

In the Matter of Arbitration Between:

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**CITY OF ATLANTIC**

"City,"

- and -

**ATLANTIC CITY INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS, LOCAL 198**

"Association."

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Docket No. IA-2003-086

**INTEREST  
ARBITRATION  
AWARD**

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the City:**

David F. Jasinski, Esq.  
Peter J. Dugan, Esq.  
Jasinski and Williams, PC

**For the Association:**

Sidney H. Lehmann, Esq.  
Robert F. Casey, Esq.  
Szaferman, Lakind, Blumenstein,  
Blader, & Lehmann, PC

Based upon the mutual request of the parties, I was appointed on July 10, 2003 by the New Jersey Public Employment Relations Commission as interest arbitrator in an impasse between the City of Atlantic City [the "City"] and Atlantic City International Association of Firefighters, Local 198 [the "IAFF"]. I was also appointed to serve as interest arbitrator in the impasse between the City and PBA Local 24.

The City and the IAFF are currently serving under terms of a collective negotiations agreement [the "Agreement"] which expired on December 31, 2002. The negotiations unit consists of all uniformed firefighting personnel. Titles in the salary schedule include Apprentice I, Apprentice II, Apprentice III, Journeyman I, Journeyman II, Journeyman III, Senior Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Assistant Chief Fire Inspector, Deputy Chief, Chief Fire Prevention. The proceedings in this matter were deferred because the City and the IAFF were engaged in direct negotiations. Upon appointment I inquired as to whether the parties wished to proceed to a pre-interest arbitration mediation or whether they wished to pursue direct negotiations. I was advised on July 25, 2003 that further negotiations sessions were scheduled. These proceedings were held in abeyance pending those efforts. On February 24, 2004 I inquired as to whether the impasse had been resolved. The parties advised me on October 27, 2004 that the parties had reached impasse and further, that the City had new legal representation.

The City and the IAFF reached agreement to convene a pre-interest arbitration mediation on February 25, 2005. One meeting was held with the IAFF and one with the PBA inasmuch as the matters had not been joined at that time. After these separate mediation efforts the impasse remained and it was decided to proceed to formal interest arbitration hearings. It was agreed that hearings would be conducted separately. However, because some evidence would be mutual to the IAFF and the PBA, in the interest of economy and efficiency, some of the evidence would be incorporated into both records rather than having duplicative hearings.

Hearings were scheduled; July 20, 21 and 22 for one unit and July 26, 27 and 28 for the other. These hearings were adjourned at the request of the City but promptly rescheduled for August 1, 2, 8, 11, and 12, 2005. In addition, all parties agreed to consolidate the hearings for the purposes of creating a record for both units. Despite the consolidation of the impasses to create a joint record, it was agreed that two separate awards would issue rather than a joint award. Interest arbitration hearings were conducted on August 1, 2 and 8, at which time the hearings were completed. A post-hearing briefing schedule was set and the hearing was closed upon receipt of post-hearing reply briefs on March 17, 2006.

## **LAST OFFERS OF THE PARTIES**

As required by statute, the City and the Association submitted their last offers to the arbitrator in advance of the arbitration hearing. I set forth the parties last offers as follows.

### **Last Offer of the City**

1. All provisions of the January 1, 2000 through December 31, 2002 collective bargaining agreement that are not specifically identified in this final offer shall form a part and be included in the new collective bargaining agreement.
2. **Duration:** January 1, 2003 through December 31, 2007.
3. **Article 16 – B. Sick Leave:**  
  
See Post-Retirement Benefits.
4. **Article 23 – Transfer and Assignments:**  
  
The parties have agreed to form a committee to develop new wording, where appropriate for this article.
5. **Article 24 – Health and Safety:**  
  
Add two new members to the Health and Safety Committee; a designee selected by the President of the Local, and the Risk Manager.
6. **Wages:** Eligible Fire Fighter hired prior to January 1, 2003, shall be eligible for the following increases:

Effective	January 1, 2003:	2%
	July 1, 2003:	2%
	January 1, 2004:	2%
	July 1, 2004:	2%
	January 1, 2005:	2%
	July 1, 2005:	2%
	January 1, 2006:	2%
	July 1, 2006:	2%

January 1, 2007: 2%

July 1, 2007: 2%

**New Hire Rate:** For those Fire Fighters hired after January 1, 2003, shall be hired and eligible for the following:

Title	
1	\$32,500
2	\$34,100
3	\$35,700
4	\$40,000
5	\$42,500
6	\$47,000

Fire Fighters under the new scale shall also be eligible to the percentage increases as set forth.

7. **Article 33 – Health Benefits:** The major medical deductible under the City's self-insured indemnity plan shall be increased to \$150.00 per year for individual coverage, and to \$300.00 per year for family coverage. Additionally, the co-payment for non-generic drugs was increased to \$10.00 per prescription; and the co-payment for generic was to be \$5.00 per prescription.
8. **Health Insurance for Retirees:** The City of Atlantic City is prepared to offer Post-Retirement benefits to eligible Fire Fighters provided the following changes are agreed to and form a part of the existing Collective Bargaining Agreement:
  - (1) Reduce the number of hours of sick leave for each Fire Fighter by forty (40) hours per year retroactive January 1, 2003;
  - (2) Eliminate the ability to accumulate sick leave from year to year;
  - (3) All earned sick leave shall be valued at the present rate prior to the commencement of this Agreement; and
  - (4) Fire Fighters shall be eligible for no more than 260 days of leave under Article 16C of the Collective Bargaining Agreement during the length of their employment with the City.

If these terms are accepted, the City is prepared to provide the following benefits to eligible Fire Fighters:

- (1) A new section will be added to Article 33 of the contract which will provide that the City shall provide health benefits in retirement, as set forth below, to all eligible Fire Fighters covered by this interest arbitration award, and their dependents, who retire on or after January 1, 2006. Dependents shall be defined as that term is currently used in the application of Article 33 for receipt of benefits while employed by the City.
- (2) The health benefits to which retired Fire Fighters and their dependents shall be entitled are the same health benefits offered through the City's Blue Cross/Blue Shield HMO plan, known as "HMO Blue" as provided pursuant to Ordinance #61 of 2004 and its attachments. The level of health benefits provided to the retirees, and their dependents may be changed at any time by the City upon notice to the retiree.
- (3) The City shall pay seventy-five percent (75%) of the full cost of the premiums for the "HMO Blue" hospitalization – medical/surgical insurance plan for the eligible Fire Fighter and his/her dependents.
- (4) Retired Fire Fighter who are eligible for this benefit as used in this Article is defined as any Fire Fighter covered by this interest arbitration award (any Fire Fighter below the rank of Chief) who retires from the Atlantic City Fire Department after January 1, 2006 with twenty-five (25) years or more of service credit in the New Jersey Fire Fighter and Fire Retirement System ("PFRS").

#### **Last Offer of the IAFF**

1. All provisions of the January 1, 2000 through December 31, 2002 collective bargaining agreement that are not specifically identified in this final offer shall form a part and be included in the new collective bargaining agreement.
2. **Duration** – The term of the new contract shall be from January 1, 2003 through December 31, 2007. Except where

specifically provided in this offer, all terms of this offer are retroactive to January 1, 2003.

3. **Article 12 – Union Release Time**

(a) Add a new Section D which will provide that firefighters attending conventions and seminars pursuant to this article must provide proof of attendance acceptable to the Chief.

(b) Add a new Section E that will provide that:

In addition to the Union Release Time set forth in this article, the Local President, with the approval by the Chief, may use personal/vacation time, one day at a time, for Union business.

4. **Article 14 – Overtime Pay** – A sentence will be added to such section which will read:

In addition, the City shall send a report detailing the use of overtime for the entire Department to the Union on a quarterly basis.

5. **Article 15 – Clothing Allowance** – Delete paragraph D.

6. **Article 16 – Leaves**

Section (i) – Funeral Leave

(a) Add great-grandparents and great-grandchildren of the fire fighter for those individuals for whom the fire fighter receives five (5) funeral leave days.

(b) Add great-grandchildren and great-grandparents of the fire fighter's spouse to the relatives for whom the fire fighters receives one (1) work day of funeral leave; and

(c) Change the last sentence of this subsection so that it reads that the day of leave shall be taken from the day of death to the date of the funeral.

(d) Add a new subsection 5 which shall provide that if the fire fighters utilize the two (2) extra travel days provided in subsection 4, the fire fighter must be

provide documentation of attendance on official letterhead from the funeral home and travel receipts.

7. **Article 17 – Vacations**

- (a) Change the language of subsection (c) so that it will read:

Vacation shall be granted during the calendar year. Selection for vacation period shall be based on seniority and rank by shift at station house level. Captains shall select their vacation time first based upon seniority and rank by shift; thereafter, the journeyman shall select their vacation time based upon seniority and rank by shift.

- (b) Subsection (g) shall be added which will provide that fire personnel working in administrative positions shall be entitled to the number of vacation days based upon their job title multiplied by ten (10) hours per day.

