

**State of New Jersey**  
**Public Employment Relations Commission**

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**In the Matter of the Compulsory** :  
**Interest Arbitration** :  
**-between-** : **Opinion and Award**  
**City of Newark** :  
**and**  
**Newark Fire Deputy Chiefs Association** :  
**Docket No. IA-97-82** :

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**BEFORE: CARL KURTZMAN, ARBITRATOR**

**APPEARANCES: For Newark Fire Deputy Chiefs Association**

**Zazzali, Zazzali, Fagella & Nowak**

**By: Paul L. Kleinbaum, Esq.**

**For City of Newark**

**Michelle Hollar-Gregory, Corporation Counsel**

**By: Philip R. Dowdell, Esq., Ass't. Corporation Counsel**

**Pursuant to a petition to initiate Compulsory Interest Arbitration, filed by Newark Fire Deputy Chiefs Association (Deputy Chiefs or Association) on Feb. 14, 1997, Herbert Haber was appointed by the Public Employment Relations Commission, (PERC) on May 9, 1997, pursuant to P.L. 1995, c. 425, to hear and decide the contract issues in dispute. After two unsuccessful mediation sessions, Arbitrator Haber scheduled a hearing for May 14, 1998. At the May 14, 1998 hearing, Arbitrator Haber ruled that the City of Newark (City or Employer) could not include in its final offer any issues which were**

not included in its response to the Deputy Chiefs' petition. The City appealed the Arbitrator's decision and PERC sustained the Arbitrator's ruling in P.E.R.C. No. 98-166. Subsequently, Arbitrator Haber withdrew from this proceeding and the parties agreed upon the designation of the undersigned as the Interest Arbitrator. On July 8, 1998, PERC designated the undersigned to hear and decide the contract issues in dispute.

On July 27, 1998, a mediation session was conducted. Since minimal progress was made during the mediation session, an interest arbitration hearing was scheduled for September 17, 1998 and the parties were asked to submit their final offers on September 10, 1998. After the timely submission of Final Offers by both parties, Association Counsel objected to the inclusion of Section 2-9 in the City's proposal for 1998 because the Association believed that PERC decision No. 98-166 was dispositive of the issue of permissible issues in the Final Offer.

The undersigned, at the September 17, 1998 hearing, issued an oral ruling which denied the City's request to submit health benefit proposals in its final offer and confirmed the oral ruling with a written ruling on September 18, 1998 which is attached to this decision. On the second day of hearing, October 7, 1998, the City requested the undersigned to permit the inclusion in its final offer of a proposal concerning the crediting of holidays toward compensatory time. The undersigned granted the request because holidays were included in the Deputy Chiefs' initial proposals.

The undersigned conducted three days of hearing in this matter, September 17, 1998, October 7, 1998 and Oct. 14, 1998. At the request of the arbitrator, the City submitted additional information on October 19, 1998 and the Deputy Fire Chiefs, on Oct. 28, 1998, submitted an arbitration award

concerning the Newark Deputy Police Chiefs and asked that it be included as part of the record. After the grant of an extension, summary briefs were timely filed by both parties and received by the undersigned by December 10, 1998. The parties executed an approval of an extension of time, to Jan. 31, 1999, for the issuance of an award by the arbitrator (copy enclosed).

The Public Employment Relations Commission has advised that these arbitration proceedings shall be conducted in accordance with the provisions of P.L. 1995, c. 425. Accordingly, since the parties in this proceeding have not agreed to a terminal procedure for resolving the contract issues in dispute, the award issued in this matter will be based on the conventional arbitration mode.

**FINAL OFFERS**

**City of Newark**

**Economic:**

1. Duration: Jan. 1, 1996 - Dec. 31, 1998.
2. Salary: The following salary schedule shall be applicable to all employees serving in the title of Deputy Fire Chief except those appointed to the title of Deputy Fire Chief prior to January 1, 1992.

