The City asserts that a seven-year contract from July 1, 1999 through June 30, 2006 is appropriate under the circumstances to provide the parties with time to absorb the terms of this contract before commencing negotiations on the next one. Additionally, the City maintains seven years would provide a significant period of time to allow for greater analysis of its financial progression.

The City urges elimination of the shift bid system. The City argues that it has a managerial prerogative to change shift assignments to improve efficiency or to meet operational needs, as well as to determine minimum staffing levels. In this instance, the City asserts that it has the prerogative to assign its officers so as to assign qualified employees to specific jobs. The City asserts that the shift bid system directly related to the City's managerial prerogative to determine the duties and responsibilities undertaken by its police officers.

### **DISCUSSION**

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria which I judge relevant. The City and the FOP have expertly articulated their positions on the issues and have submitted comprehensive evidence and argument on each statutory criterion to support their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

The City proposes to increase the co-payment for doctor's visits from \$5 to \$10 for employees presently covered under an HMO. The City also proposes to increase the prescription co-payment to \$5.00 for generic drugs, and to \$10.00 for formulary drugs. The FOP asserts that such increases of 100% are unwarranted for this bargaining unit.

The City's proposals to increase the co-payment for doctor's visits from \$5 to \$10 for those employees presently covered by an HMO is a reasonable cost-saving measure assisting in offsetting health insurance costs. Likewise, the City's proposal to increase the prescription co-payments to \$5.00 for generic drugs and to \$10.00 for formulary drugs is also a reasonable cost-saving measure to assist in the off-set of the increasing cost of prescription drugs. These increases are modest in nature given the City's overall financial obligation on these benefits. The increases must be viewed on a dollar increase basis rather than by percentages. Additionally, these same increases have been awarded in the Firefighters and Police Superior Officers units and I give substantial weight to maintaining internal comparability on these issues. Accordingly, these proposals to increase co-payments for doctor's visits from \$5.00 to \$10.00 for those employees covered by an HMO and to increase the prescription co-payments are awarded, effective upon thirty (30) days notice.

The FOP proposes that negotiations unit employees be prohibited from requesting payroll deduction for the payment of dues to any other labor organization besides the FOP and to terminate any such existing dues authorizations upon the issuance of this Award. The FOP asserts that this proposal would add stability to the negotiations unit the recent acrimonious election campaign. Additionally, the FOP seeks to establish a labor-management committee to discuss operational concerns on a quarterly basis.

The FOP also seeks to change references to the PBA contained in the predecessor agreement to the FOP as the current certified representative. The City offers no objection to these proposals and each proposal is reasonably grounded in traditional and commonly accepted principles of labor relations. These proposals are awarded.

The City seeks to amend Article XIX to eliminate Section 13, which covers Shift Bid and Schedule Change. The City asserts that it has a managerial prerogative to change shift assignments to improve efficiency or to meet operational needs. The City's arguments concerning the shift bid provisions of the parties' Agreement primarily address the negotiability of the provision. It is generally recognized that issues such as qualifications and special skills may authorize an assignment notwithstanding the existence of a shift bid system which is seniority based. The record does not demonstrate that the existing provision significantly interferes with the City's operations. I note that if the City has had a particular managerial prerogative concern over a given assignment, this issue may properly be addressed in a Scope of Negotiations proceeding before PERC whenever a grievance is filed on this issue. Accordingly, the City's proposal to eliminate the shift bid provisions of the agreement is denied.

The remaining issues in dispute are all compensation related issues and, while each issue requires independent examination, all of the issues need to be considered in their totality.

I turn to the major economic issue in dispute which centers on salaries. Both parties have proposed across-the-board percentage increases, a fold-in of holiday pay into base salaries, a lower starting salary and to add steps to the salary guide for newly hired police officers. In reviewing these salary issues, I conclude that all of the statutory criteria are relevant, although some are entitled to more substantial weight than others. Each party has also proposed a contract duration from 7/1/99 through 6/30/06 in light of the extended nature of the negotiations and arbitration process.