8. **Article 18 – Subsection (b)(2)(c)** – Change this provision so that it will provide that a Captain's duties will be performed by a journeyman fire fighter

9. **Article 20 – Pay Scale**

- (a) The language of subsection (a) shall be changed to provide that fire fighters who fail an apprenticeship test, either the first, second or third year apprenticeship tests, shall remain at the step that they were at until they pass that test. However, once the test is passed, the fire fighter shall move to the next step effective immediately upon passing the test, and the fire fighter shall be moved to the appropriate step of the salary guide for that fire fighter's class.
- (b) Add a subparagraph (b)4 which shall provide that fire fighters on military leave shall be entitled to take the apprenticeship examination upon their return to work, at the request of the fire fighters shall receive the higher salary rate retroactive to the date of his/her return to work.



- (c) A new Article 20A shall be developed by the parties creating an Apprenticeship Test Committee consisting of representation selected by the Local and by the City/Chief.
10. **Article 23 – Transfer and Assignments** – The parties have agreed to form a committee to develop new wording, where appropriate, for this article.
  11. **Article 24 – Health and Safety** – Add two new members to the Health and Safety Committee; a designee selected by the President of the Local, and the Risk Manager.
  12. **Article 25 – Education** – Add a new section (b) which will provide an incentive for administrative staff to obtain additional education and training, by being allowed to earn up to 80 hours of education and training on City time. In the event that the fire fighter is returned to a line position as a result of disciplinary charges having been sustained, the salary increment received for the training credits earned on City time shall be rescinded.
  13. **Article 29 – Exchanging Time** – The four (4) hour minimum period for exchanging time shall be reduced to one (1) hour minimums.
  14. **Article 16 – Leaves**
    - B. **Sick Leave** – Eliminate subsection 2 so all fire fighters can accumulate 140 hours of sick leave regardless of date of hire.
  15. **Article 20 – Salaries**

Increases:	<u>Year</u>	<u>Increase</u>
	2003	8%
	2004	8%
	2005	5%
	2006	0%
	2007	5%
  16. **Article 33 – Health Benefits** – While the City had not raised this during the negotiations until after impasse had been declared, the IAFF is aware that the City had reached an agreement with all other negotiating units that the major medical deductible under the City's self-insured indemnity

plan shall be increased to \$150.00 per year for individual coverage, and to \$300.00 per year for family coverage. Additionally, the co-payment for non-generic drugs was increased to \$10.00 per prescription; and the co-payment for generic was to be \$5.00 per prescription. The fire fighters will agree to that as part of their final offer, provided that it becomes effective January 1, 2006, and that in all other aspects the hospitalization-medical/surgical plan for current employees shall remain the same.

17. **Health Insurance for Retirees** – Either a new section will be added to Article 33 or a new article will be added to the contract which will provide that the City shall provide:
- (1) A new section will be added to Article 33 of the contract which will provide that the City shall provide health benefits in retirement, as set forth below, to all eligible Fire Fighters covered by this interest arbitration award, and their dependents, who retire on or after January 1, 2003. This includes fire fighters who have already retired since January 1, 2003. Dependents shall be defined as that term is currently used in the application of Article 33 for receipt of benefits while employed by the City.
  - (2) The health benefits to which retired Fire Fighters and their dependents shall be entitled are the same health benefits offered through the City's Blue Cross/Blue Shield HMO plan, known as "HMO Blue." In addition, health benefits for retirees shall also include the prescription drug insurance plan benefit. The level of health benefits provided to the retirees, and their dependents shall be the same level of benefits which were in existence for Fire Fighters who participated in the HMO Blue plan, and the prescription drug plan on January 1, 2005, regardless of whether the City changes the health insurance carriers through which it receives such benefits.
  - (3) The City shall pay ninety-five percent (95%) of the full cost of the premiums for the "HMO Blue" hospitalization – medical/surgical insurance plan for the retired Fire Fighter and his/her dependents; and one hundred percent (100%) of the full cost of the premiums for the prescription drug plan.

- (4) A retired Fire Fighter shall be permitted to participate in any more expensive plans maintained by the City, and thereby become covered by that plan for the Fire Fighter and his/her dependents; provided the retired Fire Fighter shall pay the City the difference between the premium cost for the "HMO Blue" Plan and its more expensive plan;
- (5) Retired Fire Fighters as used in this as used in this Article means any Fire Fighter covered by this interest arbitration award (any Fire Fighter below the rank of Chief) who has retired from the Atlantic City Fire Department after January 1, 2003 with twenty-five (25) years or more of service credit in the New Jersey Fire Fighter and Fire Retirement System ("PFRS"), or any other state administered retirement system, and who has at least ten (10) years of service with the City; or has retired on a disability pension, regardless of years of service with the City.

### **BACKGROUND**

Atlantic City is unique among New Jersey's municipalities. Its residential population is stable and approximates 40,000, a figure that has been level since 1980. It is the only town in which casino gambling is permitted. Because of gaming, recreation and resorts, the City has more than 30 million visitors annually.

The City is located in Atlantic County, has approximately 12 square miles and borders the Atlantic Ocean. There are major transportation links to the City. The Atlantic City International Airport (located in Pomona, New Jersey) is nearby. The Atlantic City Expressway provides east/west access into the City. Leading directly to Philadelphia, the City is accessible from the north and south by the

Garden State Parkway providing access to North Jersey and New York City and also southward towards Cape May and the Cape May Lewes Ferry service. This transportation network facilitates access to the City.

The City is highly impacted by legalized casino gambling that was approved by a statewide constitutional referendum in 1976. The investments made by the casino gaming industry as well as capital investments from sources outside the casino industry have had a dramatic impact on Atlantic City and the surrounding regions. In 1976, the total assessed value of the City's real property was \$316.6 million. In 2003, the assessed valuation of the real property had risen to \$7.3 billion and the City's equalized valuation of real property was \$8.6 billion. The City has benefited from a special tax that the casino hotels to the Casino Reinvestment Development Authority (CRDA). The CRDA is implementing a master plan to promote City tourism. This includes a Boardwalk Revitalization Project, a retail and entertainment project known as The Walk, redevelopment of The Pier at Caesar's to offer shopping, dining and entertainment and The Quarter, one of many planned Entertainment Retail Districts.

The City's financial profile reflects the investments which the casino hotels that have made in the City. The casino hotels have the ten highest property assessments in the City. In 2004, they constituted approximately 81% of the

total assessed valuation of real estate in the City. The City had a total tax levy of \$251,260,938 in 2003 of which it collected 99.17%.

The financial documents in the record reflect that the casinos support an otherwise poor tax base. A significant portion of the City's residents are low income. The median annual capita income is significantly less than the average state resident. Twenty-four percent (24%) of the City's residents live below the poverty level - three times the statewide average. Approximately 70% of the City's housing units are occupied by renters; 55% of which are low-income units and 81% of these receive government subsidies.

The City has 1,435 employees as of December 31, 2004. There were 373 uniformed police officers below the rank of Captain represented by the PBA and 259 uniformed firefighters represented by the IAFF. The City has labor agreements with six (6) other employee organizations. There is a superior officer's association (SOA) representing twenty (20) Captains, the blue collar unit of 182 public works and maintenance employees represented by AFSCME, the white collar unit of 479 public works and maintenance employees represented by ACWCPA, thirteen (13) licensed inspectors represented by the IBEW, a supervisory unit of (134) employees and a beach patrol unit of (152) life guards represented by ACBPO.

The issues in dispute are primarily economic in nature and include, but are not limited to, health benefits, health insurance for retirees, salary, salary schedules, holidays, vacations, leaves of absence, education, tour swaps, bereavement leave and clothing allowance. The City and the IAFF have each presented substantial evidence including but not limited to the City's finances, internal and external comparisons of terms and conditions of employment and the interests and welfare of the public.

Against this general backdrop, the City and the IAFF offer their respective positions based upon the evidence and argument presented. I next summarize these positions.

## **POSITIONS OF THE PARTIES**

### **The IAFF**

The IAFF presented its arguments and evidence through the testimony of Police Captain John Mooney, Fire Captain Angelo DeMaio and Battalion Chief Robert Palaramo, along with extensive exhibits. The IAFF submits that while Atlantic City had been in decline in the past it has witnessed a rebirth in recent years. The casino industry attracts over 30 million visitors annually, creating jobs and redevelopment for the City. The IAFF contends that the contracts covering the years immediately preceding this dispute were reflective of the City's difficult economic times. As a result, wage increases were below average compared to

increases in comparable towns. The wage increases negotiated in the preceding contract were as follows:

<u>Year</u>	<u>%</u>
1996	0
1997	0
1998	4
1999	5
2000	3.6
2001	3.5
2002	<u>3.4</u>
	19.5%

In this seven-year period the average annual increase of 2.79% was provided, a figure well below county and statewide averages for Fire Fighters. The IAFF contends that because it bore the burden of the City's poor economic climate it should now receive compensation that is reflective of the City's new economic growth and prosperity.