	<b><u>Effective 1/1/96</u></b>	<b><u>Effective 1/1/97</u></b>	<b><u>Effective 1/1/98</u></b>
	\$70,872.00	-	-
<b>*SR. PAY</b>	<b>\$71,945.00</b>	<b>\$74,643.00**</b>	<b>\$77,442.00**</b>

**\*Senior Pay commences on the first day of the sixth year in rank.**

**\*\* One step for all (i.e. no senior pay)**

**The following salary shall be paid to all employees appointed to the title of Deputy Fire Chief prior to January 1, 1992:**

	<u>Effective 1/1/96</u>	<u>Effective 1/1/97</u>	<u>Effective 1/1/98</u>
*SR. PAY	\$77,804.00	\$80,722.00	\$83,749.00

\*Senior Pay commences on the first day of the sixth year in rank.

3. **Holidays - Effective January 1, 1998, three (3) of the holidays to which the employees represented by this collective bargaining unit are entitled will be credited toward compensatory time.**

**Newark Fire Deputy Chiefs Association**

1. **Duration: January 1, 1996 through December 31, 1999**

2. **Salary- Retroactive to January 1, 1996. Deputy Fire Chiefs hired in May, 1996 would be placed at Step 1 retroactive to May 1996 and would advance one step each year.**

<u>Steps</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
1st	72,067.05	76,030.74	79,452.12	83,027.47
2nd	74,416.82	78,500.75	82,042.68	85,734.60
3rd	76,766.58	80,988.74	84,633.24	88,441.73
Senior	79,116.35	83,467.75	87,223.80	91,148.87

Senior Step commences on the first day of the 4th year in rank

3. **Effective January 1, 1996 increase annual hazardous duty pay by \$53.00 to \$903.00; effective January 1, 1997, increase by \$25.00 to \$928.00; effective January 1, 1998, increase by \$25.00 to \$953.00.**

**Non-Economic:**

**Neither party has submitted any non-economic proposals.**

**STATUTORY CRITERIA**

**The eight statutory criteria set forth in N.J.S.A. 34-13A-16G which will guide the disposition of this matter are as follows:**

- 1. The interests and welfare of the public; considering, inter alia, the limitations imposed upon the employer by the CAP Law, N.J.S.A. 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**
  - b. In public employment in general.**
  - c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with N.J.S.A. 34:13A-16.2.**
- 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; considering, inter alia, the limitations imposed upon the employer by the CAP Law. N.J.S.A. 40A:4-45.1 et seq.**
- 6. The financial impact on the governing unit, its residents and taxpayers. The arbitrator shall take into account, to the extent that evidence is introduced, how the award will affect the municipal purposes element of the local property tax; a comparison of the percentage of the municipal 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 of the local unit; the impact of the award on the ability of the municipality to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by a municipality in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the municipality in its proposed 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.**

### **Positions of the Parties**

#### **City of Newark**

**The City maintains that its Final Offer, as recorded above, is consistent with the negotiations pattern which it has negotiated with other uniformed and non-uniformed personnel and consistent with the City's recent aggressive stance on salary structure and benefits. The City notes that, from 1991 to 1995, Deputy Fire Chiefs received increases while real income in the Northeast decreased and the City proposal will further increase the real income of the Deputy Chiefs. The City points out that the wage proposals of the Deputy Chiefs seek increases far above the average increases of public sector entities. The City also notes that wage increases for Deputy Fire**

**Chiefs, from 1991 to 1998, outpace the cost of living by approximately 67%. The City points out that the parties' 1992-1995 contract set the two-tiered salary schedule and the Association proposal would nullify the concept and widen the gap between Deputy Chief retiree benefits and other City officials.**

**The City believes that its proposal is more reasonable than the overall cost of the Association's proposal when one considers the City's financial constraints, the socio-economic goals of the Administration and the difference between the 3.75% average rate of the City proposal and the 6.07% average rate of the Association proposal. The City believes its proposal is reasonable when compared with the conditions of employment of other City employees and its proposal will assist in the City's aim to increase spending in the non-uniformed services to attract quality employees to service the community. The City also believes its offer is reasonable because its Final Offer provides Fire Deputy Chiefs the same increases in 1996 and 1997 which were accepted by the Police Deputy Chiefs. The City believes its proposal is reasonable when compared with conditions of employment for all other City employees. Furthermore, the City maintains that its proposal is reasonable when compared with conditions of employment in the Big 6, when per capita income, annual days off, CPI, poverty, unemployment and overtime opportunities are considered. The City maintains that its offer is more reasonable than the Association proposal because it tracks the relevant cost of living statistics more closely. The City claims its offer is reasonable because the factors which demonstrate continuity and stability of employment show that the City has no problem in attracting and keeping Fire Deputy Chiefs.**

