

In the Matter of Interest Arbitration Between:

**MOUNT LAUREL BOARD OF FIRE COMMISSIONERS,
DISTRICT NO. 1**

“Employer,”

- and -

**IAFF LOCAL 4408 AND
IAFF LOCAL 4408-O**

“Unions.”

Docket No. IA-2010-060

**OPINION
AND
AWARD**

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Lane J. Biviano, Esq.

For the Unions:

Raymond G. Heineman, Esq.
Kroll, Heineman, Carton, LLC

I was designated by the New Jersey Public Employment Commission to serve as interest arbitrator after the Mount Laurel Fire District No. 1 [the “District” or “Employer”] and IAFF Local 4408 and 4408-O [the “Unions”] reached impasses in negotiations. Each employee organization filed petitions to initiate interest arbitration. Mediation sessions were held resulting in the narrowing of remaining issues. Because the impasse remained, a formal interest arbitration hearing was held on February 8, 2011 at which time testimony and documentary evidence was submitted into the record. Because the parties did not agree on an alternative terminal procedure, the arbitration proceeded under the terminal procedure of conventional arbitration under which the arbitrator has the discretion to render an award that is not confined to the last offers of either party. See, N.J.S.A. 34:13A-16(c)(1). The record was closed on or about July 1, 2011 upon receipt of post-hearing briefs.

As required by statute, the District and the Unions submitted the following last offers on the issues in dispute.

**FINAL OFFER OF THE
MOUNT LAUREL FIRE DISTRICT NO. 1**

Duration

5 year successor CBA from January 1, 2010 through December 31, 2014.

Annual Salary Increase

January 1, 2010	0.0%
January 1, 2011	1.75%
January 1, 2012	1.75%
January 1, 2013	1.75%
January 1, 2014	1.75%

Hourly Rate and FLSA Tradeoff

Effective January 1, 2011

** 0.5% (1/2%) increase in exchange for revised hourly rate, calculation attached as Appendix A.

** 0.5% (1/2%) increase in exchange for implementation of FLSA for all work schedules

** *The aggregate would effectively render the 2011 annual salary increase at 2.75% (1.75% plus 0.5% plus 0.5%)*

Health Insurance Deduction

*** Health Insurance Deduction 1.5% of salary effective May 21, 2010

*** The Fire District has implemented the above deduction in accordance with applicable law (P.L. 2010, c. 2). The IAFF has challenged the deduction via Grievance Arbitration. The Fire District has filed a Scope Petition, which is pending before PERC.

Percentage Deduction from Health Insurance Premiums

Effective 2012 the Fire District will increase the deducted amount for health insurance (currently 1.5% salary deduction in accordance with P.L. 2010, c. 2) to a percentage of the insurance premiums including the SHBP (State Health Benefits Program), Dental, Prescription Drug and Life Insurance Premiums as provided below. In no event will the deducted amount be less than the current 1.5% salary deduction.

January 1, 2012	15%
January 1, 2013	17%
January 1, 2014	20%

Salary Guide

A (Attached as Appendix B) 10 step Salary Guide for firefighters hired on or after January 1, 2011.

This includes a Starting Salary for Firefighter to be frozen at \$45,000 for duration of the CBA.

Under the 10 step Salary Guide a salary increase would occur only on the firefighter's anniversary date.

The current 7 step Salary Guide would be applicable for firefighters hired prior to January 1, 2011.

Holiday Leave Payable

Reduce Maximum Hours Payable from 144 to 72.

Longevity

Effective January 1, 2012, longevity has been negotiated out of the CBA.

Retirement Pay Out

- a. One time lump sum payment up to \$10,000, payable June 1.
- b. Pay out over two years in equal installments for retirement package exceeding \$10,000 up to \$20,000, payable June 1.
- c. Pay out over three years in equal installments for retirement package exceeding \$20,000, payable June 1.

Off Duty Liability

Revise liability language in Article XXX to limit the jurisdiction for off duty services to New Jersey instead of nationwide.

FINAL OFFER OF THE UNIONS
IAFF Local 4408-O (Officers)

1. **Article X - Overtime.** Change Section E to read:
 - E. Except as provided in Section B above, a “card system” for the purpose of distributing overtime shall be utilized in accordance with Overtime Policy #04-015(a).

2. **Article X – Overtime.** Change Administrative Policy #04-015(a). Overtime Policy, sections 2.4 and 2.7 to read:
 - 2.4 Overtime will not be offered to any employee that is suspended, on leave of absence, out of sick, on personal leave, administrative leave, military leave, or jury duty leave.
 - a. Employees on other types of leave not listed above are permitted to work overtime while on leave, but shall not be forced.

 - 2.7 When reporting for duty, the employee shall be compensated for a minimum of four (4) hours at the overtime rate for the position being filled.

3. **Article XXII – Salaries.** The firefighters are proposing an across the board increase for each employee on January 1st of each year from January 1, 2010 through December 31, 2014 as follows:

January 1, 2010	2.5%
January 1, 2011	2.5%
January 1, 2012	2.5%
January 1, 2013	2.5%
January 1, 2014	2.5%

4. **Article XXVII – Layoffs.** Change name of Department of Personnel to Civil Service Commission:
 - A. Any formal layoff taken by the Fire District will be done on the basis of seniority in accordance with the regulations of the New Jersey Department of Civil Service Commission and Title 11A.

5. **Article XXXI – Officer Rights/Past Practices.** (New) Add Section D as follows:

D. For the purposes of calculating a disciplinary suspension regardless of what shift an employee is assigned to work, a one (1) day suspension is considered a nine (9) hour day. A two (2) day suspension is considered two (2), nine (9) hour days, and so on. Therefore, if an employee is suspended for one (1) day, the employee will be docked nine (9) hours of pay at the basic hourly rate and return to work for the balance of the shift that day or for a five (5) day employee on the next scheduled shift.

6. **Article XXXII – Promotions and Transfer.** Modify Sections A, B and C as follows:

A. Civil Service Commission regulations shall apply to all permanent appointments. Seniority shall prevail where all else is equal and the Civil Service Commission “Rule of Three” does not apply.

C. All employees shall be given time off without loss of pay for the purpose of taking and reviewing a promotional examination and for attending their own promotional swearing in ceremony, including a reasonable amount of time for traveling to and from the examination and swearing-in ceremony.

D. If Management decides to fill a position with an interim or provisional appointment, a notice shall be posted in each District facility informing employees of the availability of the position, the nature and job duties of the position, and the qualifications needed to obtain the position. Seniority shall prevail when all qualifications of the candidates are equal. If more than one rank is eligible, the employee with a greater amount of service time shall prevail when qualifications are equal.

7. **Article XXXIII – Safety Clause.** (New) Add new article as follows:

A. The Chief will establish a safety committee for the benefit of the health and welfare of all fire personnel. This committee will include one (1) member from the officer’s shop and one (1) member from the firefighter’s shop representing career employees. The appointed members will be mutually agreed upon by the Chief and the Union President.

B. The District agrees to supply and make available all materials required in the day-to-day maintenance and upkeep of all firehouses. The District furthermore agrees to supply all items necessary to maintain satisfactory sanitary conditions of all quarters within all firehouses.

8. **Article XXXIV – Term and Renewal.** Modify Section A as follows:
 - A. This Agreement shall be in full force and effect as of January 1, 2010 and shall remain in effect through an expiration date of December 31, 2014.

9. **Article XXXIV – Term and Renewal, Section C** (New) Add new Section C as follows:
 - C. Nothing in this Agreement shall preclude the Fire District from consolidating or merging into or with, and/or transferring all or substantially all of its assets to the Township of Mount Laurel provided the Township assumes this Agreement and all obligations and undertaking of the Fire District hereunder. Upon such consolidation, merger, or transfer of assets and assumption, the “Fire District” as used herein shall mean the Township and this Agreement shall continue in full force and effect.

10. The Local 4408-O proposes that all previously agreed upon contract modifications be included in the successor collective negotiations agreement. Local 4408-O further proposes the rejection of the Fire District’s remaining proposals.

IAFF Local 4408 (Firefighters)

1. **Article X - Overtime.** Change Section E to read:
 - E. Except as provided in Section B above, a “card system” for the purpose of distributing overtime shall be utilized in accordance with Overtime Policy #04-015(a).

2. **Article X – Overtime.** Change Administrative Policy #04-015(a). Overtime Policy, sections 2.4 and 2.7 to read:
 - 2.4 Overtime will not be offered to any employee that is suspended, on leave of absence, out of sick, on personal leave, administrative leave, military leave, or jury duty leave.
 - a. Employees on other types of leave not listed above are permitted to work overtime while on leave, but shall not be forced.

2.7 When reporting for duty, the employee shall be compensated for a minimum of four (4) hours at the overtime rate for the position being filled.

3. **Article XI – Vacation Leave.** Modify Section J as follows:

J. Up to two hundred seven (207) hours for firefighters assigned to the five (5) day work schedule, up to two hundred forty (240) hours for firefighters assigned to a four (4) day work schedule, up to two hundred fifty-two (252) hours for firefighters assigned to a twelve (12) hour work schedule, and up to three hundred twelve (312) hours for firefighters assigned to a twenty-four (24) hour schedule of accrued vacation leave may be carried over at the end of any given year.

4. **Article XXIII – Salaries.** The firefighters are proposing an across the board increase for each employee on January 1st of each year from January 1, 2010 through December 31, 2014 as follows:

January 1, 2010	2.5%
January 1, 2011	2.5%
January 1, 2012	2.5%
January 1, 2013	2.5%
January 1, 2014	2.5%

5. **Article XXIII – Salaries, Section D.** (New) Add Section D as follows:

D. Fire Prevention Specialist UFD or any firefighter holding a Valid New Jersey Fire Inspectors Certification and assigned to the Fire Prevention Bureau shall be compensated at the rate of Lieutenant while assigned to the Fire Prevention Bureau.

6. **Article XXV – Acting Out of Title, Section C.** (New) Add Section C as follows:

C. Any Fire Prevention Specialist, UFD or any firefighter assigned to the Fire Prevention Bureau covered under this agreement that is ordered by management to “act out of title” shall be assigned and compensated at the rate of Fire Marshal.

7. **Article XXVII – Layoffs.** Change name of Department of Personnel to Civil Service Commission:

B. Any formal layoff taken by the Fire District will be done on the basis of seniority in accordance with the regulations of the New Jersey Department of Civil Service Commission and Title 11A.