The IAFF presented an analysis of the City's budget and finances prepared by its financial expert Vincent Foti, CPA. The PBA who contends that "The City is clearly in very sound financial condition." To support this position the IAFF points out that the City fund balance or surplus has continued to grow:

<u>Year</u>	<u>Balance</u>
2004	\$11,305,712
2003	\$11,287,201
2002	\$10,110,991

In addition, the IAFF points out that in the past five years, the City's property values have increase by over \$1 billion.

<u>Year</u>	<u>Amount</u>
2004	\$7,793,105,781
2003	\$7,378,211,814
2002	\$6,737,564,673
2001	\$6,626,570,759
2000	\$6,692,506,873

The IAFF further points out that the tax collection rate of 99.81% is "perfect". It compares this rate with the statewide average of 93%.

<u>Year</u>	<u>Rate</u>
2004	99.81%
2003	99.19%
2002	99.28%
2001	98.55%
2000	97.92%
1999	99.17%

The IAFF also points out that taxes have remained stable and have ever declined over the last four years. In addition, the IAFF also presented the taxpayer report from Mayor Lorenzo Langford. In that report, the Mayor announced that the City's 2005 tax rate declined by \$0.068, from \$1.846 to \$1.778.

The IAFF also refers to a report from Moody's Investor Services that it believes provides further evidence of the City's improved financial condition. Moody's upgraded the City's outlook from negative to stable making the following comments:

- a. The City has a well-managed debt.



- b. Our operating surplus has been increased from \$4,100,000.00 to \$11,300,000.00.
- c. We have an ample liquidity position brought about by our ability to accumulate significant dedicated reserves.
- d. The 2005 budget is likely to allow for a \$3,000,000.00 reduction in the property tax levy.
- e. Cash remains strong as \$47,000,000.00 reflecting an \$18,000,000.00 reserve created to fund tax appeals, as well as, a \$22,000,000 reserved receivable to fund terminal leave payments.

The IAFF submits that Atlantic City has a unique tax base. Over 80% of its property taxes are paid by the casinos and that a significant portion of the City's residents do not pay taxes. The IAFF points to data indicating that 71% of the residences in the City are occupied by renters, 55% of which are low income rentals with 81% of those renters receiving government subsidies for housing. Thus, the IAFF argues, there will not be adverse financial impact upon the City's residents in order to fund its proposals.

The IAFF contends that tax dollars are not the only financial contribution the casino industry makes to Atlantic City. It points out the casinos pay 1.25% of their revenue to the Casino Reinvestment Development Authority devoted to investment in Atlantic City.

The IAFF argues that CRDA along with investments from the private sector will keep Atlantic City's tax base expanding into the future. It points to the following projects to support its argument:

1. Expansion of Harrah's Casino and Hotel, \$458,000,000
2. Showboat Casino Expansion, \$24.5 million dollars
3. Pier at Caesars, \$175,000,000
4. The Walk, \$67,000,000
5. All Wars Memorial Building, \$12,000,000

Additional redevelopment proposals are being considered for the following sites:

1. South Inlet
2. Lower Chelsea
3. Pavilion at the north end
4. Garwood Mills
5. Northeast Inlet

The IAFF also contends that the City has the ability to fund its proposals within its budgetary CAP. The IAFF points to the 2004 and 2005 City budgets both of which indicate that the adopted budgets were \$8.5 million and \$8.9 million below the CAP. The IAFF contends that the City's strong financial position is further evidenced by its creation of a fund devoted to paying future sick and vacation time at retirement obligations accrued by city employees. The monies for this fund are the result of an investment that the City had made in 1992 which had been forgotten.

The IAFF contends that the City's only witness, its auditor, Kenneth Moore, acknowledged during cross-examination that the City was in excellent financial condition and had more than enough revenues to pay the cost of IAFF's proposal. The IAFF also cited a City exhibit, a report prepared for the Casino Association of New Jersey by Mitchell & Titus, LLP in which it was proposed that

health benefits at retirement should be granted as an incentive for older police officers and firefighters to retire. The IAFF argues that the Mitchell & Titus Report used an average cost of health benefits at retirement to be \$12,000 a year and yet still estimated the cost savings to the City to be over \$18 million.

The IAFF argues that firefighters and fire officers are essential to the City's continued growth and revitalization due to their responsibility to protect the health, safety and welfare of the City's residents, visitors and property. During the hearing, Fire Captain Angelo DeMaio testified to the City's unique environment where high density public housing coexists with hotel-casino complexes at a beach resort. Captain DeMaio further testified to the expanding duties of an Atlantic City firefighter, including hazardous materials response, collapse rescue, first responder/EMS, confine space operations, trench rescue, rope rescue, search and rescue specialist and weapons of mass destruction/chemical, biological, nuclear and explosive-CBRNE.

The IAFF points out that although the total number of fire alarms has remained relatively constant (between 2400-2500 per year from 2002-2004, the number of non-fire alarms has grown from 2700 in 2003 to 3400 in 2004. The IAFF argues that as the City continues to grow the amount of alarms will continue to increase. Therefore, in order to properly protect its residents and visitors, it is in the "interests and welfare of the public" for the City to ensure a dedicated and well compensated fire department.

The IAFF contends that its proposals are supported by the fact that all the other bargaining units have received retiree health benefits and salary increases similar to those that it has proposed. The IAFF points to a 1999 arbitration award involving the City in support of its position. The arbitrator wrote that the City "quotes numerous arbitration awards in support of the City's position that interest arbitrators in New Jersey must give great, if not dispositive weight to what other unions have agreed to with the same employer."

The IAFF further presents into evidence City ordinances and contract settlements in other City units in which the City has provided health benefits at retirement for the following unions: Atlantic City Superior Officers Association (captains), Deputy Chiefs of Police, White Collar Professional Employees Association, AFSCME Local 2303, Atlantic City Supervisors Association Local 108, and Managerial Executive and Confidential Employees. The IAFF contends that only the PBA and the IAFF are currently not being provided health benefits at retirement.

The IAFF acknowledges that health benefits at retirement are costly. But the IAFF argues that providing this benefit will provide continuity and stability of employment by encouraging police officers to remain employed by the City, provide officers with the same benefits other City employees are receiving and

match benefits that exist in comparable municipalities. The IAFF points to its willingness to accept certain concessions in the health insurance area.

The IAFF submits the results of other unit employees who have negotiated contracts with the City containing the following salary increases:

Superior Officers Association (Captains)

<u>Date</u>	<u>% Increase</u>
1/1/03	4%
7/1/03	4%
1/1/04	4%
7/1/04	4%
1/1/05	5%
1/1/06	0%
1/1/07	0%

Atlantic City Supervisors Association Local No. 108 2003

<u>Year</u>	<u>January 1</u>	<u>July 1</u>
2003	2%	2%
2004	2%	2%
2005	2%	2%
2006	2%	2%
2007	4%	

The IAFF points to the City's white collar employee contract that covers the period 2003-2006. Employees earning less than \$25,000 per year received an increase of \$800 annually. Employees earning between \$25,000 and \$50,000 per year received \$1,200 annually. Accordingly to the IAFF's calculations, the increases amount to more than 4% per year.

The IAFF contends that before comparing salaries to other municipalities, it must first be noted that Atlantic City firefighters' salaries include holiday pay while many of the salary schedules in other municipalities do not. Battalion Chief Robert Palaramo testified that holiday pay was rolled into base salary in 2002. In exchange for doing so the IAFF gave up most of their clothing allowance. As a result of the holiday pay roll-in salaries are 8.08% higher in comparison to other jurisdictions where holidays are paid separately. According to the IAFF, their base salaries less the holiday pay, are equivalent to base salaries of the PBA in years 2000 to 2002. The IAFF prepared a chart that depicts their 2002 salaries without the 8.08% holiday pay roll-in. I have set forth below the salaries for 2002:

<u>Title</u>	<u>1/1/2002</u>
Apprentice I	36,806
Apprentice II	38,258
Apprentice III	39,712
Journeyman I	43,950
Journeyman II	48,187
Journeyman III	52,078
Senior Journeyman	59,527
Fire Captain	67,818
Fire Inspector	67,818
Maintenance Repairs	67,818
Custodian	67,818
Air Mask Technician	67,818
Battalion Chief	77,355
Assistant Chief Fire Inspector	77,355
Deputy Chief	95,573
Chief Fire Prevention	95,573

The IAFF submitted thirteen (13) municipalities that have paid fire departments which it argues are most comparable to Atlantic City. These are for the most part large urban cities with fire departments similar in size and scope of

services to Atlantic City. The comparison chart, submitted as Exhibit 37, is set forth below:

### Fire Departments Fire Fighters Salary

Fire Dept	Town	Contract Period	Steps	Holiday Pay In Base	2002 Low Pay	2002 High Pay
Local 198	Atlantic City	1/1/00 to 12/31/02	7	Yes	39,778.55	64,336.63
Local 11	City of Bayonne	7/2/97 to 7/30/03	6	No	35,216	55,454
Local 384	Asbury Park	1/1/98 to 12/31/03	7	No**	36,860.05	64,096.58
Local 2663	Cherry Hill Twp	1/1/01 to 12/31/04	7	No	35,201.82	58,670.09
Local 3260	Englewood	1/1/01 to 12/31/03	6	No	28,775	72,924
Local	Newark	1/1/99 to 12/31/02	7	No	33,671	65,594
Local	Paterson City	7/1/98 to 6/30/03	9		19,000	68,466
Local 1066	Jersey City	1/1/02 to 12/31/05	7	No	32,983	67,263
Local 2616*	Pleasantville	1/1/01 to 12/31/03	7	N/A	21,000	55,364.11
Local 788	City of Camden	1/1/97 to 1/31/99	7	No		
Local	City of Elizabeth	7/1/98 to 6/30/03	8	No	35,287	62,296
Local 2657	Brigantine	1/1/03 to 12/31/07	5	No		
Local 2081*	Hackensack	1/1/01 to 12/31/06	6	No	22,873	73,581
Local 1197	Edison Twp	1/1/01 to 12/31/04	8	No***	29,391	69,033

Fire Dept	Town	2003 Low Pay	2003 High Pay	2004 Low Pay	2004 High Pay
Local 198	Atlantic City				
Local 11	City of Bayonne	36,272	57,118		
Local 384	Asbury Park	38,334.45	66,660.44		
Local 2663	Cherry Hill Twp	36,609.89	61,016.90	38,074.29	63,457.57
Local 3260	Englewood	29,855	75,659		
Local	Newark				
Local	Paterson City				
Local 1066	Jersey City	34,088	69,517	35,281	71,950
Local 2616*	Pleasantville	21,000	57,578.67		
Local 788	City of Camden				
Local	City of Elizabeth	36,610	64,632		
Local 2657	Brigantine	30,495	58,425	31,715	60,762
Local 2081*	Hackensack	23,394	76,709	23,937	79,969
Local 1197	Edison Twp	32,809	78,630	32,809	81,775

\* New Jersey League of Municipalities (NJLM), Selected Firefighters' Salaries': Part of the Police and Fire Labor Data Contract Service, 2004 Volume 13

\*\* Effective December 2001, Holiday Pay is to be rolled into the base pay, according to the contract.

\*\*\* Effective January 1, 2003, Holiday pay is to be rolled into the base pay, according to the contract.

Pointing to these comparable municipalities, the IAFF contends that in 2002, firefighters maximum salary was lower than eight (8) of the towns and minimum salary is "about the same" as five (5) of the towns.

The IAFF argues that the salary comparability data presented by the City for Brigantine, Ventnor, Pleasantville, Margate and Northfield should be given limited weight since these municipalities are said not to compare to Atlantic City in terms of size, workload, danger and responsibility.

The IAFF further argues that voluntary interest arbitration settlements throughout New Jersey since January 2005 are consistent with its final offers. The IAFF points to the settlements between the City of Brigantine and IAFF Local 2657 which resulted in a five (5) year contract with increases between four (4%) and five percent (5%); and the City of Northfield with similar increases. The IAFF also submitted data from PERC's annual report on settlements which it argues support its final offer.

The IAFF also argues that its final offer is reasonable in light of continued escalation of certain costs. In particular, the cost of housing at the Jersey shore has witnessed significant increases. The IAFF points to an increase in 2004 of 17.6% and 23.2% in the first quarter of 2005 (as reported by the Press of Atlantic City, Volume 3, Exhibit 94). Citing an FDIC Report for 2005, Atlantic City has been designated as one of 55 "boom" markets in the country. The IAFF argues that its members are being priced out of the housing market in Atlantic City and adjacent areas and must receive substantial salary increases in order to be allowed to reside in the area.



The IAFF also presents exhibits regarding the increased cost of health care in support of its demand for retiree health benefits. It cites an AARP Report indicating that individuals 65 years of age and older are spending approximately 19% of their income or about \$2,430 per year on health care. The IAFF also presented a US Department of Labor Report that indicated the CPI in the Philadelphia/Wilmington area increased by 3.4% in June 2004 to June 2005 as compared a nation-wide average of 2.5%.

The IAFF submitted a handwritten document which it attributes to Karen Upshaw, Esq. the City's Director of Human Resources. It claims that the document represents a list of proposals or stipulations that were agreed to by both parties, a claim that the City denies. The purported stipulations are as follows:

1. **Article 12 – Union Release Time**

(a) Add a new Section D which will provide that firefighters attending conventions and seminars pursuant to this article must provide proof of attendance acceptable to the Chief.

(b) Add a new Section E that will provide that:

In addition to the Union Release Time set forth in this article, the Local President, with the approval by the Chief, may use personal/vacation time, one day at a time, for Union business.

2. **Article 15 – Clothing Allowance** – Delete paragraph D.

3. **Article 16 – Leaves**

#### Section (i) – Funeral Leave

- (a) Add great-grandparents and great-grandchildren of the fire fighter for those individuals for whom the fire fighter receives five (5) funeral leave days.
- (b) Add great-grandchildren and great-grandparents of the fire fighter's spouse to the relatives for whom the fire fighters receives one (1) work day of funeral leave; and
- (c) Change the last sentence of this subsection so that it reads that the day of leave shall be taken from the day of death to the date of the funeral.
- (d) Add a new subsection 5 which shall provide that if the fire fighters utilize the two (2) extra travel days provided in subsection 4, the fire fighter must be provide documentation of attendance on official letterhead from the funeral home and travel receipts.

#### 4. **Article 17 – Vacations**

- (a) Change the language of subsection (c) so that it will read:

Vacation shall be granted during the calendar year. Selection for vacation period shall be based on seniority and rank by shift at station house level. Captains shall select their vacation time first based upon seniority and rank by shift; thereafter, the journeyman shall select their vacation time based upon seniority and rank by shift.

- (b) Subsection (g) shall be added which will provide that fire personnel working in administrative positions shall be entitled to the number of vacation days based upon their job title multiplied by ten (10) hours per day.

#### 5. **Article 18 – Subsection (b)(2)(c)** – Change this provision so that it will provide that a Captain's duties will be performed by a journeyman fire fighter

#### 6. **Article 20 – Pay Scale**

- (a) Add a subparagraph (b)4 which shall provide that fire fighters on military leave shall be entitled to take the apprenticeship examination upon their return to work, at the request of the fire fighters shall receive the higher salary rate retroactive to the date of his/her return to work.
  - (b) A new Article 20A shall be developed by the parties creating an Apprenticeship Test Committee consisting of representation selected by the Local and by the City/Chief.
- 7. **Article 23 – Transfer and Assignments** – The parties have agreed to form a committee to develop new wording, where appropriate, for this article.
- 8. **Article 24 – Health and Safety** – Add two new members to the Health and Safety Committee; a designee selected by the President of the Local, and the Risk Manager.
- 9. **Article 25 – Education** – Add a new section (e) which will provide an incentive for administrative staff to obtain additional education and training, by being allowed to earn up to 80 hours of education and training on City time. In the event that the fire fighter is returned to a line position as a result of disciplinary charges having been sustained, the salary increment received for the training credits earned on City time shall be rescinded.
- 10. **Article 29 – Exchanging Time** – The four (4) hour minimum period for exchanging time shall be reduced to one (1) hour minimums.
- 11. **Article 16 – Leaves**
  - B. **Sick Leave** – Eliminate subsection 2 so all fire fighters can accumulate 140 hours of sick leave regardless of date of hire.

### **City's Position**

While acknowledging that the casinos and hotels comprise a significant portion of the City's tax base and therefore a large portion of its tax revenues, the

City points out that twelve (12) of the casinos have pending tax appeals. These appeals, if successful, could significantly reduce its tax base. The City presents an opinion letter from its tax counsel indicating that if the casinos were successful, the City would be required to repay \$333,000,000 in previously collected taxes. Financial expert Ken Moore testified that although the City has set aside \$20,000,000 to pay for any successful tax appeal, the City still has a significant potential liability which must be considered when reviewing the City's finances.

In addition, the City also submits that it cannot be assumed that the casino industry will continue to expand in Atlantic City. It points to recent developments in which legislatures in nearby states such as Connecticut, New York, Pennsylvania, and Maryland have already approved or are considering legalizing slot machines and other form of gambling. These types of competition could, in the City's view, affect the casino industry in Atlantic City and the City's ratables.

The City responds to the IAFF's claim that the City has established a fund to pay for its future employee sick and vacation leave at retirement. According to the City, it still has a liability of \$19 million because its current exposure is \$38 million.

The City argues that the wage and benefits package it has proposed, including givebacks, is consistent with the proposal it has made to other City

unions that have been accepted. The City contends that "there is no more compelling factor for an arbitrator to evaluate ... than the consistency each offer has with the various negotiated economic packages proposed and ratified by the other bargaining units that operate within any given municipality."