The City urges that major emphasis be given to the financial impact of an award on the governing unit, its residents and taxpayers. Inextricably tied to this contention are the interests and welfare of the public whose interests would be undermined by having to fund an award which the City cannot afford. The FOP places great emphasis on comparability evidence concerning law enforcement officers employed in comparable jurisdictions as well as the dangerous work environment on which police services are provided. In this regard, the FOP believes that the interests and welfare of the public will not be served by a result which causes less favorable terms and conditions of employment for the City's police officers in relation to other police officers employed in comparable jurisdictions.

Substantial weight must be given to the financial impact of this award on the City, its residents and taxpayers. The FOP has to some extent recognized this point by constructing an economic package which averages less than average increases received in the County during the contract duration. The FOP intends to avoid severe erosion in the relative salary standing of the City's Police Officers vis-a-vis police officers employed in comparable jurisdictions while easing the impact of the costs of salary payments to unit members. The SOA's salary proposal amounts to a 22% increase in the salary schedule over the seven year period while the City has responded with an offer of a 16.5% increase in the salary schedule. These proposals are independent from each party's proposal with respect to holiday fold-in.

There is no dispute that the City experienced a fiscal crisis which caused a State takeover of the City's finances at the end of the 1999 fiscal year. Since FY 1999, the City has made progress in restoring order to its finances and is in the beginning stages of recovery. In doing so, the City has relied upon a combination of property tax increases, a more aggressive tax collection program targeting delinquent taxpayers and State aid to pay down its debt and fund its current operations. The City's location and transportation services support the residential and commercial redevelopment that has recently commenced and are strong assets in its recovery and revitalization efforts.

The City increased property taxes in 2000 to reduce deferred charges by \$3 million. The City continued to pay down the deferred charges in 2001 and as of June 30, 2001, its accumulated deficit balance was reduced to \$8,103,171. The City is making annual payments of approximately \$2.5 million in 2002, 2003 and 2004 to complete the payment of the deferred charges.

Additionally, the City's taxpayers bear a heavy burden because some of its non-tax revenue sources have been diminished. Specifically, the City's water utility system which historically, had realized profits, experienced a deficit of \$1,472,672 in FY 1999 and a deficit of \$2,518,557 in FY 2000. Mr. Lerch testified that by June 30, 2001 the water utility's deficit totaled \$2,576,012, which the City must now pay down over a three-year period. However, the City's budget for FY 2002 reflects an operating surplus of \$500,000 in FY 2001 and an anticipated operating surplus of \$500,000 in FY 2002.

At the same time, the assessed value of real property in the City decreased by almost \$27 million from 1997 through 2001 to a figure of \$302,664,600. As a result, the City's total tax levy has increased substantially over the past four years. The City calculates that its property tax levy increased approximately 29% from 1997 through 2001. The decline in the assessed value of real property has also resulted in an increase in the equalized tax rate to \$6.69, the highest in Essex County. For example, Irvington, another distressed



City in Essex County has the County's second highest tax rate of \$5.00, and Orange has a tax rate of \$4.59.

Despite its aggressive actions in foreclosing on tax liens, the City had a delinquent property tax payment problem depriving it of revenues although it has embarked on an aggressive campaign to address this problem in the future. According to Mr. Lerch, tax delinquencies increased dramatically in the fiscal year ending 2001 when the City issued tax liens for \$24,408,033 and collected only \$3,168,000, or 13%. In response to this, the FOP contends that there has been a dramatic increase in the tax lien collection rate which was only 2.9% in 1998. The FOP points out that this increase in the percentage of collection has yielded additional revenues from \$371,107 in 1998 to \$2,547,863 in 2002.

The City's efforts to restore its solvency present a complicated financial picture. The City, which ended fiscal year 2001 with an operating surplus of \$1,260,000, anticipated an operating surplus of \$1,500,000 in its FY 2002 budget. However, the City asserts it must borrow money to meet its current revenue needs by issuing tax anticipation notes, or working capital loans. Mr. Lerch testified that the City has been required to sell tax anticipation notes each year to meet current revenue needs and has tax anticipation notes of \$7 million outstanding.