8. **Article XXXI – Officer Rights/Past Practices.** (New) Add Section D as follows:

D. For the purposes of calculating a disciplinary suspension regardless of what shift an employee is assigned to work, a one (1) day suspension is considered a nine (9) hour day. A two (2) day suspension is considered two (2), nine (9) hour days, and so on. Therefore, if an employee is suspended for one (1) day, the employee will be docked nine (9) hours of pay at the basic hourly rate and return to work for the balance of the shift that day or for a five (5) day employee on the next scheduled shift.

9. **Article XXXII – Promotions and Transfer.** Modify Section C as follows:

C. All employees shall be given time off without loss of pay for the purpose of taking and reviewing a promotional examination reviewing the results of the promotional examination including a reasonable amount of time for traveling to and from the examination site.

10. **Article XXXIII – Safety Clause.** (New) Add new article as follows:

A. The Chief will establish a safety committee for the benefit of the health and welfare of all fire personnel. This committee will include one (1) member from the officer's shop and one (1) member from the firefighter's shop representing career employees. The appointed members will be mutually agreed upon by the Chief and the Union President. The appointment will be concurrent with the term of the Union President.

B. The District agrees to supply and make available all materials required in the day-to-day maintenance and upkeep of all firehouses. The District furthermore agrees to supply all items necessary to maintain satisfactory sanitary conditions of all quarters within all firehouses.

11. **Article XXXIV – Term and Renewal.** Modify Section A as follows:

A. This Agreement shall be in full force and effect as of January 1, 2010 and shall remain in effect through an expiration date of December 31, 2014.

12. **Article XXXIV – Term and Renewal, Section C** (New) Add new Section C as follows:

- C. Nothing in this Agreement shall preclude the Fire District from consolidating or merging into or with, and/or transferring all or substantially all of its assets to the Township of Mount Laurel provided the Township assumes this Agreement and all obligations and undertaking of the Fire District hereunder. Upon such consolidation, merger, or transfer of assets and assumption, the "Fire District" as used herein shall mean the Township and this Agreement shall continue in full force and effect.
13. The Local 4408 proposes that all previously agreed upon contract modifications be included in the successor collective negotiations agreement. Local 4408 further proposes the rejection of the Fire District's remaining proposals.

BACKGROUND

The Mt. Laurel Fire District operates within Mt. Laurel Township. The fire District employs forty (40) paid firefighters and fire officers in addition to a Deputy Fire Chief and Fire Chief. The District has three fire houses that service the community. In addition to the paid firefighters and fire officers, there are approximately forty (40) volunteer firefighters. Mt. Laurel is a Burlington County municipality covering some 22 square miles. While primarily a residential community, its location and proximity to Philadelphia creates a business and commercial population that reaches approximately 100,000 people.

Firefighting services are administered in a diversified fashion. Testimony reflects that two of the three fire stations are staffed by twenty-seven (27) career firefighters and fire officers who work 24 hour shifts with one (1) day on and two (2) days off. The firefighters who work 24 hour shifts work 2,754 regularly scheduled hours due to "Kelly Day Adjustments". The fire officers are scheduled

for a total of 2,920 hours annually. The third fire station operates with a 12 hour day shift staffed by six (6) paid firefighters and fire officers with the night shift being staffed by volunteers. Those assigned to the twelve hour shifts for a total of 2,184 annual work hours. In addition, there are four firefighters and fire officers who work in fire prevention and administration who work a forty-five (45) hour workweek totaling 2,340 of work per year. The Fire District performs a wide range of duties. In 2009, there were a total of approximately 2,000 incidents, including 113 fires. In addition to firefighting responsibilities, the Department responds to motor vehicle and other types of emergencies. Given its location, it is required to respond to such incidents on the New Jersey Turnpike and Route 295.

As is reflected in the last offers of the parties, the vast majority of the issues in dispute are economic in nature. The parties sharply disagree on what the resolution of those issues shall be. The District and the Unions have each submitted substantial evidence and argument in support of their respective positions on the economic issues and each asserts that its last offer represents a more reasonable determination of the issues after applying the statutory criteria. A brief overview of each party's perspective is as follows.

The Unions emphasize that the proposed 2.5% increase on the salary schedule is consistent with the evidence governing voluntary settlements, awards

in surrounding communities, in comparable fire districts and with the Township's voluntary settlement with its police officers.

The Unions also view the statutory health care contributions as being a factor in the salary analysis because it views the contributions as an integral part of the wage and compensation package. The Unions offer a graphic analysis of the contributions unit members are required to make under the more recently enacted mandatory health care contributions legislation. The Unions assert that the aggregate monies received by the District as a result of the legislation would result in amounts of \$48,711 in 2011, \$97,422 in 2012, \$146,133 in 2013 and \$194,843 in 2014. The Unions also view the District's proposals as resulting in substandard wage increases that are below all the comparability evidence. They assert that the Fire District's proposed wage increases of 8% over five years is more than offset by the decreases in wages and benefits caused by the District's proposal and the insurance legislation over the five year contract duration.

The District contends that its financial proposals flow from the need to provide financial stability in its budget because of rising costs, statutory limitations, its ability to raise the amount of tax revenues required by the Unions' proposals and the unique fiscal framework that governs and constrains fire districts such as the Mt. Laurel Board of Fire Commissioners District 1. The uniqueness of this framework is said to compel the District to reject the Unions'

proposals and to require the adoption of the District's proposal. With respect to the fiscal framework, the District offers the following argument:

Fire Districts are established under a separate set of laws from that of other local governments. This renders it impractical and unfair to compare a fire district with a municipal fire department. A municipal fire department is a sub-unit of a municipality. A fire district is a local government, pursuant to N.J.S.A. 40A:14-70 et. seq., with its own tax raising authority, budgetary requirements and limitations, elected officials, powers, administrators, firefighters and superiors. N.J.S.A. 40A:14-81 provides in pertinent part, "The commissioners of a fire district shall have the powers, duties and functions within said district to the same extent as in the case of municipalities, relating to the prevention and extinguishment of fires and the regulation of fire hazards...."

Annual budget referenda and commission elections are held on the third Saturday of February. N.J.S.A. 40A:14-72A. Voter approval of a budget is unpredictable, especially in a dismal economic climate. This places fire district budgets in peril. Similar to a local board of education budget, a defeated fire district budget is submitted to the Township Council for a final determination. In Mount Laurel Township, the Mayor and Council have historically reduced the rejected fire district budget to the previous year's level. This has occurred three times in the past eight (8) years. While a school district budget is also subject to voter approval, a school district budget is not reduced to the previous year's allocation. As a result, an increasing number of fire districts including Mt. Laurel in 2011, submitted a budget with no tax increase. Further, Mount Laurel may have little choice but to continue to propose a zero tax rate budget increase for the foreseeable future.

The District further contends that its finances are negatively impacted by the manner in which the statutes affect the schedule of payments issued by the Township which affect its cash flow and requires it to maintain sufficient levels of fund balance:

A fire district is statutorily handcuffed by the schedule of payments issued by the municipality which unfavorably affect a fire district's

cash flow. This means a fire district must budget an unrestricted fund balance to pay bills during the first quarter when tax revenues are pending. A fire district is under the most strict cash flow limitation of local government. N.J.S.A. 40A:14-79 reads in pertinent part:

Upon proper certification pursuant to section 9 of P.L. 1979, c. 453 (C. 40A:14-78.5), the assessor of the municipality in which the fire district is situate shall assess the amount to be raised by taxation to support the district budget against the taxable property therein, in the same manner as municipal taxes are assessed and the said amount shall be assessed, levied and collected at the same time and in the same manner as other municipal taxes. The collector or treasurer of the municipality in which said district is situate shall pay over all moneys so assessed to the treasurer or custodian of funds of said fire district as follows: on or before April 1, an amount equaling 21.25% of all moneys so assessed; on or before July 1, an amount equaling 22.5% of all moneys so assessed; on or before October 1, an amount equaling 25% of all moneys so assessed; and on or before December 31, an amount equaling the difference between the total of all moneys so assessed and the total amount of such moneys previously paid over, to be held and expended for the purpose of providing and maintaining means for extinguishing fires in such district. [Emphasis Added].

On this subject, Mount Laurel's independent auditor Bowman and Company, LLP opined at Mount Laurel's request with regard to fire districts and cash flow:

...[A]s independent external auditors we cannot act as an advocate for any entity for which we provide attestation services Clearly, a fire district must maintain a certain amount of its fund balance (surplus) during the year to ensure adequate cash flow due to the fact the final payment of fire district taxes is not required to be paid until the last day of the year, December 31, 2011. Not maintaining an adequate amount of fund balance (surplus) would result in poor cash flow and the inability for the fire

district to have enough cash on hand to meet its financial obligations. **As we discussed, most municipalities do wait until the last few days of the year to remit the final fire district tax payment.** Consequently, it is our professional opinion that, after consideration of the timeline in which it receives the payment of its taxes, from the municipality, **a fire district should maintain a fund balance (surplus) that provides enough cash to meet its financial obligations throughout the twelve months operating cycle to ensure effective cash management. Exhibit D-18 [Emphasis Added]**

In basic terms a fire district is entitled to receive 21.25% of the amount raised by taxation from the Township by April 1, which is 25% of the fiscal year. During the first quarter Mount Laurel has to meet payroll in excess of **\$1,000,000**, pay the entire pension bill approaching **\$1,000,000**, **Exhibits D-74-76**, and meet other obligations, including but not limited to medical and other insurance premiums (**\$360,000** for first quarter), debt service, utilities, repair and maintenance, which come due in the first quarter. Although the budget referendum is held in late February, the fiscal year is a calendar year from January 1 through December 31. The amount to be raised by taxation for 2011 was \$8,231,472 . **Exhibit D-14**. As a matter of fiscal practicality Mount Laurel should have a minimum fund balance on hand of 25% of that amount or \$2,057,868. A municipality, although it receives its funding directly from the taxpayer, assures its cash flow by raising a Reserve for Uncollected Taxes. Mount Laurel reserve has not remotely approached a 25% reserve to taxes levied. The approximate reserve percentages (see chart below) have been: 2007-5.18%; 2008 -0.98%; 2009 - 6.2%, 2010 - 10.67% and 201119.49%. **Exhibit D-83**.

Based upon the aforementioned fiscal framework, and the financial climate the District contends that it must reduce its overtime costs, create a new salary schedule for new hires, eliminate longevity, reduce maximum holiday leave hours payable, freeze salaries for 2010 and reduce the hourly rate calculation¹ for employees on 24 hour shifts among its many proposals.

¹ The District's submission on revised hourly rate and the FLSA rate is more fully detailed in the analysis of that issue under the determination of salaries.