**The City argues that its proposal is reasonable because of the City's**

**financial constraints, the City's socio-economic goals and the City's attempt to achieve a balance between labor cost containment and fair employee wages and benefits. The City notes the following:**

- 1. In 1995, an average Newark homeowner paid \$2,528 in residential property taxes. In 1996, the average residential property tax was \$2,673. In 1997, the average residential property tax is projected to be \$2,821. Furthermore, revaluation of the City's taxable property will further raise property taxes on Newark residents earning a median income of \$21,650. In addition, property taxes may be raised to meet the \$6.2 million increase from the 1996 adopted budget amount of \$85.9 million to the 1997 proposed amount of \$92.1 million. In the face of less State aid, the burden of paying for better municipal services must be met by the Newark taxpayer. Police and Fire Budgets called for increases while other departments had decreases in their budgets.**
- 2. In the 1997 budget, municipal debt service increased by \$6.5 million in order to finance the refund of tax appeals. The City continues to lose millions of dollars in assessed property valuation which will result in higher property taxes.**

**The City claims that the Association's comparison of differentials between the rank of Battalion and Deputy Chief in the Big 6 municipalities fails to consider the costs associated with competing budget priorities and increasing demands for services within the budget. In addition, the City notes the enormity of the Association's proposal which would provide cumulative increases in 1999 of \$27,389.01 for Non-Grandfathered Deputy Chiefs and \$19,727.45 for the Grandfathered Deputy Chiefs.**

**The City questions the Association evidence concerning workload**



**because its own evidence shows that Deputy Fire Chiefs may be involved in thousands of potential fire responses but, in actuality, they only work hundreds of times.**

**The City notes that the Newark Mayor, Business Administrator, City Clerk and other high officials earn salaries commensurate with their longevity, increased responsibility due to the size of the city and the number of its citizens and the diversity of services.**

**The City points out that, under its proposal, the salary differential between the Newark Fire Chief and the Fire Deputy Chiefs will remain about the same and the 1992 and 1998 differentials between Battalion Chief and Non-Grandfathered Fire Deputy Chief will be about the same.**

**The City maintains that it has presented evidence demonstrating the City's financial constraints justifying the City proposal and proving the Association's proposal is unreasonable. The City's fiscal condition has been adversely affected by the loss of federal and state aid, the loss or reduction of other revenue sources and the non-realization of anticipated revenues. In addition, the City expresses a concern about the pending revaluation of the City's taxable property and its effect on the taxpaying residents. Accordingly, the City must rein in municipal wage increases to prevent the sacrifice of additional civilian employment and the attendant enhanced public services. The City notes that it has a large minority population with a low education level, a population with the lowest per capita income in Essex County and the second lowest among the Big 6, a very high unemployment rate and a high tax rate. The City's financial condition is affected by the large percentage of appropriations for the schools and the County. Furthermore, tax exempt valuations continue to rise which further erode the**

**tax base and reduce the City's ability to meet the public's increasing demand for services. The City cautions that an award of the Association proposal could result in a reduction of wages to non-uniformed employees and a reduction in services to the public. The City argues that the mere identification of funds in a multi-million City budget is not sufficient to justify the use of these funds without a showing of need for their use.**

**The City claims that the Association has failed, in the face of a showing of fiscal constraints on the City, to show why the salaries of Fire Deputy Chiefs deserve a budgetary priority, or to show why the pattern of settlement established by the City should be destroyed.**

**The City claims that its proposal reflects the goals of the Administration and serve the interest and welfare of the public. The City notes the following:**

- 1. The public safety portion of the budget has steadily increased over the past decade.**
- 2. There is an availability of personnel willing to accept the position of Superior Officer at the current wage levels.**
- 3. The City's population has a need for services such as public safety and health care. The City must attract commercial enterprise and a middle class population to expand the tax base and thus provide these vital services.**
- 4. The City's population has a high rate of homelessness , a very high caseload of AIDS and problems of TB and high infant mortality rates.**
- 5. To provide the City's population with greater self-sufficiency and improve the City's infrastructure, the City has established core/mandatory and discretionary Capital Budget projects requiring substantial outlays of**