The City also disputes the IAFF's argument that the prior contract settlement which provided zero increases in its first two years now entitles them to reap the benefits of the City's improved financial position. The City contends that since the firefighters salaries are among the highest in the surrounding municipalities there is no need to "make up" for prior year contracts. In any event, the City contends that the prior contract is not relevant to the issues in dispute in these proceedings. The City argues, "this pending interest arbitration is not the proper vehicle to make up for negotiated settlements and the Petitioners pervert the entire interest arbitration process by attempting to do so at this juncture."

The City argues that the IAFF's reliance on thirteen selected municipalities for comparison purposes is misplaced. It notes that a previous arbitrator in a 1999 interest arbitration award rejected the union's argument on this point and instead based his award on an analysis of internal comparables and in comparable communities within Atlantic County.

The City argues that it is already paying firefighters and fire officers the highest salaries within the surrounding areas and therefore the front end loaded salary increases that have been proposed by the unions should not be awarded. The City also points out that police and firefighter salaries represent 50% of the amount budgeted for salaries by the City each year and that there is substantially greater financial impact for terms awarded to these employees.

The City has proposed to establish new starting salaries for firefighters hired after January 1, 2003 as set forth below:

<u>Title</u>	<u>1/1/2002</u>	<u>Proposed</u>
1	\$39,779	\$32,500
2	\$41,348	\$34,100
3	\$42,919	\$35,700
4	\$47,500	\$40,000
5	\$52,079	\$42,500
6	\$56,659	\$47,000

The City has proposed the reduced hire rates to contain costs, however, it contends that it cannot measure the savings since the number of new hires is unknown.

The City acknowledges that the public does benefit from a cohesive and dedicated fire department whose officers are well paid. However, it notes that the interest and welfare of the public is also affected by the tax burden its citizens must bear. Therefore, the City argues that its proposed schedule of salary

increases will have less adverse impact on the public because it is less costly than the front end loaded schedule proposed by the IAFF. The City contends that awarding its salary proposal will make fire fighters the highest paid in Atlantic County by \$9,000.

The City argues that the IAFF's claim that it has the "ability to pay" for the proposals submitted by the IAFF is irrelevant to these proceedings. It points to the New Jersey Supreme holding in Hillsdale in which the court stated, "for purposes of compulsory interest arbitration the statutory factor financial impact on the governing unit, its residents and taxpayers does not equate with the municipality's ability to pay".

The City objects to the IAFF's references to the financial report prepared by Foti dated November 26, 2005. Its objection is based upon the following:

- a. The report is dated four months after the hearings were closed.
- b. The report was not served on the City prior to the filing of its brief in January 2006.
- c. Mr. Foti was present at the hearing and the information to complete his report was available to him. However, he never testified nor was the report submitted into evidence at that time.

In support of their arguments that the Foti report should not be considered by the arbitrator, the City cites the Appellate Division in the Township of Aberdeen vs. PBA Local 163, 286 NJ Super. 372 (1996). In that case, the court

ruled that an arbitrator could not consider information he had learned during the mediation process but which had not been presented in an arbitration hearing.

The City also contends that there was never an agreement between it and the IAFF on any of the proposals that the IAFF has submitted. The City argues that the hand written document submitted by the IAFF was not signed and therefore should not be considered.

### **DISCUSSION**

The parties did not agree upon an alternative terminal procedure and accordingly, pursuant to statute, the arbitration was conducted under the procedure of conventional arbitration. That procedure authorizes the arbitrator to fashion an award without being required to adopt an aspect of the final offers made by either party.

The IAFF and the City have offered testimony and substantial documentary evidence in support of their final offers. Each submission was expert and comprehensive. The entire record of the proceedings must be considered in light of the statutory criteria. I am required to make a reasonable determination of the issues giving due weight to those factors set forth in N.J.S.A. 34:13a 16g (1-8) which I find relevant to the resolution of these negotiations. There factors which are 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.

It is traditional in interest arbitration proceedings for the party that proposes changes to bear the burden of proof for the modifications to the agreement that it has proposed. I apply that principle as part of my analysis to each issue in this dispute. While I must consider the merits of the various proposals individually, I refer to criterion N.J.S.A. 34:13a -16g(a), a criterion which directs the consideration of factors ordinarily considered to make determination of wages and benefits. One such element requires that consideration be given to the totality of the changes to be made to the existing agreement. This is especially appropriate in this case due to the linkage among the many economic issues. Thus any decision to award or deny any individual issue will include consideration as to the reasonableness of that individual decision in relation to the reasonableness of the total terms of the entire award.

I first address the evidentiary issue raised by the City with respect to the Foti report. The City has argued that this report should not be considered since it was not presented into evidence at the hearing. After considering the City's arguments and review of the cited Appellate case, I concur that any opinions contained in the report are not admissible in the absence of hearing testimony at which time those opinions could have been cross-examined. The City was not given the opportunity to question Mr. Foti concerning the opinions expressed in the report or on the veracity of any of the conclusions he may have reached based upon the information contained therein. However, any financial information contained in the budgets, audits, financial statements, or other official documents that were introduced into evidence will be considered. Those aspects of the report containing such evidence are admissible to form an appropriate basis upon which the IAFF may present argument. I also note that other reports and consultants studies submitted by the City and cannot be cross-examined, although Auditor Moore did present some direct testimony and offered opinions that were subject to examination. The City's reports will also be considered to the extent that they point to evidence contained in official documents that are in the record and the City may properly present argument that flows from that evidence.

The IAFF has submitted a list of stipulations on which it indicates the parties have reached agreement. However, the handwritten document it submitted was not signed by any City official and there is no written evidence of

mutual agreement. In addition, the City asserts that a tentative agreement had not been reached on any of the outstanding issues. Therefore, it argues that it has not agreed to any of the stipulations offered by the IAFF. While the "proposed stipulations" do appear to be a product of the parties' negotiations process, there is insufficient evidence that they represent agreed upon binding stipulation. The City did, however, indicate that it does stipulate to the proposed changed to Article 1 of the Agreement. This would add the following language into the Agreement:

This agreement is entered into pursuant to the provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq.

This stipulation will be incorporated into the award. All other issues are therefore outstanding and I will review each in turn.

### **Article 21- Continuation of Benefits**

Both parties have proposed a modification to the continuation of benefits clause. They propose to replace it with the following language:

"All provisions of the January 1, 2000, through December 31, 2002 collective negotiations agreement which are not modified by agreement of the parties and/or this interest arbitration award, are to be carried forward and included in the new contract with changes in the date where appropriate."

I accept the parties' positions as a stipulation to be incorporated into the Award.

### **Contract Duration**

Both the IAFF and the City have proposed a contract that would cover the period January 1, 2003, through December 31, 2007. In addition, the companion award for the PBA is for the period January 1, 2003 through December 31, 2007. There is merit to having both public safety units on the same contractual time period. I also note that none of the other current City employee contracts extend beyond 2007. The contract period of January 1, 2003, through December 31, 2007 is awarded.

### **Article 12 – Union Release Time**

The IAFF has made two proposals that would add additional sections to this Article. The new section (d) would require officers attending conventions and seminars to provide proof of attendance to the chief. The new section (e) would permit the IAFF President, with the approval of the chief, to use a personal or vacation day for union business. The City did not directly respond to either of these proposals.

The first new section would provide the chief with the ability to greater monitor attendance at conventions and seminars consistent with the intent of the benefit. It is therefore awarded. The second proposal would permit the local president additional union time off by using a personal or vacation day. In the absence of objections to this proposal, the proposal is awarded.

#### **Article 14 – Overtime Pay**

The IAFF has proposed that the following sentence be added “in addition the City shall send a report detailing the use of overtime for the entire Department to the IAFF on a quarterly basis.” Such a report would permit the IAFF to assure itself that overtime assignments are made on a rotating basis as required under the terms of the contract. In view of the fact that the City did not object to this proposal, it is awarded.

#### **Article 15 – Clothing Allowance**

The IAFF has proposed to delete paragraph D which reads “pursuant to OSHA regulations the City will purchase special uniforms during 1994 to be in place by January 6, 1995.” Because this language no longer applies, the language should be deleted. This proposal is awarded.

#### **Article 17 – Vacations**

The IAFF has proposed to add language that would allow captains to select their vacations based upon seniority and rank by shift before journeyman firefighters may select their vacations. The current language makes no distinction between ranks. The IAFF also proposes to add a new section (g) which provides that personnel working in an administrative position should be entitled to the number of vacation days based upon their job title multiplied by ten hours per day. The City did not offer objection to either of the IAFF’s proposals.

The IAFF represents both captains and journeyman fire fighters. The proposal to permit captains to select their vacation before journeyman is awarded.

The second proposal is consistent with the work schedule of administrative positions which is ten hour days, four days a week. The proposed language clarifies the number of vacation hours such positions have been granted. It is therefore awarded effective January 1, 2007.