As reflected in the parties' last offers, there are a substantial number of issues in dispute in this proceeding. For the sake of clarity and structure, I have laid out each party's proposal on each individual topic and have accompanied each proposal with a concise summary of argument and evidence presented on that proposal. The main compensation issues have been laid out last along with a summary of the evidence and argument each party has provided referencing the relevant statutory criteria. At the end of each individual issue, I have summarized what I have awarded on that issue. In addition, I have included a self-contained award containing all of the awarded issues at the end of the decision.

DISCUSSION

The District and the Unions have offered testimony, and substantial documentary evidence and argument support of their final offers. All of the evidence and argument have been considered. I am required to make a reasonable determination of the above issues, giving due weight to those factors set forth which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in its proposed local budget.

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

As is typically the case in interest arbitration proceedings, any party who seeks to modify an existing term and condition of employment has the burden to prove that there is basis for its proposed change. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. No proposed issue by either party can be deemed presumptively valid without justification supported by the statutory criteria or without determining its reasonableness within the overall framework of the entire award. While there may be merit to awarding or denying a single issue if it were to stand alone, a different result may be reached after assessing the merits of any individual issue

within the context of an overall award. I have applied these principles to my analysis of the issues in dispute.

Duration

The parties have each proposed that the successor collective negotiations agreement commence on January 1, 2010 and expire on December 31, 2014. Given the parties' agreement on the duration of the new contract, I accept their positions as a stipulation pursuant to N.J.S.A. 34:13A-16g(4). Article XXXIV – Term and Renewal, Section A shall be modified to state:

This Agreement shall be in full force and effect as of January 1, 2010 and shall remain in effect through an expiration date of December 31, 2014.

Stipulations

During the course of negotiations, the parties executed a Sidebar Agreements addressing the details of implementing a twelve (12) hour shift. These details are set forth in Addendum A for firefighters and Addendum B for supervisory unit and have been submitted into evidence as District Exhibits #71 and 72. The exhibits address Article 9 – Hours of Operation, Article 10 – Overtime, Article 11 – Vacation Leave, Article 12 – Regular and Floating Holiday Leave, Article 13 – Sick Leave, Article 15 – Personal Leave, Article 16 – Bereavement Leave and Article 31 – Rights/Past Practice. I accept Addendum A

and Addendum B as stipulations pursuant to N.J.S.A. 34:13A-16(g)(4) and incorporate the terms of Addendum A and Addendum B into the award.

The parties have also agreed to many revisions in the language of each collective negotiations agreement. These revisions were submitted to me on March 30, 2011 with the revisions "highlighted in green." The only exceptions to the revisions concern Article 14, paragraph (7)(D) on page 37 of the fire officers' Agreement and the same reference on page 37 of the firefighters' Agreement.² I accept the language revisions to both Agreements that are "highlighted in green" with the exception of Article 14, paragraph (7)(D) as stipulations pursuant to N.J.S.A. 34:13A-16(g)(4) and incorporate the terms of the language revisions into the award.

Article XXXIV – Term and Renewal

The Unions propose to add a new Section C to Article XXXIV – Term and Renewal. The proposal reads as follows:

- C. Nothing in this Agreement shall preclude the Fire District from consolidating or merging into or with, and/or transferring all or substantially all of its assets to the Township of Mount Laurel provided the Township assumes this Agreement and all obligations and undertaking of the Fire District hereunder. Upon such consolidation, merger, or transfer of assets and assumption, the "Fire District" as used

² This reference is to Article 14 – Management Rights, Section 7(D) that states "proposed new rules or modifications of existing rules governing working conditions shall be negotiated with the Union before they are established." Although the parties have not stipulated to its continuation, neither party has proposed to delete this language. In any event, there is no record basis to not continue this language into the next agreement.

herein shall mean the Township and this Agreement shall continue in full force and effect.

The Unions' contend that there is a need to incorporate this proposal into the agreement because of the Township's stated desire to achieve cost savings. The Unions express a concern that the Township could attempt to achieve that goal by the consolidation of municipal services and unilaterally diminishing existing terms and conditions of employment. Accordingly, the Unions submit that the proposal is meant to protect the terms and conditions of employment that have been negotiated by the parties in the event of a transfer of the fire department's operations to the Township.

The District urges rejection of the Union's proposal. The District's submission in response to the Union's proposal was set forth in detail in its post-hearing brief. The District contends that:

The IAFF proposal would undermine any unification process that would ensue in a merger with another fire district. Moreover, the bargaining units' proposal is preempted by the Uniform Shared Services and Consolidation Act. N.J.S.A. 40A:65-11(d) specifically addresses the procedure for the merger of civil service entity into a non-civil service entity (should this be the case) as provided below:

- d. If the local unit that will provide the service is not subject to the provisions of Title 11A, Civil Service, of the New Jersey Statutes, but the local unit that will receive the service is subject to that Title and the parties desire that some or all employees of the recipient local unit are to be transferred to the providing local unit, the transferred employees shall be granted tenure in office and shall only be removed or suspended for good cause and after a hearing; provided, however, that they may be laid-off in accordance with the provisions of N.J.S.11A:8-1 et seq., and the regulations

promulgated there under. The transferred employees shall be subject to layoff procedures prior to the transfer to the new entity. Once transferred, they will be subject to any employment contracts and provisions that exist for the new entity. The final decision of which employees shall transfer to the new employer is vested solely with the local unit that will provide the service and subject to the provisions of any existing collective bargaining agreements within the local units.

The court has also addressed the merger or consolidation of Fire Districts. Cherry Hill Fire Company No. 1 v. Cherry Hill Fire District No. 3, 275 New Jersey Super 632 (1994) involved a Township consolidating or merging two fire districts. The court outlined the issue below:

In this case, the narrow controversy involves the continuing enforceability of a fixed-term employment contract covering the position of Executive Director of a municipal utilities authority. The Court is asked to determine whether such an employment contract, entered into by a local utilities authority, remains valid and enforceable following the dissolution of that authority and another local utilities authority created to perform the combined functions of the dissolved authorities. In these circumstances, we conclude that under the statutory provisions by which the contracting authority was dissolved, the successor authority was not required to assume the employment contract of the predecessor authority and that the decision to terminate such an employment contract was not an abuse of discretion. *Id.* at 112, 543 A.2d 431.

A public employment arrangement or contract undertaken by a governmental entity is not similar to the contractual debts incurred in the course of conducting government business. *Public employment* engenders materially different consideration from those surrounding *public contracting*. "Historically, traditionally, and as a matter of continuing currency, the subjects of municipal employment and municipal contracting have been and continue to be separate and distinct headings of municipal law." *Fennimore v. Clementon Sewerage Auth.*, 173 N.J. Super. 466, 470 [414 A.2d 593] (App. Div. 1970). Such is the case with

the statute dealt with today. In the context of this case we are concerned with the statutory authority of local government entities to employ managerial personnel in the discharge of their governmental responsibilities. *This is a concern quite different from incurring contractual indebtedness.* [Id. At 121, 543 A.2d 431 (emphasis supplied)].

In declining to enforce the employment contract, the Court went on to conclude that it is "not compatible with the basic aim of the Fiscal Law to make new authorities assume all of the employment contracts of their dissolved predecessors without regard to their own need to retain such employees." *Stone, supra*, at 120, 543 A.2d 431. Cherry Hill at 643-644.

For the foregoing reasons, it is submitted that the bargaining unit's proposed Section C under Article XXXIV is not in the public interest. The purpose of merger consideration (which is currently not under consideration) would be to step away from the status quo. The IAFF proposal is designed to effectively render any such merger consideration as financially unfeasible.

I decline to award the Unions' proposal to add a new Section C to Article XXIV. At this juncture, there is no evidence, nor even speculation that the District is investigating or contemplating a merger with the Township or another fire district. The District has raised legal uncertainties as to the Unions' proposal that cannot be resolved on this record. In the absence of any indication that the District is exploring the possibility of offering a proposal that could result in consolidation or merger. Accordingly, the proposal is denied.

Article XXXI – Firefighter Rights/Past Practices

The Unions propose to add a new provision to be included in the collective negotiations agreements at Article XXXI, Firefighter Rights/Past Practices. The

proposal provides that, for purposes of imposing discipline, suspensions would be calculated on the basis of a nine hour day. The proposal states:

- D. For the purposes of calculating a disciplinary suspension regardless of what shift an employee is assigned to work, a one (1) day suspension is considered a nine (9) hour day. A two (2) day suspension is considered two (2), nine (9) hour days, and so on. Therefore, if an employee is suspended for one (1) day, the employee will be docked nine (9) hours of pay at the basic hourly rate and return to work for the balance of the shift that day or for a five (5) day employee on the next scheduled shift.

According to the Unions, the proposal is designed to eliminate the disparity in the economic impact of discipline on employees working different shifts, so that a one day suspension would have the same economic impact on an employee working a twenty-four hour day as an employee working an eight-hour day. The District does not agree with the Unions' proposal. There is merit to the Unions' proposal. For the purpose of imposing disciplinary suspensions, it is appropriate that suspensions which are characterized as in the amount of a day or days have reasonable equivalency. The Unions' proposal provides for such reasonable equivalency and does not dilute the District's authority to determine the appropriate amount of discipline that should be implemented based upon employee conduct. Accordingly, the Unions' proposal is awarded.

Article XXXIII – Safety Clause

The Unions propose the inclusion of a new provision at Article XXXIII that it asserts would establish a standard safety clause. The proposal states:

- A. The Chief will establish a safety committee for the benefit of the health and welfare of all fire personnel. This committee will include one (1) member from the officer's shop and one (1) member from the firefighter's shop representing career employees. The appointed members will be mutually agreed upon by the Chief and the Union President.
- B. The District agrees to supply and make available all materials required in the day-to-day maintenance and upkeep of all firehouses. The District furthermore agrees to supply all items necessary to maintain satisfactory sanitary conditions of all quarters within all firehouses.

The proposal is awarded in part and denied in part. The proposed article XXXIII(A) establishes a safety committee with membership with each bargaining unit. The health and welfare of fire department personnel is a term and condition of employment so long as it does not significantly interfere with the prerogatives of the District to set governmental policy. Under the proposed Section A, a committee does not have decision-making authority or does not dictate District membership on the committee. Accordingly, Section A is awarded.

I do not award the Unions' proposal to add Section B. There is no evidence that the District has not provided for the standards that are set forth in the District's proposal. In the event that there is evidence that the District has not met these standards during the remainder of the terms of the agreement, the proposal may be renewed in future bargaining on that basis.