In addition to property taxes, the City has relied heavily upon grants and State aid to meet its current revenue needs. The City receives Distressed City

Aid specifically for tax relief. The City received \$7 million in Distressed City Aid for fiscal year 1999, \$9 million in Distressed City Aid for fiscal year 2000, and \$6 million for fiscal year 2001 for a total of \$22 million over the last three years. In addition to the Distressed City Aid it receives, the City receives a variety other State aid from a variety of funds. According to the FY 2002 municipal budget, the City anticipated receiving a total of \$32,293,660 in State aid without offsetting appropriations. This sum is an increase over the \$30,933,803 received in FY 2001. However, the City notes that State aid has not increased in proportion with its expenditures.

Through a combination of increased property taxes and State aid, the City has made progress toward regaining its financial footing. This award must give weight to the extreme financial difficulty encountered by the City since the fiscal crisis in 1999 and also be responsive to the City's need to continue its financial recovery without adverse impact on the City, its residents and taxpayers. But this factor does not stand alone and weight must also be given to other factors. The award must also consider the City's obligation to compensate its police officers in a manner which maintains the continuity and stability of employment among those officers. Comparability within law enforcement in the county and internal comparability with the City's superior officers and firefighters are also relevant considerations. The FOP seeks substantial weight to be placed upon comparability evidence in law enforcement. This factor is relevant but must be weighed in relation to the City's finances. The FOP has produced comparability

evidence which it believes reflects that its superior officers compare unfavorably with those employed throughout the County. The FOP points to increases within Essex County which approximate 4%.

The creation of a large disparity in salaries of the City's police officers compared to police officers in similar comparable jurisdictions could reasonably lead to early retirements and resignations. The interests and welfare of the public are not served by a result which fosters poor morale in a workforce which is required to preserve order and stability in a jurisdiction which experiences a high rate of crime and violent crimes. The City's financial recovery is largely dependent upon an environment in which education and residential and commercial redevelopment can flourish. Without a strong law enforcement component, recovery and revitalization could be severely jeopardized.

Although the FOP emphasizes "similar comparable jurisdictions," that criterion, N.J.S.A. 34:13A-16(g)2(c), also speaks to consideration of comparability in the same jurisdiction. This criterion requires an examination of the evidence relating to comparisons among the City's labor organizations representing police superior officers, firefighters and fire officers. The City and FMBA Local 23 were recipients of an interest arbitration award issued on June 12, 2002 and supplemented by an additional opinion and award on remand issued on February 19, 2003. As noted herein, the City and PBA, Local 16 were

recipients of an interest arbitration award covering the superior officers issued on September 19, 2003.<sup>2</sup>

On February 19, 2003, a supplemental Opinion and Award was issued by Arbitrator Zausner covering the City's firefighters. The salary portion of that award was reads:

|              |          |                         |          |
|--------------|----------|-------------------------|----------|
| July 1, 1999 | \$52,439 | 1%                      | \$52,963 |
| July 1, 2000 |          | 1%                      | \$53,493 |
| July 1, 2001 |          | +\$4,114 Holidays<br>8% | \$57,607 |
| July 1, 2002 |          | 3.5%                    | \$59,623 |
| July 1, 2003 |          | 3.5%                    | \$61,710 |

On September 19, 2003 I issued an award covering police superior officers. This award provided for the same contract duration as proposed by both parties herein. The salary portion of that award reads as follows:

|                            |        |                                  |
|----------------------------|--------|----------------------------------|
| <b>Sergeant</b>            |        |                                  |
| (June 30, 1998 - \$59,306) |        |                                  |
| July 1, 1999               | 59,306 | 0% to base salary<br>2% lump sum |
| July 1, 2000               | 60,492 | 2%                               |
| July 1, 2001               | 63,740 | \$3,248<br>Holiday Fold In       |
| July 1, 2002               | 65,971 | 3.5%                             |
| July 1, 2003               | 68,280 | 3.5%                             |
| July 1, 2004               | 71,011 | 4.0%                             |
| July 1, 2005               | 73,496 | 3.5%                             |

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<sup>2</sup> The Award was issued shortly after the receipt of post-hearing briefs in this matter.