#### **Article 18 - Acting Out of Title**

The IAFF has proposed modifying the language of subsection (b)(2)(c) to provide that a Captain's duties will be performed by a journeyman firefighter on the same shift, instead of in the same company as is currently stated. The current contract language reads as follows: "Acting Captain shall be performed by journeyman firefighters in the same company, if possible." The IAFF provided no justification as to the need for the change in language especially in light of the current language that contains the modifier "if possible" which appears to offer flexibility to the parties depending on staffing needs. The proposal is denied.

#### **Article 20 – Pay Scale**

The IAFF has made several proposals to add new language to the Article concerning pay scales. The City has not offered objections to any of the IAFF proposals.

The IAFF's first proposal would modify the language concerning fire fighter movement from one apprenticeship level to another and when salary increases would be implemented as a result of that movement. Current language provides that once a fire fighter passes an apprenticeship test his salary commensurate with the new apprenticeship would not be effective until the employee's next anniversary date.

The IAFF proposal concerns those fire fighters who fail the apprenticeship test and then later retake the test and pass it. The IAFF proposal would implement the new higher salary immediately upon passing the re-test. Current language provides specifically that if an apprentice fails the test, retakes the exam and passes it, the salary rate change will not become effective until the employee's next anniversary date. There is no basis in the record to deny what appears to be a reasonable proposal to modify existing language. Therefore, the proposal is awarded.

The IAFF has also proposed added language permitting fire fighters who have been on military leave to take an apprenticeship examination upon their return to work if they so desire. Firefighters passing the test would move to a higher rate of pay retroactive to their anniversary date. This proposal applies only to those very unique situations where fire fighters have been on extended military leave and were therefore unable to take the apprenticeship examination



when it was given to other fire fighters. This proposal is reasonable and there is no basis in the record to deny it. It is awarded.

The IAFF has also proposed adding a new section to this Article creating an Apprenticeship Test Committee to consist of representatives selected by both the IAFF and the City. This proposal is awarded.

### **Article 23 – Transfer and Assignments**

Both parties have indicated agreement to form a committee to develop new wording where appropriate for this Article. A new section shall be added to this article creating such a committee.

### **Article 24 – Health and Safety**

Both parties have indicated agreement to add two new members to the Health and Safety Committee, a designee selected by the President of the local and the City's Risk Manager. The proposal is awarded.

### **Article 25 – Education**

The IAFF has proposed the addition of a new section which would permit administrative staff to be allowed to earn up to 80 hours of education and training on City time. The current agreement does not allow employees covered by this contract to obtain training and education on City time. No justification has been presented as to why some officers should be permitted to obtain training and

educational while on the City payroll while others must do so on their days off. The IAFF has said that this is an incentive for administrative personnel to be able obtain training and education; however, I note that the contract already provides stipends based upon the amount of education and training that officers have completed thereby establishing an incentive for additional educational achievements. The proposal is denied.

#### **Article 29 – Exchanging Time**

The IAFF has proposed reducing the four-hour minimum period for exchanging time to one hour minimums. Under the existing contract language, firefighters may exchange up to 216 hours throughout the year so long as the exchange does not cause the City any additional cost in overtime or otherwise. Given the existing flexibility and opportunity to engage in tour swaps under the current Agreement, I do not award this proposal.

#### **Article 16 – Leaves (Bereavement)**

The IAFF has also proposed modifications to Section (i) – Funeral Leave which would add great-grandparents and great-grandchildren of a fire fighter to the list of those relatives for which a fire fighter would be eligible for a five day funeral leave and great-grandchildren and great-grandparents of a fire fighter's spouse for one day of funeral leave. Language is also proposed that would require fire fighters who use the two extra travel days currently provided under the contract to provide documentation of attendance from the funeral home as

well as travel receipts. I find that the IAFF has not met its burden to compel a change to the existing language in the Agreement. The proposal is denied.

### **MAJOR ECONOMIC ISSUES**

#### **Hospitalization and Health Insurance, Retiree Health Insurance and Sick Leave/Accumulation**

I next address the unresolved issues concerning salary, hospitalization and health insurance, dental – prescription, retiree health insurance and sick leave/accumulation. These issues cannot be considered independently from one another despite the fact that the merits of each must be examined individually. I reach this conclusion for several reasons.

Initially, I note that all of these issues relate to the core of the economic impacts of the parties' negotiations proposals and the net annual economic changes of this award. Secondly, the parties' respective arguments on their proposals center mainly on the "packaging" of the economic issues. In other words, they may appear to agree on a single economic issue but have disagreement over its linkage to others. A third point is that the parties have argued over how these main economic issues interrelate with terms that were set by collective negotiations agreements in other City units and/or by City Resolution for non-unit personnel.

The City and the IAFF rely heavily upon the factor of internal comparability but they dramatically disagree on which internal comparables are to be given the most weight and influence on how these economic issues should be resolved.

The City proposes a retiree health insurance package but only in conjunction with its salary proposal and concessions on sick leave and sick leave accumulation. The City's proposals are substantially similar to the non-law enforcement salary increases that approximate a 4% average and the concessions made by the Superior Officer Association (Captains) on sick leave and sick leave accumulation that were allegedly made in exchange for retiree health insurance. In addition, the City seeks a two-tier salary structure with sharply reduced salaries for new hires. On the other hand, the IAFF seeks retiree health insurance but seeks that it be packaged with the higher salary increases given to the Superior Officer Association (8, 8, 5, 0, 0) and to certain managerial employees in the police department that exceeded 20% over the first two years rather than the 4% (2%-2% splits) given to non-law enforcement salary increases. With respect to concessions, the IAFF submits that all City employees received retiree health insurance without concessions except for the Superior Officers Association. But the IAFF discounts the concessions made in that instance because they are asserted to have had minimal impact upon a small bargaining unit where a large number of unit members were eligible to retire. The IAFF also points to very substantial increases received by the Atlantic City Council, the Council President, Department Directors and Business

Administrator and City Solicitor in 2006. In short, the City and the IAFF agree on emphasizing the factor of internal comparability and the concept of consistency of terms but have sharply divergent views on which internal agreements are comparable and which components of any of those agreements are applicable to the IAFF unit.

I agree with the parties' emphasis on internal comparability. External comparability arguments have also been made by the City and IAFF as each has selected municipalities for comparison purposes. External comparability is not irrelevant but reliance upon labor agreements beyond the jurisdiction of Atlantic City are not as persuasive in this instance as are the internal settlements. Internal comparability and patterns of settlement where there are numerous bargaining units have long been recognized as falling squarely within the parameters of the statutory criteria, including the interests and welfare of the public, continuity and stability of employment, salary and benefit comparisons within the employer's scope and principles that are ordinarily and traditionally considered in the determination of salaries and benefits through collective negotiations.

The record that has been developed on internal comparability reflects consistencies of approach but within a broader context that contains some variations depending on each bargaining unit. The one main theme throughout the agreements, and also the unilaterally adopted terms for non-bargaining unit

personnel, is the inclusion of the retiree health benefit. Retiree health benefits were provided to Deputy Chiefs of Police in accordance with Resolution No. 1972. This benefit was provided to eligible employees covered by labor agreements (other than the Superior Officers Association) by Ordinance No. 61 during June of 2004. This ordinance covered all city employees (except Police Officers and Firefighters covered by labor agreements) as well as the City's managerial and confidential employees. Shortly thereafter, the City adopted Ordinance No. 85 providing retiree health insurance for the Superior Officers Association (Captains).

The IAFF's proposal for retiree health benefits differs substantially from the City's. The IAFF's proposal essentially patterns Ordinance No. 85. The IAFF proposals differs in that Ordinance No. 85 requires 25% of benefit costs to be borne by the retiree (75% to be paid by the City) for those retiring on or after January 1, 2007 but the IAFF has proposed that the City pay 95%. The City's proposal differs from the programs that it has already adopted under all of its resolutions. The main differences between the parties are as follows. The City has tied its proposal to certain givebacks and seeks application of Ordinance No. 61 for the IAFF. In addition, the two proposals differ in that the IAFF's would be implemented effective January 1, 2003, while the City's would not take effect until January 1, 2006. In addition, the IAFF proposes that the City pay 95% of the cost of the HMO Blue program and 100% of the cost for a drug prescription program, while the City would pay 75% under its proposal with the retired fire

fighter paying 25%. The City does not reference any payment for the drug prescription program. The City would also require that the retiring officer have at least 25 years of service with Atlantic City while the IAFF would provide this benefit to individuals retiring with 25 years of service in a state or locally administered retirement system with at least 10 years of service with the City or if an officer has retired on a disability pension regardless of years of service with the City. The City also proposes language stating that the level of health benefits provided to the retirees, and their dependents, may be changed at any time by the City upon notice to the retiree. This authority is not present in either Ordinance No. 61 or No. 85.

After thorough review and consideration of the respective retiree health insurance proposals, I am persuaded that the program to be awarded for this unit should, with modifications set forth below that are appropriate due to cost considerations and the passage of time, be consistent with the terms that were contained in Atlantic City Ordinance No. 85. That document is in the record and need not be reproduced here.