Article XXIV – Longevity

The District has proposed to eliminate the existing longevity benefit that is currently set forth in Article XXIV of both Agreements. Its rationale for doing so is as follows:

Mount Laurel has proposed to cease the longevity benefit effective 2012. Longevity was established forty (40) years ago to provide a necessary incentive for public sector employees to remain with the local government. At the time public employees received low pay and minimal benefits and leaving for another jurisdiction after training and a few years service was not uncommon. Eventually public employee benefits increased substantially and later salaries kept pace with the benefits. Today there is little concern of a firefighter leaving the jurisdiction to take another job. In fact there are at least 200 applicants for every vacancy, even in a good economy. Mount Laurel would not derive any economic benefit from the elimination of the longevity benefit with new hires for at least a decade. The increased costs of escalating salaries when buttressed against zero budget increases and a relatively low CPI leave Mount Laurel little alternative but to propose the end of a once needed incentive to provide for continuity of effective fire services.

Both agreements have the same longevity provision. The existing provision provides the following longevity benefit:

- A. All firefighters on the first day of their 8th year of service with the Fire District shall be entitled to a longevity bonus as described in the below listed scale.

1st day of 8th year 2% of base salary or no less than \$1,250, but no more than \$4,500. (thru the 14th year)

1st day of 15th year 2.5% of base salary or no less than \$1,500, but no more than \$4,500. (thru the 20th year)

1st day of 21st year 3% of base salary or no less than \$1,750, but no more than \$4,500. (thru the 14th year)

The payment of this longevity will be made in one (1) lump sum in the pay period of the firefighter's anniversary date.

I do not award the District's proposal to eliminate longevity for unit employees. I do so for the following reasons. The existing longevity benefit, when compared to others within the field of comparables is not unreasonable. The costs of the program, when measured against the value of maintaining a benefit that rewards career service, are not excessive. To eliminate the existing longevity benefit would negatively impact upon overall compensation currently received in a manner inconsistent with the remaining contract terms that have been awarded. It would also significantly impact upon salary comparisons between employees in this unit and similarly situated fire districts.

Health Insurance Deductibles

The District offers the following proposals concerning health insurance deductions from salary, more commonly known as health insurance contributions:

1. Health Insurance Deduction 1.5% of salary effective May 21, 2010.

2. The Fire District has implemented the above deduction in accordance with applicable law (P.L. 2010, c. 2). The IAFF has challenged the deduction via Grievance Arbitration. The Fire District has filed a Scope Petition, which is pending before PERC.

3. Effective 2012 the Fire District will increase the deducted amount for health insurance (currently 1.5% salary deduction in accordance with P.L. 2010, c. 2) to a percentage of the insurance premiums including the SHBP (State Health Benefits Program), Dental, Prescription Drug and Life Insurance Premiums as provided below. In no event will the deducted amount be less than the current 1.5% salary deduction.

January 1, 2012	15%
January 1, 2013	17%
January 1, 2014	20%

As each party has acknowledged in their submissions, unit members were required to contribute 1.5% of base salary towards health care benefits as required by law on May 21, 2010 pursuant to P.L. 2010, Chapter 2 as a result of legislative action legally mandating the contributions. In and around the time of the close of record, there was additional legislative action once again addressing the issue of employee health insurance contributions. The Governor signed P.L. 2011, Chapter 78 into law with an effective date of June 28, 2011 or the first pay period in July pursuant to that legislation. That legislation provides for amounts of health benefit contribution pursuant to a percentage schedule based upon a combination of the type of coverage the employee selects and the amounts of base salary earned. This award must be consistent with law because N.J.S.A. 34:13A-16g(5) and (9) require the arbitrator to consider the Township's lawful authority and statutory restrictions, one of which is to implement Chapter 78 in

accordance with its terms. The District's proposal in point #3 differs from the formula set forth in Chapter 78 and there is no evidentiary basis to award a proposal that does not match the legislative action. Accordingly, I award the following language as an addition to Article XXII:

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. No retroactive health insurance contributions are awarded prior to the effective date of these provisions.

Accordingly, the Award will reflect that health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78 and shall not be retroactive to dates prior to the legislation.

Article XXVIII – Retirement Payout

The District proposes to have retirement payouts in accordance with the following schedule:

- a. One time lump sum payment up to \$10,000, payable June 1.
- b. Pay out over two years in equal installments for retirement package exceeding \$10,000 up to \$20,000, payable June 1.
- c. Pay out over three years in equal installments for retirement package exceeding \$20,000, payable June 1.

Article XXVIII of the Agreement provides for a comprehensive scheme that could result in retirement cash payouts depending upon a variety of circumstances. The District's proposal does not change any benefit levels,

accruals or options that a firefighter may have proceeding or subsequent to retirement. It is limited to the timing of cash payouts that are earned. Its obvious intent is to provide for the timing of payouts that would assist in its budgetary expenditure during a calendar year and provide for an easing of payments over a period of time so as to not adversely impact any specific budget year. Based upon this analysis, the District has met its burden to have this proposal awarded.

Article X – Overtime

The Unions offer proposals to change the overtime provision set forth in Article X. Its first proposal states:

- E. Except as provided in Section B above, a “card system” for the purpose of distributing overtime shall be utilized in accordance with Overtime Policy #04-015(a).

The District submits that the Union’s proposal to utilize a “card system” for the purpose of distributing overtime is currently set forth in the agreement. That view has been confirmed after review of contract terms. Thus the existing language in Article X, Section E shall be carried forward.

The second proposal is to change Administrative Policy No. 0401-5(a) by modifying Overtime Policy, Sections 2.4 and 2.7 to read as follows:

- 2.4 Overtime will not be offered to any employee that is suspended, on leave of absence, out of sick, on personal leave, administrative leave, military leave, or jury duty leave.

a. Employees on other types of leave not listed above are permitted to work overtime while on leave, but shall not be forced.

2.7 When reporting for duty, the employee shall be compensated for a minimum of four (4) hours at the overtime rate for the position being filled.

With respect to Article X, Section 2.4, the District has represented “that there is no issue with regard to not forcing unit members who are under suspension or leave to work overtime.” Given the District’s representation, there is no need to award the Unions’ proposal. The Administrative Policy shall be construed consistent with the District’s representation and shall not be unilaterally changed inconsistent with that representation.

The District has objected to the Unions’ proposal to modify the overtime policy at Section 2.7 to increase the minimum call back for overtime from 2 hours to 4 hours the employer asserts that the annual overtime budget is already \$400,000 and need not be burdened by additional expenditures. The record supports the District’s view that an award of this proposal would cause increases to overtime expenditures that are already substantial. I conclude that the additional costs of this proposal, given the overall financial impact of the terms of the award, have not been justified. Accordingly, the proposal is denied.

Article XI – Vacation Days

The Agreements, at Article XI, Section J provide for accrued vacation leave at the end of any given year. That provision states the following:

- J. Up to one hundred eighty (180) hours for firefighters assigned to the five (5) day work schedule, up to two hundred sixteen (216) hours for firefighters assigned to a four (4) day work schedule, up to two hundred eighty-eight (288) hours for firefighters assigned to a twenty-four (24) hour schedule of accrued vacation leave may be carried over at the end of any given year.

The Unions have proposed to modify the above provision to provide the following:

- J. Up to two hundred seven (207) hours for firefighters assigned to the five (5) day work schedule, up to two hundred forty (240) hours for firefighters assigned to a four (4) day work schedule, up to two hundred fifty-two (252) hours for firefighters assigned to a twelve (12) hour work schedule, and up to three hundred twelve (312) hours for firefighters assigned to a twenty-four (24) hour schedule of accrued vacation leave may be carried over at the end of any given year.

According to the Unions, the increase in the amount of vacation carryover will assist the District with scheduling issues because it would allow firefighters to defer a greater amount of vacation time into the succeeding year. The District urges rejection of the proposal as providing no benefit to the District and questions whether the proposal is consistent with Civil Service Law.

The Unions have not demonstrated sufficient justification to award a change in Article XI, Section J. A change of this nature is unsupported by sufficient evidence reflecting that there would be no adverse operational impact on the District. Accordingly, the proposal is denied.

Article XXXII – Promotions and Transfers

The Unions propose to modify Article XXXII, Section C as follows:

- C. All employees shall be given time off without loss of pay for the purpose of taking and reviewing a promotional examination reviewing the results of the promotional examination including a reasonable amount of time for traveling to and from the examination site.

Local 4408-0 (officers) proposes to modify Article XXXII – Promotions and Transfers by the addition of language in Sections A, C and D:

- A. Civil Service Commission regulations shall apply to all permanent appointments. Seniority shall prevail where all else is equal and the Civil Service Commission “Rule of Three” does not apply.
- C. All employees shall be given time off without loss of pay for the purpose of taking and reviewing a promotional examination and for attending their own promotional swearing in ceremony, including a reasonable amount of time for traveling to and from the examination and swearing-in ceremony.
- D. If Management decides to fill a position with an interim or provisional appointment, a notice shall be posted in each District facility informing employees of the availability of the position, the nature and job duties of the position, and the qualifications needed to obtain the position. Seniority shall prevail when all qualifications of the candidates are equal. If

more than one rank is eligible, the employee with a greater amount of service time shall prevail when qualifications are equal.

The District objects to all of the aforementioned proposals. Because Mt. Laurel is a Civil Service jurisdiction, it contends that the matters sought by the Union are provided for under Civil Service laws and regulations. I do not award the Union's proposal to modify Article XXII, Section C. It has not shown that unit employees have been adversely affected by not having time off to take and review a promotional exam, to review the results of the promotional exam and to provide paid time to travel to and from the examination site. Similar reasoning applies to the proposal for Fire Officers given time off for the same purposes and for attending their own promotional swearing in ceremony. I do award the modification to the Fire Officers' proposal to add language to Section D. The first sentence proposed is a notice provision that could affect the Fire Officer's ability to be considered for an interim or provisional appointment. I do not award Sentences 2 and 3 which limits the District's authority to fill an interim or provisional position. I do award an additional sentence which will provide the Union with notice in the event that the District fills an interim or provisional appointment. The language awarded in the Fire Officers' agreement at Article XXXII, Section D shall read:

- D. If Management decides to fill a position with an interim or provisional appointment, a notice shall be posted in each District facility informing employees of the availability of the position, the nature and job duties of the position, and the qualifications needed to obtain the position. In the event that

the interim or provision appointment is filled by the District, the District shall notify the Union of the appointment.

Article XXV – Acting Out of Title, Section C

Local 4408 (firefighters) proposes to add a new Section C to Article XXV.

The proposal is worded as follows:

- C. Any Fire Prevention Specialist, UFD or any firefighter assigned to the Fire Prevention Bureau covered under this agreement that is ordered by management to “act out of title” shall be assigned and compensated at the rate of Fire Marshal.