**Lieutenant**  
(June 30, 1998 - \$65,765)

|              |        |                                  |
|--------------|--------|----------------------------------|
| July 1, 1999 | 65,765 | 0% to base salary<br>2% lump sum |
| July 1, 2000 | 67,080 | 2%                               |
| July 1, 2001 | 70,692 | \$3,612<br>Holiday Fold In       |
| July 1, 2002 | 73,166 | 3.5%                             |
| July 1, 2003 | 75,727 | 3.5%                             |
| July 1, 2004 | 78,756 | 4.0%                             |
| July 1, 2005 | 81,512 | 3.5%                             |

**Captain**  
(June 30, 1998 - \$73,873)

|              |        |                                  |
|--------------|--------|----------------------------------|
| July 1, 1999 | 73,873 | 0% to base salary<br>2% lump sum |
| July 1, 2000 | 75,350 | 2%                               |
| July 1, 2001 | 79,396 | \$4,046<br>Holiday Fold In       |
| July 1, 2002 | 82,175 | 3.5%                             |
| July 1, 2003 | 85,051 | 3.5%                             |
| July 1, 2004 | 88,453 | 4.0%                             |
| July 1, 2005 | 91,549 | 3.5%                             |

I am persuaded that internal comparability considerations between police and firefighters are entitled to substantial weight in this proceeding as is the financial impact of the award. There is a lengthy history, including arbitration awards for firefighters, which reflects that comparable treatment is relevant. For example, an arbitration award in the early 1990s provided firefighters with a comparable longevity schedule enjoyed by the law enforcement units in order to provide comparability for firefighters with police. Financial impact was thoroughly reviewed and considered in the recent awards covering firefighters and police superior officers as well as by the record evidence as previously discussed in this Award.

The evidence with respect to the City's finances compels an award of less cost than proposed by the FOP notwithstanding the fact that the FOP's proposal yields less percentage increases than those received on average within Essex County. The evidence with respect to comparability compels an award above the cost proposed by the City.

I award a 2% retroactive payment, not to be reflected in base salary, for contract year commencing July 1, 1999. The non-base payment without an increase in base pay is required by the financial standing of the City at that time. This amount shall be calculated based upon each police officer's rate of pay on July 1, 1999. The net economic cost of this payment for the entire bargaining unit is \$138,101. The total payroll cost of \$6,905,052 is unaffected by this payment. In the absence of a base wage increase for the first contract year, a 2% increase in base salary effective July 1, 2000 will provide a comparable adjustment to that awarded to firefighters and superior officers. The net economic cost of this adjustment totals an addition of \$145,424 added to base pay. The hiring of seven additional police officers by the City during this period reflects a new total payroll cost of \$7,416,653.

The FOP proposes a 2.5% increase commencing July 1, 2001 while the City proposes no increase in base pay but does propose that holiday pay be folded into base pay in lieu of a base wage increase. The City proposes to fold

the holiday pay earned by each police officer under the present holiday pay provision in Article XI into their base pay. In the awards covering the superior officers and firefighters, the holiday fold-in was the only modification to the compensation scheme effective July 1, 2001 and there was no additional adjustment in base pay awarded for that year. No separate salary increase was awarded. The fold-in for police superior officers was dependent upon base pay for each rank with Sergeants receiving an amount of \$3,248, Lieutenants receiving an amount of \$3,612 and Captains receiving an amount of \$4,046. An amount of \$4,114, or 8% of base pay, was calculated as the amount to be folded in for firefighters as reflected in the Zausner Award.