There are differences between the programs provided by Ordinance No. 61 and Ordinance No. 85. The reasons for awarding a program similar to Ordinance No. 85 rather than No. 61 and denying the City's proposal containing requirements that are less than both are several. The City's position that it be allowed to change the level of health benefits at any time upon notice to the

retiree is inconsistent with the commitments it has made to retirees in all of its other agreements and/or unilateral adoptions. Another inconsistency is the requirement that the IAFF have 25 years or more of service credit with the City of Atlantic City Fire Department compared to the eligibility terms set forth in Ordinance No. 61 and No. 85 that provide eligibility upon having 25 years of creditable service with at least 10 years of such service within the City. The City's reasoning for these and other differences are outweighed by considerations that focus on uniformity and consistency. The City has, by its own actions, provided for differentiation between its non-public safety employees and its public safety employees and an extension of the program it has adopted for its public safety employees prior to this date with certain modifications is warranted for this bargaining unit.

The City has proposed that any retiree health benefit program that may be awarded be effective January 1, 2006 while the IAFF proposes that the effective date be January 1, 2003 similar to Ordinance No. 61 and No. 85. The IAFF seeks that there be consistent application of the effective date, asserting that to deny this benefit to those who have retired after January 1, 2003 but prior to January 1, 2006 would unfairly penalize its members for the extended delay caused by the negotiations process. The City's position is based primarily upon the costs of retroactivity and having the financial impact of the benefit on its budget offset by concessions. After weighing these considerations, I award retroactivity with respect to eligibility for the program back to the date of January



1, 2003 but with an effective date for the payment and the receipt of retiree health benefits effective on January 1, 2007. The City's payment levels, similar to Ordinance No. 85, shall be 95% for employees who have retired after January 1, 2003 but prior to January 1, 2007 and 75% for employees who retire January 1, 2007 or thereafter.

The awarding of the retiree health insurance program is a significant cost item to the City. Its inclusion requires consideration as to its impact upon the other economic issues in dispute. This consideration was present in the determination made above to implement the retiree health insurance benefits on January 1, 2007.

The City proposes two areas of cost containments in the health insurance area. One is to increase the major medical deductible under the City's self-insured indemnity health insurance plan to \$150 per individual and \$300 per family per year. These concessions were made by other employee organizations who received retire health insurance. The IAFF has made an identical proposal concerning the major medical deductible. This issue addresses the increased cost for providing health insurance. The proposed increase in deductibles will result in savings of premium costs to the City while maintaining comprehensive health insurance coverage. The proposal is therefore awarded. The effective date for this modification shall be January 1, 2007.

A second area addresses the cost of drug prescription co-pays. The City has proposed to increase the co-pay for drug prescriptions to \$10 for non-generic drugs and \$5 for generic drugs. Currently both types of prescriptions are \$5. These concessions were made by other employee organizations who received retire health insurance. The IAFF has addressed this issue in similar fashion. The cost of the existing benefit has increased and the parties have addressed this increase by proposing increases in the co-pays. Since both parties have proposed the same change to the drug prescription co-pays, the proposals are awarded. They too shall be effective on January 1, 2007.

Both parties have submitted proposals involving sick leave and sick leave accumulation. The IAFF proposes to eliminate the current two-tiered system set forth in Article 16(B)(2) to provide that all fire fighters can accumulate 140 hours of sick leave regardless of date of hire. The City, on the other hand, has submitted several proposals it has considered "givebacks" in exchange for providing the health benefits at retirement issue. Specifically, the City proposes the following:

- (1) Reduce the number of hours of sick leave for each Fire Fighter by forty (40) hours per year retroactive January 1, 2003;
- (2) Eliminate the ability to accumulate sick leave from year to year;
- (3) All earned sick leave shall be valued at the present rate prior to the commencement of this Agreement; and

- (4) Fire Fighters shall be eligible for no more than 260 days of leave under Article 16C of the Collective Bargaining Agreement during the length of their employment with the City.

The City sees the issue of health benefits upon retirement for the employees covered by this Agreement as connected to the IAFF's acceptance of certain givebacks, among them the four items listed above. The City argues that all other unions have accepted givebacks in return for the implementation of a health benefits program for retirees. In particular, they point to the Agreement with the SOA (Captains) who agreed to a similar proposal the City has made in this proceeding.

The IAFF, in opposition to the proposal, argues that the only other negotiating unit within Atlantic City to accept "givebacks" in the area of sick leave was the SOA. The IAFF contends that the Captains should be distinguished from the City's treatment of police officers due to the composition the SOA unit. The SOA represents only Captains. The IAFF points out that most of the Captains have 25 years of service over which time they have already accumulated a significant amount of sick leave. The IAFF asserts that twenty (20) of the twenty-five (25) captains will be eligible for retirement during the life of their contract and will most likely retire. The IAFF also speculates that the rank of Captains may not be used in the future in the Police Department because the City has created and filled the position of Lieutenant rather than filling the rank of Captain. The IAFF also points out that if the City promotes anyone to Captain

they get paid the full value of their accumulated sick leave at the time and then are awarded unlimited sick leave. Thus, the IAFF asserts that the concessions or the savings the City claims for Captains as a result of the SOA concession as a mere "illusion."

Although I do not award the City's proposal in the form that it has advanced, I do find merit to that portion of the City's proposal that it receive some relief in its long-term financial obligations in the terminal leave area caused by sick leave accumulation as an additional consideration towards the awarding of retiree health benefits. I note that Article 16 of the prior Agreement, at Section B, did provide for a two-tier system reducing the amount of sick leave hours per year to 100 for fire fighters hired after January 1, 1996. In addition, the Agreement, at Article 16, Section E, provided for a reduction in the amount of terminal leave that could be accumulated. Employees hired in 1984 were limited to a maximum of 16 months, a figure that was reduced to a maximum of 14 months for those hired in 1985. There was a further reduction to a maximum of 12 months for those hired in 1986. In the twenty (20) years that have passed since the last modification in the terminal leave program, the salaries for fire fighters have risen substantially and will rise to more attractive levels as a result of the terms of this award. A further reduction in the maximum amount of time that can be accumulated for the purpose of terminal leave is warranted. I award a reduction in the City's terminal leave obligation to a maximum of six (6) months for any fire fighter hired on or after October 16, 2006.

I find no merit to the IAFF's proposal to eliminate the two-tiered sick time accumulation system that was previously created in 1996. No data was placed on the record as to the need to increase the amount of sick time for this group of employees and to do so would impose additional costs upon the City.

### Salary

I next turn to the issue of salary. The IAFF has proposed salary increases as follows:

<u>Year</u>	<u>Increase</u>
2003	8%
2004	8%
2005	5%
2006	0%
2007	5%

The City has proposed salary increases of:

Effective:	January 1, 2003:	2%
	July 1, 2003:	2%
	January 1, 2004:	2%
	July 1, 2004:	2%
	January 1, 2005:	2%
	July 1, 2005:	2%
	January 1, 2006:	2%
	July 1, 2006:	2%
	January 1, 2007:	2%
	July 1, 2007:	2%

The City has also proposed to reduce the salaries for new hires after January 1, 2002. In terms of percentages increases, the IAFF's proposal totals 26% over the five year period while the City's totals 20% for that period.

However, difference in the total cost in dollars between the proposals far exceeds 6% because of the front end loaded nature of the IAFF's proposal. 1% of cost is \$172,634. The costs are depicted in the chart below:

IAFF									
2003		2004		2005		2006		2007	
8%		8%		5%		0%		5%	
\$1,381,073		\$1,491,559		\$1,006,802		\$0		\$1,057,142	
TOTAL								\$4,936,576	
CITY									
Jan. 2003	July, 2003	Jan., 2004	July, 2004	Jan., 2005	July, 2005	Jan., 2006	July, 2006	Jan., 2007	July, 2007
2%	2%	2%	2%	2%	2%	2%	2%	2%	2%
\$345,268	\$352,174	\$359,217	\$366,401	\$373,729	\$381,204	\$388,828	\$396,605	\$404,537	\$412,628
TOTAL									\$3,780,591

In developing the base salary number on which these calculations are structured, it was assumed that all personnel were at their maximum salary level and the Table of Organization was as follows<sup>1</sup>:

Firefighters	181	\$64,337	\$11,644,997
Captains	50	\$73,299	\$3,664,950
Bat. Chief	11	\$83,603	\$919,633
Dep. Chief	6	\$95,573	\$573,438
Custodian	1	\$73,295	\$73,295
Super Fire Pre.	1	\$73,295	\$73,295
Fire Prevent.	2	\$73,295	\$146,590
Fire Official	2	\$83,607	\$167,214
	254		\$17,263,412

<sup>1</sup> Precise calculations must give way to reasonable projections because of changes in staffing levels due to turnover, promotions and/or retirements.

The differences in the wage proposals are substantial. The IAFF's proposal will cost the City \$1.15 million more over the life of the agreement than that proposed by the City if calculations are made based upon the annual difference in each year's cost. If the differences in the parties' positions were to be calculated based upon actual annual payroll expenditures, the additional costs that the City would have to assume over the five years would be far more substantial due to the IAFF's front loaded proposal and would be between \$3,000,000 and \$4,000,000.