**funds. The City claims that it has developed its wage offer in this matter so as to accommodate the above listed goals and notes that the Association proposal ignores the competing demands placed on the City.**

**The City believes that its proposal is more reasonable than the Association's proposal in the face of the City's economic constraints and socio-economic goals. The City analyzes the competing proposals as follows:**

<b>Year</b>	<b>City</b>	<b>NFDCA Grandfathered</b>	<b>NFDCA NonGrandfathered</b>
<b>1996</b>	<b>3.75%</b>	<b>5.5%</b>	<b>5.5%</b>
<b>1997</b>	<b>3.75%</b>	<b>5.5%</b>	<b>8.9%</b>
<b>1998</b>	<b>3.75%</b>	<b>4.5%</b>	<b>7.8%</b>
<b>1999</b>		<b>4.5%</b>	<b>7.7%</b>

**The City notes that, in its proposal, non-grandfathered deputy chiefs would receive Senior Pay effective 1/1/97 and this results in a 5.32% increase for 1997. The City believes its proposal is reasonable when compared to the Association proposal and conforms to the City's financial plan and the going rate of settlements in comparable jurisdictions. The City maintains that the cumulative effect of 23.85%/33.44% and 16.31%/21.15% increases in the Association plan would have a devastating long term effect on the City and would trigger demands by other uniformed groups for higher wage increases to restore parity. The City fears that the additional cost of the Association proposal would pressure the City to either raise taxes or reduce public services which would not be in the interest or welfare of the public and which would have an adverse impact on the governing unit, its residents and taxpayers.**

**The City maintains that it has attempted, in its internal pattern of settlement with its other unions, to achieve a balance between cost containment and providing reasonable wages to City employees. The City believes its offer in this matter is consistent with this approach and notes that the Association has not produced evidence to support greater increases than negotiated with the other unions. The City stresses the importance of a pattern of bargaining and the need for adherence to same. The City points out that its Final Offer more closely follows the internal pattern of the settlement with the City's Deputy Police Chief unit than the Association's proposal. The City points out that, since 1995, the trend has been to implement similar wages between Police Deputy Chiefs and the Fire Deputy Chiefs. The City cautions that the acceptance of the Association's proposal would lead to whipsawing among the other uniformed groups in the future. In addition, the City believes acceptance of the Association proposal may deter future promotions because of the higher costs associated with promotion and, thereby, hinder the City's provision of increased fire services.**

**The City notes that its Final Offer more closely follows the pattern of negotiated settlements with non-uniformed groups and includes a recognition of the greater personal risks in a fire-fighting unit. However, the City believes that the Association has not substantiated the need for broadening the gap between uniformed and non-uniformed employees.**

**The City points out that its proposal is reasonable because the Newark Fire Deputy Chiefs already enjoy a favorable salary premium over other City employees and, under the City proposal, they will continue to enjoy more favorable salary increases than other City employees. On the other hand, the Association proposal would further widen the gap between the Fire Deputy**

**Chiefs and most other City employees.**

**The City claims it has shown that the level of salary increases for uniformed public employees has slowed to where 3% increases are the norm in 1998 and the City's offer reflects the current economic climate and wage increase trends. On the other hand, the Association's Offer is much higher than today's going rate as evidenced by Awards in Passaic and the Township of North Bergen. The City also notes that, as of Summer 1997, the median wages awarded by interest arbitration under the new statute was 3.5% for 1996, 3.9% for 1997 and 3.8% for 1998. Therefore, the City believes its offer is more reasonable than the Association's overreaching demands.**

**In analyzing the private sector, the City argues that the Association is seeking wage increases well in excess of the percentage increases seen in the private sector in 1997 and beyond. On the other hand, the City notes its offer is more reasonable because it tracks the private sector more closely.**