The City proposes a separate dollar amount for holiday fold-in at each of the five steps on the guide reflecting the value of holiday pay at each step for employees who have completed less than 22 years of service. The amounts are as follows:

|        |         |
|--------|---------|
| Step 5 | \$2,873 |
| Step 4 | \$2,711 |
| Step 3 | \$2,548 |
| Step 2 | \$2,386 |
| Step 1 | \$2,192 |

The City's proposal is based upon the folding in the holiday pay earned by each police officer under the present holiday pay provision in Article XI into their base pay. Under the City's proposal, employees who have completed 22 years of service would only be entitled to a fold-in of \$205.

1. Each employee having less than twenty-two years of service shall, on or before December 10 of the contract year, receive pay for fourteen (14) holidays per year. Holiday pay shall be computed by multiplying the regular hourly rate by eight (8) hours.
2. Employees who have completed twenty-two (22) years or more of service shall receive pay for only one holiday per year.

The FOP's proposal is to fold 14 days of holiday pay into base pay for each police officer with no change to longevity nor distinction based upon years of service although this proposal is to be effective on January 1, 2004.

Consistent with the firefighter and police superior officers awards and the City's proposed effective date for the fold-in, I award a holiday pay fold-in to base pay effective July 1, 2001 but deny the FOP's proposal for a separate additional across-the-board adjustment in base pay, a result also consistent with the firefighter and police superior awards.

The calculation of the amount of the holiday fold in for the police officers should be consistent with the awards covering firefighters and police superior officers, although the calculation will not yield identical dollar amounts. I am persuaded that the deletion of "having less than twenty-two (22) years of service" in Article XI, Section 1 prior to the fold in of holiday pay has merit as well as the City's proposal for differentiated amounts based upon each step of the salary schedule. The effect of the deletion eliminates the existing differentiation



between the number of holidays police officers receive based upon years of service. Currently police officers who have completed less than twenty-two (22) years of service receive pay for fourteen (14) holidays per year while employees who have completed twenty-two (22) years or more of service receive pay for one holiday per year. A fair and reasonable reading of Article XI in conjunction with Article XV – Salary and Longevity, reflects that employees who have completed twenty-two (22) years of service have a 6% longevity increase at that step as consideration for the reduction in their number of paid holidays. The FOP's proposal eliminates this distinction in holiday pay without altering the longevity schedule. The implementation of the terms of the Zausner Award serves as justification for the granting of the Union's proposal. The Zausner Award, as stated above, awarded a fold in based upon the full number of holidays without any distinctions or offset due to length of service<sup>3</sup>. There is no evidence of offset due to a longevity increase after completion of the 22<sup>nd</sup> year of service or reductions in holiday pay received due to length of service. To do otherwise here would severely diminish the relative salary schedule and base pay differences between the firefighter and police officer units and would be inconsistent with the thrust of prior firefighter awards justifying comparability of longevity schedules between firefighters and police. The City's proposal would also yield the anomaly of a Step 5 patrolman at maximum with 22 years of

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<sup>3</sup> Although the Zausner award is silent on the method of calculation, it is apparent that her methodology was based upon a multiplication of the number of holidays (14) received times the number of hours in a paid holiday (12 hours) which equals 168 hours of pay. When the annual number of hours scheduled to be worked (2,080) are divided by 168 hours, the result is 8%.

service receiving a base pay of some \$2,700 less than a Step 4 patrolman with less than 22 years of service.

There is an economic cost to the awarding of the fold in. Prior to calculating the net annual economic value of the fold in, I note that the dollar per rank fold in of holiday pay for police officers has less value and costs less than the net annual economic value of the fold in for firefighters due to the fact that each day of holiday pay for firefighters is calculated on a 12 hour day rather than an 8 hour day. This causes the number of hours of holiday pay to be 14 times 8 or 112 hours for police officers (5.37%) rather than the 168 hours folded in by the Zausner Award. I do not address the merits of this differentiation in this Award.