The District objects to the proposal asserting that they should not be required to provide compensation for firefighters to perform the duties of a Fire Marshal on a temporary basis. The Unions' proposal, as phrased, is overly broad in that it does not define the amount of time required for a firefighter to receive acting out of title pay. There is merit to providing such pay in the event that an employee serves for a reasonable period of time so as to serve on a more continuous basis. Accordingly, I award the following language.

- C. Any Fire Prevention Specialist, UFD or any firefighter assigned to the Fire Prevention Bureau covered under this agreement that is ordered by management to “act out of title” for a period that is fourteen (14) days or more shall be assigned and compensated at the rate of Fire Marshal.

Article XXIII – Salaries, Section D

Local 4408 (firefighters) proposes to add a new Section D to Article XXIII - Salaries. The proposal is worded as follows:

- D. Fire Prevention Specialist UFD or any firefighter holding a Valid New Jersey Fire Inspectors Certification and assigned to the Fire Prevention Bureau shall be compensated at the rate of Lieutenant while assigned to the Fire Prevention Bureau.

According to Local 4408, this proposal would recognize the responsibility and training required of certified firefighters who are assigned to the Fire Prevention Bureau. It likens its proposal to that which is in Article XXXIII of the Local 4408-0 Agreement which recognizes the fire official's specialized skills and training by mandating compensation at the Battalion Chief rate. Local 4408 further points to surrounding communities which pay differentials of between \$3,908 to \$6,327 for similar duties provided in Cherry Hill, Voorhees and Evesham.

The District objects to these proposals and claims that the Union is seeking to provide supervisors pay for a non-supervisory position.

Local 4408 has justified its proposal for additional pay but not at a rate of Lieutenant that it has sought. I award Local 4408's proposal at the rate of compensation of 5% above the maximum salary for firefighter under the firefighters' salary schedule to be effective January 1, 2013.

Article XXX – Off Duty Liability

Article XXX provides for a “hold harmless clause.” The current provision provides, in pertinent part, that any action taken by a firefighter within the boundaries of the United States while the firefighter is “off duty” ... shall have all rights to benefits as though he was on duty. The District proposes to revise this liability language to limit the jurisdiction for off duty to off duty services that are rendered in New Jersey instead of on a nationwide basis. In support of its proposal, the District offers the following rationale:

Mount Laurel, for practical and financial reasons, proposes that this clause be limited to responding to a fire solely in New Jersey. A Firefighter running into a burning building in California and causing injury to himself or others, is not a benefit for which the Mount Laurel taxpayers should be burdened. It only takes one mishap or perceived mishap to upset the financial applectart. It is not merely whether the “Off Duty” firefighter is charged with committing a criminal, wrongful or tortious act, Mount Laurel would be responsible to pay the cost of legal defense in another jurisdiction. This is the reason the public is advised to call 911. In this manner those charged with the duty to address a given emergency in a given locale are appropriately advised.

Under the Patriot Act a police officer is now permitted to carry a firearm across state lines. However, that police officer is considered a “private citizen” and not a police officer in another state jurisdiction. The same reasonable principle must be held for a Mount Laurel firefighter under Article XXX.

The record does not reflect any instances which would serve to justify the proposal of the District. The District’s proposal would, as it asserts, limit its liability by limiting the geographic area under which the firefighter would have the

protections that are currently provided under Article XXX. However, the District has not shown the wisdom of limiting the protections to the State of New Jersey while nullifying the protections beyond the State of New Jersey, especially given the geographic location of the District with its close proximity to Pennsylvania. Accordingly, the proposal is denied.

Article XXVII – Layoffs

The Union's propose to change the name of the department of Personnel to the Civil Service Commission. The District voices no objection to the proposal. Accordingly, it is awarded as follows:

- A. Any formal layoff taken by the Fire District will be done on the basis of seniority in accordance with the regulations of the New Jersey Department of Civil Service Commission and Title 11A.

Article XII - Holiday Leave Payable

The District proposes to reduce the maximum hours of holiday leave payable from 144 hours to 72 hours. Under the District's proposal, unit members who are assigned to 24 hour and 12 hour schedules would receive 6 of 12 holidays in cash. The remaining six holidays would be taken and scheduled similar to any vacation day. In the District's view, its proposal, if awarded, would result in no loss of benefits but would assist the District with cash flow. The Unions have not agreed to the District's proposal.

The District's proposal would mandatorily reduce the number of maximum hours of holiday leave that are payable under Article XII. The District has not met its burden to significantly alter the current contractual provision. However, the concept proposed by the District could be provided as an option to unit employees who might prefer and be willing to have up to six holidays removed and scheduled similar to any vacation day. Accordingly, I award authority to the District to present such optional and voluntary program to unit employees.

Salary

Locals 4408 – Officers and 4408 – Firefighters propose an across the board increase for each employee on January 1st of each year from January 1, 2010 through December 31, 2014 as follows:

January 1, 2010	2.5%
January 1, 2011	2.5%
January 1, 2012	2.5%
January 1, 2013	2.5%
January 1, 2014	2.5%

The District proposes across the board modifications to the salary schedules as follows:

January 1, 2010	0.0%
January 1, 2011	1.75%
January 1, 2012	1.75%
January 1, 2013	1.75%
January 1, 2014	1.75%

The District also accompanies its salary proposal with various changes to the structure of the salary schedule for new hires. The new hire salary schedule is as follows:

1. A 10 step Salary Guide for firefighters hired on or after January 1, 2011 (Attached as Appendix B).
2. This includes a Starting Salary for Firefighter to be frozen at \$45,000 for duration of the CBA.
3. Under the 10 step Salary Guide a salary increase would occur only on the firefighter's anniversary date.
4. The current 7 step Salary Guide would be applicable for firefighters hired prior to January 1, 2011.

On the across the board salary issue, the Unions place great emphasis on a voluntary agreement negotiated between the Township of Mt. Laurel and the Mt. Laurel Police Officer's Association. They assert that the Fire District's proposal compares unfavorably with what the Township agreed to offer its police officers. The Unions submit extensive argument on this point:

The most appropriate comparison for the Fire District's firefighters and Fire Officers is the Township's voluntary agreement with the Mount Laurel Police Officers Association (MLPOA) and the Mount Laurel Superior Officers Association, executed on May 17, 2010, extending their October 1, 2008 Agreement. The police officers in the patrol division work a 12 hour schedule of 82 hours in a bi-weekly period for a total of 2,182 hours per year. The police officers in other divisions work a schedule of 8 and 8.5 hours shifts of 42 hours in a week, or a total of 2,182 hours per year. The firefighters on 24 hour shifts, who comprise 70% of the workforce, work a schedule of 9 days in a 27 day period for a total of 2,754 hours per year by firefighters, all of which are paid at straight time, and 2,920 hours per year by fire officers. Thus, firefighters on 24 hour shifts work an additional 572 hours of scheduled straight time work, 26% more than police officers. The remaining firefighters

work 9 hour shifts for a total of 2340 hours or work per year or 12 hour shifts for a total of 2184 hours of work per year.

At the expiration of the Fire Department's 2009 collective negotiations agreements the units had similar wage schedules through Step 7, with the fire fighters lagging by over \$1,300 as police officers progressed through 4 additional steps. Taking into account that lost firefighters regularly work an additional 572 hours at straight time, the disparity is outside the norm for the salaries of police and fire units to be within a few thousand dollars:

	<u>Firefighters</u>	<u>Police</u>
Step 1	\$49,369	\$48,425
Step2	\$51,733	\$56,191
Step 3	\$55,899	\$62,069
Step 4	\$60,480	\$67,946
Step 5	\$64,055	\$70,422
Step6	\$67,850	\$73,389
Step7	\$76,064	\$76,358
Step 8		\$79,079
Step9		\$82,295
Step 10		\$86,447
Step 11		\$91,553
Lt/Sgt A	\$87,170	\$97,644
Sgt D		\$107,756
Capt/Lt A	\$93,620	\$113,135
Lt		\$122,776

Adjusting the police salaries for the 26% greater straight time hours worked by Fire Department personnel, the disparity becomes even more pronounced.

	<u>Firefighters</u>	<u>Police</u>
Step 1	\$49,369	\$61,016
Step2	\$51,733	\$70,801
Step3	\$55,899	\$78,207
Step 4	\$60,480	\$85,612
Step 5	\$64,055	\$88,732
Step 6	\$67,850	\$92,470
Step 7	\$76,064	\$96,211
Step8		\$99,640
Step9		\$103,692
Step 10		\$108,923
Step 11		\$115,357
Lt/Sgt A	\$87,170	\$123,031
Sgt D		\$135,772

Capt/Lt A	\$93,620	\$142,550
Lt		\$154,697

The October 2008 Agreement and the May 17, 2010 addendum between the Township and police unions provide for the following increases:

- 10/2009 - 3.9%.
- 7/2010- \$500 on top police officer pay and superior officers.
- 7/2011- 3.0%.
- 1/2012- 2.5%, but no step movement in calendar year.
- 1/2013- 2.5%, but no step movement in calendar year.
- 1/2014- restoration of step movement.

It should be noted that the extension of the police agreements provide for the implementation of the 1.5% health care contribution effective May 21, 2010, but that the extension agreement delays the implementation of the latest statutory health care contribution until the expiration of the police agreements.

Under the parties' proposals, by 2013, the comparison of unadjusted fire and police salaries at top pay would be as follows:

	Firefighters Proposal	Fire District Proposal	Police
Step 7	\$83,960	\$80,915	\$100,933
LT/Sgt D	\$96,219	\$92,836	\$122,393
Capt/Lt C	\$103,339	\$99,591	\$134,685

Under Local 4408's wage proposal the disparity between police officer and firefighter salaries would increase from \$15,469 in 2009 to \$16,973 in 2013. Thus, the Local's proposal would continue the 20% disparity between the top pay of fire fighters and police officers. In contrast, the Fire District's proposal would increase the disparity in police officer and firefighter salaries from \$15,469 in 2009 to \$20,018 in 2013. Thus, the Fire District's proposal would increase the disparity from 20% to 24.7%. For Lieutenants, the disparity with police Sergeants would increase from 23.6% in 2009 to 27.2% under the Union's proposal and to 31.8% under the Fire District's proposal. For Captains, the disparity with police Lieutenants would decrease from 31.1% in 2009 to 30.3% under the Union's proposal and increase to 35.2% under the Fire District's proposal.