An evaluation of the salary issue centers mainly upon comparability and costs. Absent deviations that may be justified, there is a presumption in this proceeding that the evidence on internal comparisons be given the most weight. The comparisons show varied treatment. The IAFF seeks the higher and heavily front loaded settlements received by the SOA [8% in 2003, 8% in 2004, 5% in 2005, 0% in 2006, 0% in 2007] but with a 5% increase in 2007. The City has proposed a 2% increase effective January 1, 2003 followed by 2% increases every six months thereafter. These increases more closely parallel increases for the non-law enforcement units.

A salary determination cannot be made by isolating this issue from the others. The City's proposal was linked to a specific set of concessions including a reduction in sick leave and in sick leave accumulation for existing employees; a

deep two tiered salary structure for new hires, a retiree health insurance program containing elements that differ from others the City adopted. The IAFF seeks salary increases at a higher level than the SOA, a retiree health insurance program that exceeds all others with more limited concessions. The context of the wage issue is one which retiree health insurance issue has been awarded effective January 1, 2007 with eligibility retroactive to January 1, 2003. The deep two tier salary proposal of the City has been denied as well as its proposal to reduce sick leave and eliminate its accumulation. A fifty percent (50%) reduction in terminal leave has been awarded for new hires as well as increases in prescription co-pays and major medical deductibles.

The IAFF has sought linkage with the SOA agreement but with an additional 5%. In this instance, less weight must be accorded to the SOA agreement. Initially, it must be noted that its terms applied to 25 employees rather than the 254 at issue in this proceeding. The IAFF itself asserts that at least 80% of that unit was retirement eligible and that their overall package was designed to motivate retirement. The IAFF unit, in conjunction with the PBA, represent 50% of the costs of the City's payroll and the costs associated with the front load package approaches a several million dollar difference in payroll costs for the IAFF alone over the life of the Agreement. The IAFF's proposal would not only cause adverse financial impact on the City but would also represent a significant deviation from the terms of settlement that have prevailed within the City's non-law enforcement units. To the extent that adjustments were made to



the City's non-law enforcement units, such as raising the minimum starting salary of blue collar employees to \$19,865 per year, such adjustments must be viewed as beyond the scope of percentage increases that would apply to the IAFF unit. The wage issue must be considered as part of the totality of the economic changes that have awarded with due weight given to the other salary agreements. After doing so, I conclude that annual increases of 4% commencing January 1 of each of the five years, without the split raises sought by the City, represents a reasonable determination of the wage issue and one that clearly comports with an application of the statutory criteria. They are, on average, also comparable to those within Atlantic County, within the State of New Jersey and within the thirteen selected municipal fire departments offered by the IAFF.

Accordingly, I award increases of 4% annually to each step of the salary schedule for the titles of Apprentice I, Apprentice II, Apprentice III, Journeyman I, Journeyman II, Journeyman III, Senior Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Assistant Chief Fire Inspector, Deputy Chief, Chief Fire Prevention<sup>2</sup>. I do not award a second tier to the salary schedule. To do so would, more than likely, diminish the continuity and stability of the fire department by creating unfavorable salary comparisons with fire departments elsewhere who work in less demanding environments than Atlantic City.

Based upon the record before me, I am persuaded that the interests and welfare of the public will be furthered by the terms of the Award. They are reasonably consistent with the City's treatment of the remainder of its workforce, represented and unrepresented, and address issues unique to the IAFF. The deviations sought by the City fall outside of the reasonably consistent standard and could decrease the continuity and stability of employment of the City's fire fighters as well as the morale of the fire fighters who protect the health, welfare and safety of residential, commercial and entertainment sectors of the City. The City has witnessed a significant expansion of its tax base -- almost \$1 billion over the past five years which has allowed it to stabilize its tax rate, reduce taxes in 2004 and maintain funds to offset longer term financial obligations under its labor agreements and tax appeals. The City has the ability to fund an award that is reasonably consistent with its other labor agreements without adverse financial impact and within its statutory spending limitations due to its maintenance of a significant cap bank.

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

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<sup>2</sup> All increases are retroactive to their effective dates. Those eligible for retroactivity are those presently employed and those who have retired including those who may have retired on ordinary or disability pension.

## **AWARD**

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

2. **Duration**

The effective date of this Agreement shall be January 1, 2003 through December 31, 2007

3. **Article 1 - Purpose**

This following language shall be added to Article 1:

This agreement is entered into pursuant to the provisions of the New Jersey Employer-Employee Relations Act, N.J.S.A. 34:13a-1 et seq.

4. **Article 21 – Continuation of Benefits**

The current provision for continuation of benefits shall be replaced with the following language:

"All provisions of the January 1, 2000, through December 31, 2002 collective negotiations agreement which are not modified by agreement of the parties and/or this interest arbitration award, are to be carried forward and included in the new contract with changes in the date where appropriate."

5. **Article 14 – Overtime Pay**

A sentence will be added to Article 14 which will read:

In addition, the City shall send a report detailing the use of overtime for the entire Department to the Union on a quarterly basis.

6. **Article 15 – Clothing Allowance**

Paragraph D shall be deleted.

7. **Article 33 – Health Benefits**

Effective January 1, 2007, the major medical deductible under the City's self-insured indemnity plan shall be increased to \$150.00 per year for individual coverage, and to \$300.00 per year for family coverage. Additionally, the co-payment for non-generic drugs shall be increased to \$10.00 per prescription and the co-payment for generic shall be \$5.00 per prescription.

8. **Article 23 – Transfer and Assignments**

The parties have agreed to form a committee to develop new wording, where appropriate, for this article.

9. **Article 24 – Health and Safety**

Add two new members to the Health and Safety Committee; a designee selected by the President of the Local, and the Risk Manager.

10. **Article 12 – Union Release Time**

(a) Add a new Section D which will provide that firefighters attending conventions and seminars pursuant to this article must provide proof of attendance acceptable to the Chief.

(b) Add a new Section E that will provide that:

In addition to the Union Release Time set forth in this article, the Local President, with the approval by the Chief, may use personal/vacation time, one day at a time, for Union business.

11. **Article 17 – Vacations**

Effective January 1, 2007:

(a) Change the language of subsection (c) so that it will read:

Vacation shall be granted during the calendar year. Selection for vacation period shall be based on seniority and rank by shift at station house level. Captains shall select their vacation time first based upon seniority and rank by shift; thereafter, the journeyman shall select their vacation time based upon seniority and rank by shift.

(b) Subsection (g) shall be added which will provide that fire personnel working in administrative positions shall be entitled to the number of vacation days based upon their job title multiplied by ten (10) hours per day.

12. **Article 20 - Pay Scale**

(a) The language of subsection (a) shall be changed to provide that fire fighters who fail an apprenticeship test, either the first, second or third year apprenticeship tests, shall remain at the step that they were at until they pass that test. However, once the test is passed, the fire fighter shall move to the next step effective immediately upon passing the test, and the fire fighter shall be moved to the appropriate step of the salary guide for that fire fighter's class.

(b) Add a subparagraph (b)4 which shall provide that fire fighters on military leave shall be entitled to take the apprenticeship examination upon their return to work, at the request of the fire fighters shall receive the higher salary rate retroactive to the date of his/her return to work.

(c) A new Article 20A shall be developed by the parties creating an Apprenticeship Test Committee consisting of representation selected by the Local and by the City/Chief.

13. **Article 15 - Terminal Leave**

Section E shall add "employees hired after October 16, 2006 shall have maximum accumulation time of six (6) months."

14. **Retiree Health Benefits**


Unit employees shall be provided retiree health benefits to correspond with Ordinance No. 85 that was adopted by the Council of the City of Atlantic City on August 11, 2004 and approved by the Mayor on August 13, 2004 with the following modification. Those eligible for this benefit shall be fire fighters who retired after January 1, 2003. Implementation and payment of the program by the City for eligible fire fighters shall commence on January 1, 2007.

15. **Salaries**

The salary schedule shall be increased at each step of the salary schedule by 4.0% effective January 1, 2003, 4.0% effective January 1, 2004, 4.0% effective January 1, 2005, 4% effective January 1, 2006 and 4.0% effective January 1, 2007 and be retroactive to their effective dates. The increases shall be applied to the titles and ranks of Apprentice I, Apprentice II, Apprentice III, Journeyman I, Journeyman II, Journeyman III, Senior Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian,

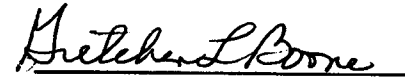
Air Mask Technician, Battalion Chief, Assistant Chief Fire Inspector, Deputy Chief, Chief Fire Prevention.

Dated: October 16, 2006  
Sea Girt, New Jersey

  
James W. Mastriani

State of New Jersey       }  
County of Monmouth       }ss:

On this 16<sup>th</sup> day of October, 2006, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

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