Prior to the effective date of the holiday fold in, the total payroll cost for police officers on June 30, 2001 is \$7,417,380. The total payroll cost of \$6,905,052 at the conclusion of the prior contract was not altered during the first year because there was no change in base salaries for that year due to the non-base payment of 2%. After the City added seven new police officers, this figure was adjusted by \$73,343 on July 1, 2000 because of the 2% increase in base salaries increasing the total payroll cost, including the cost of the additional officers, to \$7,417,380. By June 30, 2001, the City had hired an additional 43 police officers, thus increasing the total payroll, based upon top step base salary, to \$9,615,788. Thus, the actual cost of holidays as of June 30, 2001 calculated at top step base pay under the existing holiday pay provision was \$463,710.

With the deletion of Article XI, Section 1 prior to the fold in of holiday pay, the actual cost of the fold in would be \$522,340. Because the \$463,710 is an existing financial obligation, the \$68,630 difference must be considered and charged as a new cost. This cost is not substantial because of the demographics of the unit reflecting that the vast majority of police officers have less than twenty-two full years of service. When this figure is calculated based upon total payroll costs as of July 1, 2001, the economic value of the fold in represents a new cost of less than 1% of base pay. Broken down by step, the base salaries of police officers will be adjusted as follows:

|        | <u>Holiday Fold-In</u> | <u>Adjusted Salary<br/>Effective 7/1/01</u> |
|--------|------------------------|---|
| Step 1 | \$2,191                | \$44,400                                    |
| Step 2 | \$2,385                | \$48,322                                    |
| Step 3 | \$2,547                | \$51,610                                    |
| Step 4 | \$2,709                | \$54,899                                    |
| Step 5 | \$2,870                | \$58,194                                    |

I also conclude that the new money cost is justified not only in light of the previously stated considerations but also, in the absence of a base wage increase effective July 1, 2001, the overall changes to base salary including the cost of the holiday fold in during the first three years of the new contract remain well below the average changes in all of the Essex County municipalities and are independently justified based upon comparability considerations within the County's law enforcement community. The new total payroll cost, based upon

182 police officers, is calculated at \$10,233,314. I do not award a separate base pay salary adjustment for the contract year commencing July 1, 2001. Also, because of the effective date of this provision increasing base pay in the salary schedules, holiday pay which has been received subsequent to July 1, 2001 shall be deducted from each unit member's retroactive pay.

Consistent with the terms of the awards covering police superiors and firefighters, as well as the City's and the FOP's final offers, I award increases of 3.5% effective July 1, 2002, 3.5% effective July 1, 2003, 4.0% effective July 1, 2004 and 3.5% effective July 1, 2005. By June 30, 2002, the City had added an additional ten police officers to 192, thus increasing the calculation of total payroll based upon top step base pay to \$11,021,472. Accordingly, the cost of the 3.5% across-the-board increase effective July 1, 2002 is \$377,845. By June 30, 2003, the City had added an additional 17 police officers, bringing the total number of police officers to 209, thus increasing the calculation of total payroll based upon top step base pay to \$11,757,443. Accordingly, the cost of the 3.5% across-the-board increase effective July 1, 2003 is \$411,300. The cost of the 4.0% across-the-board increase effective July 1, 2004 is \$486,509. The cost of the 3.5% across-the-board increase effective July 1, 2005 is \$442,723. The net economic cost of these adjustments is a total of \$1,718,377.

When the terms of the award are applied to the existing salary schedules, they will cause the salary schedules for police officers currently employed to be modified as follows:

| Patrolman | 7/1/99<br>2% Lump<br>Sum | 7/1/00<br>2% on<br>base | Holiday<br>Fold-In | 7/1/01<br>including<br>Holiday<br>Fold-In | 7/1/02<br>3.5% on<br>base | 7/1/03<br>3.5% on<br>base | 7/1/04<br>4.0% on<br>base | 7/1/05<br>3.5% on<br>base |
|-----------|--------------------------|-------------------------|--------------------|---|---------------------------|---------------------------|---------------------------|---------------------------|
| Step 1    | 39,910<br>(+\$798)       | 40,708                  | 2,191              | 42,899                                    | 44,400                    | 45,954                    | 47,792                    | 49,465                    |
| Step 2    | 43,435<br>(+\$868)       | 44,303                  | 2,385              | 46,688                                    | 48,322                    | 50,013                    | 52,013                    | 53,834                    |
| Step 3    | 46,391<br>(+\$927)       | 47,318                  | 2,547              | 49,865                                    | 51,610                    | 53,416                    | 55,553                    | 57,497                    |
| Step 4    | 49,348<br>(+\$986)       | 50,334                  | 2,709              | 53,043                                    | 54,899                    | 56,820                    | 59,093                    | 61,162                    |
| Step 5    | 52,311<br>(+\$1,046)     | 53,357                  | 2,870              | 56,227                                    | 58,194                    | 60,231                    | 62,641                    | 64,833                    |