The irony is that the Township agreed on a no-lay off pledge to reach agreement with the police unions on superior wage

increases, while the Fire District is conditioning its substandard wage package on the elimination of firefighter longevity and acceptance of FLSA overtime. The Agreements between MLPOA and the MLPSOA and the Township increased police wages between 2009 and 2013 by 9.6% to 10.2%. During the same period, the Unions in the instant matter propose increasing fire salaries by 10.4%. In contrast, the Fire District's proposal of wage increases of 6.4% over the same period comes at the cost of concessions exceeding 8.7%.

Aside from the Fire District's substandard wage offer, its final offer attacks economic terms in the firefighters' agreement which were left unscathed in the "concessionary" police agreement:

1. The police health care contributions remain unchanged, after the implementation of the 1.5% statutory healthcare contribution;
2. The police starting salary was not frozen and continues to increase over the life of the agreement;
3. The steps in the police salary structure were not increased;
4. While the police gave up double time for overtime hours, the police maintained overtime pay for all hours worked outside of their normal hours of work; and
5. The police maintained their pre-existing longevity structure.

Unlike the Fire District's proposal, the Township's extension agreements with the police unions preserved the wage and compensation structure of law enforcement personnel and maintained consistency with surrounding municipalities. Further, the Township's agreements with the police unions promise job security in return for cost concessions. By contrast, the Fire District seeks to permanently impact the livelihood of firefighters and increase the disparity in earnings between the police and fire service serving the Township's residents.

Based on the foregoing, Local 4408's proposal is more comparable to the increases negotiated in the public and private sectors, including the changes in terms and conditions of employment negotiated by the Township and the MLPOA and the MLPSOA.

The Unions further contend that the District's wage proposal compares unfavorably with salary comparables in communities that provide the same services as the Fire District's and that an award of the District's proposal would cause further erosion in compensation. Drawing from labor agreements submitted into the record, the Unions provide the following chart to support its argument by comparing compensation in neighboring communities of Evesham, Cherry Hill and Voorhees to both the Fire District's proposal and the Unions' proposal.

	<u>Evesham</u>	<u>Cherry Hill</u>	<u>Voorhees</u>	<u>Fire District's Proposal</u>	<u>Local 4408's Proposal</u>
2009	\$75,831	\$77,572	\$80,314	\$76,064*	\$76,064*
2010	\$78,295	\$80,287	\$81,117	\$76,064	\$77,966
2011	\$81,232	\$83,287	\$83,551	\$78,156	\$79,915
2012	\$84,440		\$86,057	\$79,523	\$81,913
2013	\$87,776			\$80,915	\$83,960
2014				\$82,331	\$86,059

*Salary levels in last year (2009) of the expired agreement.

The Unions also dispute the District's claims as to its financial abilities. The Unions note that in 2011, the District's revenue was \$9,212,103 and while subject to the tax levy cap of \$8,358,347 budgeted only for \$8,231,472 or \$126,875 below cap.

The Unions also engage in an analysis of the official budget documents which it asserts reflects the District's financial health:

The ability to sustain operations while below Cap is further underscored by an extraordinarily robust financial operation as measured by the fund balance (surplus).

Table 3: Surplus As Revenue and Replenishment and Growth of the Fund Balance

	2008	2009	2010	2011
Start FY Fund Balance act.	\$956,863	\$820,944	\$1,248,826	\$1,653,906
Used as Revenue act.	\$697,000	\$505,038	\$376,492	\$376,492
Unencumbered surplus act.	\$259,863	\$315,906	\$872,334	\$1,277,414
Actual End-of-Year Est.	\$820,944	\$1,248,826	\$1,653,906	\$1,800,000
Excess in operations Est.	\$561,081	\$932,920	\$781,572	\$522,596

Table 3 illustrates that the Fire District began the 2008 fiscal year with a fund balance of just under \$1 million, of which it budgeted 73% as revenue. In each of the three succeeding years, the District budgeted smaller proportions of what became an increasingly large surplus. Accordingly, 61.5% of the surplus was budgeted in 2009, 30.15% in 2010, and only 22.76% in 2011. The unencumbered fund balance for 2011 is now almost \$1.3 million, the highest since 2008.

Equally important has been the Fire District's ability to replenish and grow the surplus. Again, as illustrated in the preceding table, fiscal year operations exceeded appropriation requirements by an average of more than \$758,000 between 2008 and 2010. In order to provide a conservative estimate to the Arbitrator, the "low" projected excess operations in 2011 of just under 70% of the prior three year actual performance. Based upon a conservative estimate, the Fire District will end FY 2011 with a fund balance of approximately \$1.8 Million; estimating 2011 performance at 75% of prior year would yield an end-of-year surplus of \$1.850 million.

The District offers many reasons as to why its salary proposals should be awarded and the Unions' salary proposal rejected. The District notes that it has been subject to voter rejection of budgets in the past and it projects that its ability to have such budgets approved in the future are tenuous at best. The District cites a 2008 financial report from its Fire Chief reflecting the impact of increased salary and benefits on its budget. In that report the Chief noted:

85% of our budget is made up of salary and benefits, 5% of the budget is debt services, 6% to 7% of the budget for utility costs, and the remaining 3% to 4% is our normal operating cost to run the service that we provide. In the beginning this was not the case; the salary and benefit costs were not the highest percentage it was the operational costs. Then, as the department suffered budget defeats we began to use surplus monies and had to take monies out of the operation costs to cover the salary and benefits costs for our employees. (Emphasis in original).

The District further contends that it suffers under budgetary stress due to a 2% tax levy cap, the failure of the 2010 budget to include \$276,000 in contractual spending obligations, a \$49,000 deficit to the State Unemployment Trust Fund and the defeat of a referendum for a one cent tax increase that would have raised \$346,000. The proposed \$671,000 deficit in 2010 caused it to propose the elimination of thirteen (13) positions in the fire department pursuant to layoffs.

The District offers salary comparisons for firefighters and fire officers from which it concludes that salary for unit employees compares favorably with other fire districts:

Firefighter Salary Top Pay

Municipalities	Salary 2009	Salary 2010	Salary 2011	Salary 2012	Salary 2013
Evesham (FF/EMT)	\$75,831.60	\$78,296.13	\$81,232.23	\$84,440.91	\$87,776.3_
Evesham (FF/Insp)	\$84,257.34	\$86,995.70	\$90,258.04	\$93,823.23	\$97,529.2_
Willingboro	\$74,788.00	\$77,406.00	\$80,115.00	\$83,320.00	N/A
Gloucester	\$65,976.00	\$68,615.00	N/A	N/A	N/A
Mt. Laurel	\$76,064.00	N/A	N/A	N/A	N/A
Deptford Local 3592	\$64,173.21	N/A	N/A	N/A	N/A
Cherry Hill District 13	\$77,572.07	\$80,287.09	\$83,498.58	N/A	N/A
Hamilton District 3 (FMBA Local 84)	\$67,978.00	N/A	N/A	N/A	N/A
Hamilton District 8					
Firefighters	\$55,602.00				
FF/Driver	\$57,500.00				
FF/Fire Inspector	\$60,993.00				
Fire Marshall	(+)\$5955.00				
Cinnaminson District 1					
Hired after March 1					
40 hr work week	N/A	\$38,501.00	\$39,501.00	\$41,501.00	\$43,501.00
53 hr work week	N/A	\$48,730.00	\$49,740.00	\$51,730.00	\$53,730.00

Superior Officer Salary Comparison

Municipality	Year	(40 hrs) Lieutenant	(53 hrs) Lieutenant	(40 hrs) Captain	(53 hrs) Captain	(40 hrs) Batt. Chf	(53 hrs) Batt. Chf.	(40 hrs) Dep. Chf.
Mt. Laurel	2009	\$87,170	N/A	\$93,620	\$93,620	\$102,327	\$102,327	\$115,324
Cinnaminson	2010	\$43,501	\$53,570	\$48,501	\$58,730	\$53,501	\$63,730	
	2011	\$44,501	\$54,730	\$49,501	\$59,730	\$54,501	\$64,730	
	2012	\$46,501	\$48,501	\$51,501	\$61,730	\$56,501	\$66,730	
	2013	\$58,730	\$58,730	\$53,501	\$63,730	\$58,501	\$68,730	
Evesham	2009	\$89,373		\$96,488				
	2010	\$97,373		\$103,216				
	2011	\$100,246		\$106,261				
	2012	\$103,203		\$109,395				
	2013	\$106,248		\$112,623				
Willingboro	2009			\$83,763				
	Step A							
	2009			\$86,606				
	Step B							
	2009			\$88,250				
	Step C							
	2010			\$86,695				
	Step A							
	2010			\$89,017				
	Step B							
	2010			\$91,339				
	Step C							
	2011			\$89,729				
	Step A							
	2011			\$92,132				
	Step B							
	2011			\$94,536				

	Step C 2012	\$93,318			
	Step A 2012	\$95,818			
	Step B 2012	\$98,318			
	Step C				
Voorhees	2009	\$90,021	\$93,172 (Sr. Cpt)	\$102,868	\$106,469 (Sr. B.C.)

The District contends that the proposed costs of the Unions' salary demands are excessive. It offers an exhibit calculating the differences between the IAFF proposal and its own proposal to demonstrate annual and cumulative cost differences.

Aggregate Unit Member Salary & Longevity

	IAFF Proposal	Mount Laurel Proposal
2010	\$3,077,310 x 2.5% = \$3,154,243	\$3,077,310 x 0% = \$3,077,310
2011	\$3,154,243 x 2.5% = \$3,233,099	\$3,077,310 x 1.75% = \$3,131,163
2012	\$3,233,099 x 2.5% = \$3,313,926	\$3,131,163 x 1.75% = \$3,185,958
2013	\$3,131,163 x 2.5% = \$3,396,774	\$3,185,958 x 1.75% = \$3,241,713
2014	\$3,396,774 x 2.5% = \$3,481,694	\$3,241,713 x 1.75% = 3,298,443

A review of the final offers reflects that neither proposal represents a reasonable determination of the wage issue. Each party submits a chosen group of comparables as a basis for comparison. The comparisons show a wide range of salaries among the various departments. These relationships have developed over many years and contracts based upon circumstances unique to those communities. The comparables all show modest salary increases and the parties' proposals here also show modest increases that would maintain

reasonable consistency among the comparables. In other words, salaries are at mid-level and would remain at that level notwithstanding the differences in the parties' positions. The Unions rely heavily upon the Mount Laurel police department. While this municipal department has some relevance, controlling weight cannot be attached to this comparability evidence for many reasons. Though there is some operational interrelationship between the municipal police department and the fire district, the employing entities differ and the funding sources that decide the amount of funds to be raised by taxation to support these respective departments also differ. The Unions, while submitting a thoughtful and detailed analysis of the District's finances, give little weight to the District's difficulty in having proposed budgets passed and its requirement to fit increased salary expenditures within its statutory taxing limitations.