**The City maintains that its offer is more reasonable than the Association's Offer when conditions of employment are compared with Big 6 cities and when relative income is factored in. The City notes that, in terms of total compensation, Newark ranks fourth from the top despite the fact that its per capita income is next to last in the group and its PCI is 89% of the average. The City also notes Newark's high unemployment rate of 11% compared to the State average of 5.0% in 1997 and insists that this factor must be considered in determining the reasonableness of the competing offers.**

**The City notes that Newark Deputy Chiefs, from 1991 to 1995, have received salary increases well above the rate of increase in the CPI while, in the Northeast, from 1989 to 1997, the percent change in real income**

**decreased 7.6%. The City points out that its proposal further increases the real income of the Deputy Chiefs. The City points out that the Deputy Fire Chiefs wage proposal is much greater than the average increase for all government workers and local government workers. The City shows that the salary escalation for Deputy Fire Chiefs, from 1881 to 1998, outpaces the cost of living during the period by approximately 67%. Nevertheless, the City claims that its proposal will increase the real pay of Deputy Chiefs by 13.37% over three years for non-grandfathered deputies and by 11.17% for grandfathered deputies and is therefore reasonable.**

**The City claims that the evidence in the record shows that there is not a scarcity of fire superior officers ready for promotion to the ranks of Battalion Chief and Deputy Chief in the coming years. In the face of high unemployment in Newark and layoffs due to corporate mergers, the City believes that the Newark Fire Department attracts a supply of qualified firefighter applicants. Citing longevity percentages in the range of 12% to 14%, the City points out that Deputy Chiefs provide long years of service with the City and experienced firefighters are retained because of promotional opportunities. Under these circumstances, the City believes that a City population, plagued with unusually high unemployment rates, should not be called on to grant wage increases above the average in the private sector and instead, should merely offer reasonable wage increases without jeopardizing its ability to maintain a qualified work force.**

**The City seeks acceptance of its Final Offer because it is supported by the substantial and credible evidence in the record.**

**Deputy Fire Chiefs Association**

**The Association seeks two principal objectives in this proceeding, the**

**elimination of the two-tier salary guide and the establishment and maintenance of a fair differential between the rank of Deputy Chief and Battalion Chief. The Association seeks to end the two-tier system because it eliminates the rank differential, is not in effect in any other jurisdiction and it is contrary to the concept of responsible management of a Fire Department.**

**The Association seeks a four year agreement because this Award will issue in early 1999 and to ease the implementation of its proposals. The Association believes that its Final Offer is more reasonable when analyzed in accordance with the statutory criteria. The Association notes that the bargaining unit contains only seven Deputy Chiefs and the City could not show that acceptance of the Association Offer would have any detrimental financial impact on the City or have any impact on the ability of the City to deliver services. The Association points out that acceptance of the City proposal will result in virtually no differential between the ranks of Deputy Chief and Battalion Chief which will create a management problem for the City and eventually hurt the City residents.**

**The Association notes that the City presented no evidence to support the proposal concerning use of holidays with compensatory time.**

**The interests and welfare of the public**

**Initially, the Association notes that the arbitrator is required to assess the limitations imposed by the Cap Law. However, the Association notes that the City has not offered evidence that there will be a problem with the Cap if the Association proposal is accepted. In any event, the Association points out that, because of the size of the unit, the impact on the City budget is minimal.**

**The Association maintains that the interest and welfare of the public.**

**are well served by a motivated and satisfied workforce. The Association cites the record evidence showing that there is now one division (instead of two) covering the entire City with seven Deputy Chiefs (compared to eleven in 1994) and, therefore, the workload has dramatically increased.**

**The Association notes that, during the hearing, the City acknowledged that its proposal would reduce the differential between the newly promoted Deputy Chiefs and the Battalion Chiefs from \$1,818 in 1996 to \$723 in 1996, to \$636 in 1997 and to \$104 in 1998. The Association also notes that these differentials were not compared with the other Big 6 cities by the City Personnel Officer because the comparisons did not reflect well on the City. In fact, the Association points out that Newark compares poorly to the other Big 6 cities even though it is the largest city in New Jersey and its top officials are very well paid. Citing increased lease payments by the Port Authority and combined earnings of \$194,705 for the Fire Director, the Association believes the City has the ability to pay the Deputy Fire Chiefs commensurate with their position and responsibilities.**