I next address the proposals of the City and the FOP with respect to adding a probationary step and a salary schedule which provides for a six step salary schedule after the probationary level. The parties are in agreement as to the structure of this salary schedule but disagree on the amount of the probationary starting salary level as well as the effective date of the modified salary schedule.

The effective date for a modified salary schedule should coincide with the effective date of this Award. This will result in the parties having a salary schedule for current employees as set forth above and a separate salary schedule for new hires, or employees hired the day after the effective date of this Award. This procedure is one which is ordinarily or traditionally considered to be appropriate when determining new wage structures. Employees hired after the

effective date of the Award will have knowledge of the salary structure to be implemented for them while existing employees will not be subjected to a substantial change in the salary schedules which existed at their time of hire and subsequent employment prior to the effective date of the Award. The new probationary step shall be set at \$27,500 and the new first step of the new hire salary schedule shall be set at \$34,910 for the contract year which remains through June 30, 2004. Thereafter, these salaries shall be adjusted by the across-the-board increases scheduled for current employees. This new hire salary schedule shall read as follows:

| Patrolman         | 7/1/03<br>3.5% on base | 7/1/04<br>4.0% on base | 7/1/05<br>3.5% on base |
|-------------------|------------------------|------------------------|------------------------|
| Probationary Step | 27,500                 | 28,600                 | 29,601                 |
| Step 1            | 34,910                 | 36,306                 | 37,577                 |
| Step 2            | 45,954                 | 47,792                 | 49,465                 |
| Step 3            | 50,013                 | 52,013                 | 53,834                 |
| Step 4            | 53,416                 | 55,553                 | 57,497                 |
| Step 5            | 56,820                 | 59,093                 | 61,162                 |
| Step 6            | 60,231                 | 62,641                 | 64,833                 |

The terms of the Award will not compel the City to exceed its statutory spending limitations. While financial impact considerations as well as internal comparability evidence compel an award at levels less than average increases in the county's law enforcement municipalities, the financial obligations of implementing the Award are within the City's financial capability without exceeding its Cap. The budgetary data reflects fund balances and funds available for banking.

In fashioning this award I have also considered data relative to the cost of living. The Award totals 16.5% in base wage increases over seven years at an average of 2.35% or 21.87% over seven years including the cost of the holiday fold-in effective July 1, 2001 at an average of 5.37%, although this latter figure assumes costs already borne by the City. The cost of living criterion is one of many considerations and is not independently controlling. The terms of the Award exceed the cost of living data but not significantly and are justified by the criteria which I have given more weight to.

Accordingly, and based upon all of the above, I respectfully enter the following Award.

### **AWARD**

1. All proposals by the City and the FOP not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those mutually agreed to by the parties or modified by the terms of this Award.
2. The increases in salary shall be retroactive to their effective date and received by all eligible unit employees, including those who have left employment in good standing between the effective date of the salary adjustments and their last date of employment.

3. **Duration** – There shall be a seven-year agreement effective July 1, 1999 through June 30, 2006.

4. **Article XIII – Health Insurance**

Effective upon thirty (30) days notice:

- A. All employees presently covered under an HMO would have their co-pay increased from \$5.00 to \$10.00.
- B. The prescription plan shall be modified to require employees to pay a \$5.00 co-pay for generic drugs and a \$10.00 co-pay for brand name drugs.