I am persuaded, on this record, that a reasonable determination of the salary issue, with due regard for the statutory criteria, is 0% in 2010 followed by 2% increases to the salary schedule and ranks in 2011, 2012, 2013 and 2014. In addition, I award the District's proposal for a new hire salary schedule with modifications. The costs of the award are based upon projections and may not be precise due to changes in staffing levels from promotions, retirements, resignations and hiring over the contract term. Based upon the District's cost estimates, I calculate the costs as \$3,077,310 in 2010, \$3,138,856 in 2011, \$3,201,633 in 2012, \$3,265,665 in 2013 and \$3,330,980 in 2014. As calculated, these costs match the District's proposal in 2010 and exceed its proposal in

cumulative dollars by \$7,693 in 2011, \$15,675 in 2012, \$23,952 in 2013 and \$32,537 in 2014.

I next turn to the proposed new hire schedule.

The District has established that there has been the continuity and stability of employment within the two bargaining units and further, that it receives a substantial number of applications for employment. This, coupled with the improved terms and conditions of employment required by this Award, allows for the establishment of a new hire salary schedule effective for employees hired after the date of this Award. The cost savings will provide financial stability from which all employees will benefit. This shall include a starting salary of \$45,000 to remain at that number through the duration of the Agreement, a ten (10) step salary schedule with equal dollar amounts between steps and a salary maximum at Step 10 that is equivalent to the salary maximum at the current Step 7 level for existing firefighters on the existing salary schedule. The effective date for the new hire salary schedule shall be December 24, 2012. I do not award the District's proposal to have salary increases on the new schedule to occur only on a firefighter's anniversary date. The procedures for across the board increases and step movement shall be the same for both schedules.

When fashioning a salary result, I note that all of the statutory criteria have some relevance, directly or indirectly. The more important question is the weight

to be given to the criteria. All of the statutory criteria implicate the interests and welfare of the public. Statutory financial limitations and financial impact are separate criteria but are among the items that must be considered under the public interest criterion. The record shows that the terms of the award will not cause adverse financial impact and can be funded within the statutory limitations. Continuity and stability of employment of unit employees is also a separate criterion but one that also falls within the public's interest in having qualified and productive employees. This unit has been stable and the terms of the award will maintain that stability and continue the District's ability to hire well qualified employees. Comparability also interrelates with the interests and welfare of the public as it is one measure of maintaining employment levels and employee morale. Salary terms for District employees falls within the high and low levels currently set in fire districts in the broader geographic area and will maintain reasonable consistency with those units. The cost of living and private sector data have been considered and while not controlling, are generally compatible with the wage adjustments that have been awarded.

FLSA Trade Off – Overtime

The District offers a proposal that it characterizes as a "tradeoff." It involves a total additional 1% salary increase in return for a revised hourly rate and implementation of FLSA language already in the agreements. Specifically, the District proposes a 0.5% increase in each of two years exchange for a revised hourly rate calculation it attaches as Appendix A and an additional 0.5%

increase to implement the District's interpretation of "FLSA overtime." The impetus for this proposal is to save overtime costs by negotiating a change in overtime eligibility calculations after a grievance was sustained in arbitration finding that the District violated Articles IX and X by unilaterally changing overtime eligibility calculations through a June 10, 2009 memorandum issued by its Administrator. The District explains and argues on behalf of its proposals as follows:

Fair Labor Standards Act Issue

In this proposal Mount Laurel is not requesting the Arbitrator issue another determination of the Arbitration determination with regard to the FLSA contractual issues recently arbitrated between Mount Laurel and the IAFF. Rather the proposal's purpose is to address the financial impact and financial trade-off of Mount Laurel's implementation of the FLSA. The annual cost to Mount Laurel for not fully implementing the FLSA exemption is roughly \$100,000. This, coupled with the artificial overtime rate addressed below is economically unsustainable.

Revised Hourly Rate Calculation

Similarly, Mount Laurel is not requesting the Arbitrator render a determination as to whether the current hourly rate for 90% of IAFF unit members who work the 24 or 12 hour shifts is legitimate or appropriate. This proposal addresses the financial impact of the current system and establishes a reasonable financial trade-off to maintain fiscal stability over the long term. The IAFF wants to maintain the costly status quo. The shifts and corresponding hourly rates are provided below under Article 9, Hours of Operation, Paragraphs C, D and F of the respective CBA's, Exhibits D-1, D-2, which does not include the recent sidebar providing for a twelve (12) hour shift:

- C. Firefighters shall be scheduled to work one of three shift patterns. The first is a nine (9) hour/five (5) day work week shift, known as the five day schedule. The second is an eleven (11) hour, fifteen (15) minute/four (4) day work week shift,

known as the 4 day schedule. The third is a twenty-four (24) hour shift, known as the 24 hour schedule.

- D. The five day schedule will consist of a nine (9) hour continuous work shift, five (5) days per week, Monday through Friday. These employees will receive one (1) fifteen (15) minute break in the morning, one (1) one-half (1/2) hour break for meal purposes, and one (1) fifteen (15) minute break in the afternoon.
- E. The four (4) day schedule will consist of an eleven (11) hour and fifteen (15) minute continuous work shift, four (4) days per week, Monday through Friday. Each employee will receive one day off per week on a rotating basis, Monday through Friday. These employees will receive one (1) fifteen (15) minute break every three (3) hours and one (1) forty-five (45) minute break for meal purposes.
- F. The twenty four (24) hour schedule will consist of three (3) twenty four (24) tours of duty within a nine (9) day work cycle as follows: one (1) twenty-four (24) hour tour of duty, followed by one (1) twenty four (24) hour tour of duty off, followed by one (1) twenty four (24) hour tour of duty, followed by one (1) twenty four (24) hour tour of duty off, followed by one (1) twenty four (24) hour tour of duty, followed by four (4) twenty four (24) hour tours of duty off. The employees will receive one (1) fifteen (15) minute break in the morning, one (1) one half (1/2) hour break for lunch, one (1) fifteen minute break in the afternoon, and one (1) one (1) hour break for dinner.

The immediate impact is that the artificial hourly rate (24 and 12 hour shift employees) creates an inflated overtime rate, i.e., unit members are paid in excess of the hours they have worked. The chart submitted with Mount Laurel's Last Offer is provided below:

Proposed Revised Hourly Rate Calculations

4 Day & 5 Day Schedule Employees:

Basic Hourly Rate = Annual Salary per Table / 52 weeks / 5 shifts per week / 9 hours worked per shift
of hours scheduled annually = 52 x 5 x 9 2340 scheduled hours
Hourly Rate Example: \$76,064 / 52 / 45 = \$32.51 per hour rate

12 Hour Schedule Employees:

Basic Hourly Rate = Annual Salary per Table / 26 fourteen day cycles per year / 7 shifts worked per 14 day cycle / 12 hours worked per shift

of hours scheduled annually = 26 x 7 x 12 = **2184** scheduled hours

Hourly Rate Example: \$76,064 / 26 / 7 x 12 = **\$34.83** per hour rate

24 Hour Schedule Employees:

Basic Hourly Rate = Annual Salary per Table / 13.5 twenty-seven day cycles per year / 9 shifts worked per 27 day cycle 24 hours worked per shift

of hours scheduled annually = 13.5 x 9 x 24 = **2916** scheduled hours

Hourly Rate Example: \$76,064 / 13.5 / 9 / 24 = **\$26.09** per hour rate

The bottom line is the 24 hour unit members are receiving an excess of \$6 per hour regular time and \$9 per hour overtime of the rate to which they are entitled.

Mount Laurel offered a tradeoff in return for the FLSA and an accurate hourly rate in the form of a 1% increase. To reiterate, the overall purpose of this tradeoff is to establish economic and budgetary stability over the long term. The annual cost of maintaining the status quo is at least **\$100,000**. Given an annual overtime budget of **\$400,000**, Exhibit D-73, regular salary increases, medical coverage and pension costs (addressed herein) and other routine expenses with a 2% cap of \$163,469 the status quo cannot endure. (emphasis in original).

The Unions vigorously object to the District's proposals that concern the hourly rate and the "FLSA tradeoff." They contend that the District's proposals ignore the number of hours of work that are required of unit employees and the bargaining history of the employees concerning the implementation of 24 hour

shifts. They further contend that the District is simply seeking to reverse a grievance arbitration award issued in the Union's favor in March 2010 that found that the District's unilateral attempt to change the existing scheme governing hours and overtime violated the terms of the Agreement. The Unions offer the following arguments in support of their position to reject the District's proposal on the hourly rate and "FLSA tradeoff."

An unusual feature of the Fire Department's operations is the 24 hour shifts of 9 working days in a 27 day period. Under the schedule, firefighters are normally scheduled for 2,754 hours of work and fire officers are normally scheduled for 2,920 hours of work. The predominate 24 hour schedule in New Jersey is 1 day on, followed by 3 days off, for a total of 2,184 regularly scheduled hours of work. Thus, firefighters in Mt. Laurel are scheduled to work 26% more hours than the bulk of their counterparts throughout the State. A review of the record indicates the hours worked by departments in Burlington, Camden and Mercer Counties:

Municipality	Schedule	Total Hours/Year
Mt. Laurel:	24 hour shifts (9 on in 27)-Firefighters	2756
	24 hour shifts (9 on in 27)-Fire Officers	2920
	12 hour shifts	2190
	9 hour shifts, 5 per week	2340
Evesham:	44 hours per week	2288
	42 hours per week	2184
	40 hours per week	2080
Voorhees:	11 hour shifts, 4 days per week	2288
Cherry Hill:	24 hour shifts (9 on in 27)	2756
	12 hour shifts	2190
	9 hour shifts, 5 per week	2340
Willingboro:	24 hour shifts scheduled 1 on, 2 off	2756
Camden City:	24 hour shifts scheduled 1 on, 3 off	2184
Hamilton:	24 hour shifts scheduled 1 on, 3 off	2184

In January 2000, when the 24 shifts were first negotiated, the Agreements did not reflect a proportionate increase in salary as the total work hours increases from 2,340 hours per year to 2,756 hours per year for firefighters and 2,920 hours per year for fire officers, an increase in work hours of 18%. Rather, modeling their agreement on Cherry Hill, the parties compromised by maintaining the regular hourly rate for purposes of overtime based on the previous 9 hour shifts, despite the increase in work hours. Accordingly, while employees on 24 hour shifts worked outside their regular hours, they have earned the same overtime rate as employees on 9 hour shifts. The Fire District's proposals seek to undermine the parties' historic compromise, taking advantage of the higher work hours while seeking to penalize firefighters on 24 hour shifts when they work overtime.