**The Association maintains that it has developed its proposal to meet the needs of the City and the Fire Chiefs. The Association has used the percentage increases given to the Newark Fire Officers in order to maintain a fair differential and adequately compensate the Deputy Fire Chiefs. The Association notes that it is seeking the same increase in the hazardous duty pay as given to the Fire Officers. The Association is proposing a fourth year at the rate the City and Police Superiors agreed upon. The Association concedes that its Offer exceeds the cost of living and is more than the increases received generally in the private and public sectors but it believes the unique situation of the Fire Deputies requires special consideration.**



## **Comparison of the wages, salaries and conditions of employment**

**The Association cites its evidence that the average percentage private sector increase in Essex County in 1995 was 3.9% and 4.1% in 1996 and the Bureau of Labor Statistics reports average annual pay increases of 4%. However, due to the disparity between public safety officers and private sector employees, the Association believes this factor merits little weight. The Association believes the unique responsibilities of the Deputy Fire Chiefs warrant a slightly higher percentage increase than those reported for private sector wage increases in 1996, 1997 and 1998 which average from 3% to over 4%.**

**The Association concedes that its Offer entails higher increases than reported for public employees in general but, because of the difference between public employees in general and Fire Officers, this factor merits minimal weight. The Association points out that the average salary of teachers in Newark was \$54,787 and the median salary was \$59,500. However, the Association notes that teacher salaries are based on ten months of teaching and would be proportionately higher if extrapolated for a twelve month period.**

**The Association maintains that comparisons with the Big 6 merit the most weight in this proceeding. The Association shows that the total compensation for Newark Fire Deputies, both first and second tier, ranked below the total average compensation in the Big 6. The Association, using the City proposal, shows that Newark Fire Deputies fall far short of their counterparts in the Big 6 in the area of base salaries and differentials. The Association especially cites the almost non-existent differential between the ranks in Newark. The Association notes that its proposal will result in a**

marked improvement in the differential in 1996 and 1997 but the Newark differentials will still be significantly below the Big 6 averages in those years. The Association notes that the differential between Battalion Chief and Deputy Chief, in 1990, was 21%. The Association shows that the City proposal will reduce the differential for second tier Deputy Chiefs to almost 0% whereas the Association proposal would increase the differential to 9% in 1998 and the differential for first tier Deputy Chiefs is maintained at 13%, albeit below the average differential in the Big 6 municipalities.

The Association rejects the City's reliance on the comparison between the Police and Fire Deputy Chiefs. The Association points to a number of economic benefits which the Deputy Police Chiefs received beyond their salary increases in 1994, 1995, 1996 and 1997. The Association believes these additional benefits cause the comparison to be inappropriate.

The Association concedes that new Deputy Chiefs will receive 5.5%, 8.9%, 7.8% and 7.7% in 1996 through 1999 respectively. However, the Association maintains that all Newark employees, uniformed or non-uniformed, receive incremental increases if they move through the salary guide.

The Association notes that the City pays its top officials rates which reflect Newark's status as the largest New Jersey City. The Association believes the Deputy Fire Chiefs in this city are similarly entitled to a fair commensurate salary. The Association argues that acceptance and implementation of its proposal will not result in any significant change in Newark's ranking in comparison to the other Big 6 municipalities.

#### Overall Compensation

The Association claims that it is seeking a compensation package

**which will provide an adequate differential even though the differential proposed by the Association will fall short of the average differential among the Big 6. The Association notes that its hazardous pay proposal is appropriate because it will match the stipend which the Newark Fire Officers receive. The Association seeks the rejection of the City proposal concerning the use of holidays as compensatory time because the City has not presented evidence in support of this proposal. The Association disputes the City's claim that it is offering the Deputy Fire Chiefs the same economic package which was offered to the Newark Police Chiefs. The Association claims that the salary portion of the two proposals is the same but the Police Deputy Chiefs were provided with substantial other economic benefits including pager time which it estimates has an annual value of \$1,360.76 per year. Accordingly, the Association argues that the overall compensation received by the Deputy Police Chiefs is significantly higher than the compensation of the Deputy Fire Chiefs.**