5. **Article XI – Holidays:**

Delete pre-existing language in Article XI. The preexisting language in Article XI shall be placed into an Appendix solely for historical purposes. The language in Article XI shall be replaced with the following language:

Effective July 1, 2001 there shall be a fold-in of holiday pay into base salary for purposes of pensionable earnings for all employees. The amounts to be folded in are set forth on page 53 and the salary schedules set forth in Sections 9 and 10 of this Award.

6. **Dues Deduction** – Pursuant to N.J.S.A. 52:14-15.9(e) the employees represented in this bargaining unit may not request payroll deduction for the payment of dues to any labor organizations other than the duly certified majority representative. Existing written authorizations for payments of dues to any other



labor organization shall be terminated effective upon issuance of this arbitration award. The effective date of this provision shall be July 1, 2004.

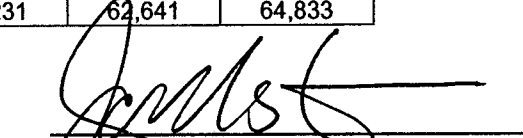
7. A joint labor management committee shall be established to address operational concerns of the department. The FOP shall submit an agenda of issues to be discussed within thirty (30) days of the issuance of the arbitration award period. The committee shall be convened within thirty (30) days thereafter and shall meet quarterly during the term of this agreement.
  
8. All references in collective negotiations agreement shall be changed from PBA to FOP.
  
9. **Salaries:** The salary schedule for employees employed as of the date of the Award shall be modified, retroactive to the effective dates, as follows:

| Patrolman | 7/1/99<br>2% Lump<br>Sum | 7/1/00<br>2% on<br>base | Holiday<br>Fold-In | 7/1/01<br>including<br>Holiday<br>Fold-In | 7/1/02<br>3.5% on<br>base | 7/1/03<br>3.5% on<br>base | 7/1/04<br>4.0% on<br>base | 7/1/05<br>3.5% on<br>base |
|-----------|--------------------------|-------------------------|--------------------|---|---------------------------|---------------------------|---------------------------|---------------------------|
| Step 1    | 39,910<br>(+\$798)       | 40,708                  | 2,191              | 42,899                                    | 44,400                    | 45,954                    | 47,792                    | 49,465                    |
| Step 2    | 43,435<br>(+\$868)       | 44,303                  | 2,385              | 46,688                                    | 48,322                    | 50,013                    | 52,013                    | 53,834                    |
| Step 3    | 46,391<br>(+\$927)       | 47,318                  | 2,547              | 49,865                                    | 51,610                    | 53,416                    | 55,553                    | 57,497                    |
| Step 4    | 49,348<br>(+\$986)       | 50,334                  | 2,709              | 53,043                                    | 54,899                    | 56,820                    | 59,093                    | 61,162                    |
| Step 5    | 52,311<br>(+\$1,046)     | 53,357                  | 2,870              | 56,227                                    | 58,194                    | 60,231                    | 62,641                    | 64,833                    |

10. A new salary schedule shall be implemented for employees hired the day after the date of the award

| Patrolman            | 7/1/03<br>3.5% on<br>base | 7/1/04<br>4.0% on<br>base | 7/1/05<br>3.5% on<br>base |
|----------------------|---------------------------|---------------------------|---------------------------|
| Probationary<br>Step | 27,500                    | 28,600                    | 29,601                    |
| Step 1               | 34,910                    | 36,306                    | 37,577                    |
| Step 2               | 45,954                    | 47,792                    | 49,465                    |
| Step 3               | 50,013                    | 52,013                    | 53,834                    |
| Step 4               | 53,416                    | 55,553                    | 57,497                    |
| Step 5               | 56,820                    | 59,093                    | 61,162                    |
| Step 6               | 60,231                    | 62,641                    | 64,833                    |

Dated: November 24, 2003  
Sea Girt, New Jersey

  
James W. Mastriani  
}ss:

State of New Jersey  
County of Monmouth

On this 24<sup>th</sup> day of November, 2003, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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