Since the expiration of the last collective bargaining agreement, the firefighters and fire officers employed by the Fire District and the unions have undergone attack by the Fire District Administration. For example, on March 10, 2010, the Fire District issued layoff notices to all firefighters and paid staff, announcing that layoffs could be avoided through union concessions.

In June 2010, the Fire District unilaterally changed from paying overtime for all hours worked in excess of normally scheduled hours to paying overtime only for hours worked in excess of the FLSA standard of 204 hours in a 27 day cycle. The result of the action was to eliminate paid overtime for all weeks in which employees took paid time off. At the same time, the Fire District exercised its managerial prerogative to reduce minimum staffing from a 4 man minimum per Company to a 3 man minimum per Company. As a result of the change in overtime payments and the reduction in minimum manning, paid overtime had been virtually eliminated, resulting in a decrease in income earned by firefighters. A subsequent award issued by Arbitrator Gerard Restaino in March 2010, restored pay for overtime worked in excess of an employee's regularly scheduled hours of work.

The analysis of this disputed issue on its merits must be placed in proper context. In the grievance arbitration, the relevant contract language was not found, as the District had argued, to be clear and unambiguous. As such, the arbitrator found that the nine (9) year history of how the provisions had been

implemented controlled. In short, he found that a binding and enforceable past practice resolved any ambiguity that existed in the contract language. He also found that the scheme that had been implemented was lawful because the parties had the authority to agree to create a higher level of overtime eligibility provisions than the minimum protections afforded under the FLSA so long as the minimum protections were not eroded. While the arbitrator disagreed with the District's reasoning supporting its unilateral change, he specifically noted that the existing system "can only be changed through collective negotiations," that "the parties are in interest arbitration" and that the overtime issue "must be part of that equation that the parties are looking for to reach closure on the new Agreement."

The District contends that its overtime proposal does not constitute an attempt to relitigate the issue of contract interpretation which it had unilaterally implemented. It acknowledges that an application of the contract language in a manner that is consistent with how it seeks overtime to be calculated is a negotiable issue and it has properly placed the issue on the negotiations table and before this interest arbitrator. In short, and at the risk of oversimplification, the issue centers on how the definition of "time worked" and or "time off" is expressed and what hours should be included or excluded from consideration in the overtime calculation as to what constitutes hours worked in excess of an employee's scheduled shift.

The grievance arbitrator properly directed the parties to the proper forum for resolution of this issue which is the negotiations process. The District recognizes that its proposals are directly related to compensation by proposing a salary tradeoff in the event that its proposal is awarded. This context allows for the across the board salary issue to be considered independently of the hourly rate and overtime proposals and similarly, allows for those issues to be considered separately from the across the board salary issue.

The District views its proposals as necessary from a cost perspective. This view is not without merit. The record shows that overtime costs in the 2011 budget are \$391,150. As such, they exceed 10% of the line item for salaries, they exceed social security payments and surplus amounts from the prior year's budget. As best that can be determined from this record, the overtime costs flowing from the current method of calculating overtime payments is \$100,000 or 25% of the total amount of overtime costs.

The cost aspect of the issue is a significant consideration, especially when overtime costs well exceed 10% of salary. But it is not the only significant consideration. Employees have been receiving overtime payments pursuant to the existing formula and the payments are part of overall compensation presently being received even if those payments are not pensionable. A change in how the current language is applied would reduce overtime costs by 25% but still require overtime payments of \$300,000. The District has proposed to offset

compensation loss by 0.5% for each part of the two part proposal, or 1% in total. Based upon 2011 budget, each 0.5% has a dollar value approaching \$20,000, excluding increased pension contributions and roll up costs such as hourly rates, holiday pay and longevity. While the overall dollar amount of overtime compensation would be reduced under the District's proposal, employee pensionable income would increase due to increases in base salary resulting from the trade off of increased base pay.

After review of all of the relevant evidence that concerns this issue, I conclude that there is merit to the concept advanced by the District to revise the hourly rate and manner in which overtime is calculated consistent with its proposal while simultaneously increasing base pay. While reaching this conclusion, I find that a reasonable determination as to the appropriate balance in the trade off to be adjustments in the amount of 0.75% rather than 0.50%. This will yield a "trade off" in the amount of 1.5%. The effective date for the change shall be ninety (90) days from the date of the award or the beginning of a new pay period subsequent to the ninety (90) day time period. This will provide a reasonable time period for the implementation of the change. The 0.75% adjustments shall be to each step and rank of the salary schedule on the effective date of the 2013 change.

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

AWARD

1. All proposals by the District and the Unions 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**

This Agreement shall be in full force and effect as of January 1, 2010 and shall remain in effect through an expiration date of December 31, 2014

3. **Stipulations**

During the course of negotiations, the parties executed Sidebar Agreements addressing the details of implementing a twelve (12) hour shift. These details are set forth in Addendum A for firefighters and Addendum B for supervisory unit and have been submitted into evidence as District Exhibits #71 and 72. The exhibits address Article 9 – Hours of Operation, Article 10 – Overtime, Article 11 – Vacation Leave, Article 12 – Regular and Floating Holiday Leave, Article 13 – Sick Leave, Article 15 – Personal Leave, Article 16 – Bereavement Leave and Article 31 – Rights/Past Practice. I accept Addendum A and Addendum B as stipulations pursuant to N.J.S.A. 34:13A-16(g)(4) and incorporate the terms of Addendum A and Addendum B into the award.

The parties have also agreed to many revisions in the language of each collective negotiations agreement. These revisions were submitted to me on March 30, 2011 with the revisions “highlighted in green.” The only exceptions to the revisions concern Article 14, paragraph (7)(D) on page 37 of the fire officers’ Agreement and the same reference on page 37 of the firefighters’ Agreement. I accept the language revisions to both Agreements that are “highlighted in green” with the exception of Article 14, paragraph (7)(D) as stipulations pursuant to N.J.S.A. 34:13A-16(g)(4) and incorporate the terms of the language revisions into the award.

4. **Article XXXI – Firefighter Rights/Past Practices**

A new provision shall be added to Article XXXI as follows:

- D. For the purposes of calculating a disciplinary suspension regardless of what shift an employee is assigned to work, a

one (1) day suspension is considered a nine (9) hour day. A two (2) day suspension is considered two (2), nine (9) hour days, and so on. Therefore, if an employee is suspended for one (1) day, the employee will be docked nine (9) hours of pay at the basic hourly rate and return to work for the balance of the shift that day or for a five (5) day employee on the next scheduled shift.

5. **Article XXXIII – Safety Clause**

- A. The Chief will establish a safety committee for the benefit of the health and welfare of all fire personnel. This committee will include one (1) member from the officer's shop and one (1) member from the firefighter's shop representing career employees. The appointed members will be mutually agreed upon by the Chief and the Union President.

6. **Health Insurance**

Health care contributions shall be consistent with that required by P.L. 2010, Chapter 2 and P.L. 2011, Chapter 78. If applicable, no retroactive health insurance contributions are awarded prior to the effective date of these provisions.

7. **Article XXVIII – Retirement Payout**

Article XXVIII – Retirement shall add the additional language as follows:

Retirement payouts shall be in accordance with the following schedule:

- a. One time lump sum payment up to \$10,000, payable June 1.
- b. Pay out over two years in equal installments for retirement package exceeding \$10,000 up to \$20,000, payable June 1.
- c. Pay out over three years in equal installments for retirement package exceeding \$20,000, payable June 1.

8. **Article XXXII - Promotions and Transfers**

- D. If Management decides to fill a position with an interim or provisional appointment, a notice shall be posted in each District facility informing employees of the availability of the position, the nature and job duties of the position, and the

qualifications needed to obtain the position. In the event that the interim or provision appointment is filled by the District, the District shall notify the Union of the appointment.

9. **Article XXV – Acting Out of Title, Section C**

C. Any Fire Prevention Specialist, UFD or any firefighter assigned to the Fire Prevention Bureau covered under this agreement that is ordered by management to “act out of title” for a period that is fourteen (14) days or longer, such employee shall be assigned and compensated at the rate of Fire Marshal.

10. **Article XXVII – Layoffs**

Section A shall be modified to state as follows:

A. Any formal layoff taken by the Fire District will be done on the basis of seniority in accordance with the regulations of the New Jersey Department of Civil Service Commission and Title 11A.

11. **Article XII - Holiday Leave Payable**

I award authority to the District to present such optional and voluntary program to unit employees that if selected by an employee could result in 6 of the 12 holidays to be taken in cash and the remaining 6 holidays to be taken and scheduled similar to any vacation day.

12. **Article XXV – Acting Out of Title, Section C (new section)**

Any Fire Prevention Specialist, UFD or any firefighter assigned to the Fire Prevention Bureau covered under this agreement that is ordered by management to “act out of title” for a period that is fourteen (14) days or more shall be assigned and compensated at the rate of Fire Marshal.

13. **Article XXIII - Salaries, Section D (new section)**

The Fire Prevention Specialist UFD or any firefighter holding a Valid New Jersey Fire Inspectors Certification and assigned to the Fire Prevention Bureau shall be compensated at the rate of 5% above the maximum salary for firefighters under the firefighter's salary schedule while assigned to the Fire Prevention Bureau, effective January 1, 2013.

14. **Salaries**

The salary schedule shall be modified at each step and rank by the following amounts retroactive to their effective dates:


1. 0% effective January 1, 2010
2. 2% effective January 1, 2011
3. 2% effective January 1, 2012
4. 2% effective January 1, 2013
5. 2% effective January 1, 2014

A new hire salary schedule shall be effective for employees hired after the date of this Award. The new hire salary schedule shall have a starting salary of \$45,000. The starting salary shall remain at \$45,000 through the duration of the Agreement. The new hire salary schedule shall contain ten (10) steps with equal dollar amounts between the starting salary and the maximum top Step 10. The maximum salary at Step 10 shall be equivalent to the salary maximum at the current Step 7 maximum for existing firefighters. The procedures for across the board increases and step movement shall be the same for both schedules.

15. **Hourly Rate and FLSA Tradeoff**

Effective ninety (90) days from the date of the award or the beginning of a new pay period subsequent to the ninety (90) day time period there shall be a 1.5% increase in exchange for revised hourly rate, calculation attached as Appendix A and the "implementation of FLSA for all work schedules" as proposed by the District.

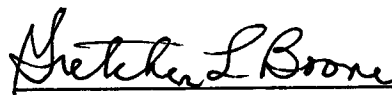
Dated: December 23, 2012
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 23rd day of December, 2012, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



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