#### **Stipulations of the Parties**

**The Association confirms that there are no substantive stipulations which impact on this matter.**

#### **Lawful Authority of the Employer**

**The Association claims that there aren't any provisions within the Cap law that would place any limitation on an award of the Association position. The Association notes that the City has not presented any evidence to show that implementation of the Association proposal would impact on its Cap limitations.**

**The Association notes that the difference in the cost of implementing the competing proposals is estimated by the City to be \$96,350.00. Since the**

**total appropriations in the 1998 City budget were approximately \$440,995,000 and the total general appropriations within the City's Cap were \$311,981,000. The Association notes that the cost difference of the competing Offers is a very small part of the budget and would not have any recognizable impact on the Cap limitations in the budget.**

**The Association points out that the City explains its fourth or fifth standing in "differentials" among the Big 6 by citing its low per capita income and its high percentage of residents below the poverty line. However, the Association notes that the City pays its top officials significantly more than the second largest city in spite of these economic handicaps.**

**The Association rejects the City call for parity between the Deputy Police Chiefs and the Deputy Fire Chiefs because of the extra benefits available to Deputy Police Chiefs and because parity agreements are illegal.**

**The Association rejects the City claim that the salaries of Deputy Fire Chiefs will exceed that of the Fire Chief because the City controls the Fire Chief's salary and can rectify the situation. Furthermore, the Association notes that the Fire Chief's salary is significantly lower than the Police Chief's salary. The Association agrees that the Fire Chief's salary should not be less or equal to the salaries of Deputy Fire Chiefs any more than the salaries of Deputy Fire Chiefs should not be the same as the lower rank of Battalion Chief.**

#### **The Financial Impact on the Governing Unit, its Residents and Taxpayers**

**The Association argues that the City has not provided evidence that would show that the acceptance of the Association proposal will have any detrimental effect on the City's budget. The Association notes that the \$561,995 payroll of the Deputy Fire Chiefs is only approximately .4% of the**

**total payroll for uniformed services employees of \$113,225,887. The Association claims that the City could demonstrate a significant impact only if the percentage increases contained in the Association proposal were applied across the board to all municipal employees, including uniformed services. The Association disputes the relevance of such impact because parity is illegal and there is nothing which compels the City to offer the same percentages to other units. The Association notes that the circumstances which justify the Association's offer in this matter are unique and would not apply to any other unit. Furthermore, the Association notes that a number of contracts for uniformed service employees are already set through 1997 or 1998 or 1999 and the application of these percentage increases to units where terms have already been set is highly unlikely. Finally, the Association notes that, while the City presented extensive evidence that it provides needed services to its residents and hopes to provide more services, the City did not show that acceptance of the Association proposal would have a detrimental effect on the City's ability to provide these services at this time or in the future.**

#### **Cost of Living**

**The Association concedes that the rate of cost of living increase is now somewhat less than the Association position but little weight should be afforded to this factor because of the City's history of agreeing to wage increases which exceed the cost of living. Although both the Association and City exhibits show a CPI rise of less than 3% in 1995, 1996 and 1997, the Association shows that the City has agreed to wage increases of 5.5%, 5.5%, 4.5% and 4.5% for Police Superiors for the years 1996 through 1999. And the City agreed to salary increases for Fire Officers of 4.5%, 5.5%, 5.5% and**

**4.5% for the years 1995 through 1999 respectively. Although the City's Offer is closer to the rate of increase in the CPI, the Association believes it is inconsistent for the City to adhere closely to Cost of Living in this unit when it has agreed to percentage increases in two other bargaining units which exceed the CPI data.**

#### **Continuity and Stability of Employment**

**The Association believes that acceptance of the Association proposal will enhance the continuity and stability of employment of the Deputy Fire Chiefs while acceptance of the City Offer will virtually eliminate the differential between Deputy Fire Chiefs and Battalion Chiefs and thereby destroy the continuity and stability of employment in this unit. The Association notes that appropriate differentials breed respect between ranks and provides an incentive for promotion to higher ranks. The Association questions the City's position on the substantial reduction in rank differentials in the face of the increase in work load for seven Deputy Fire Chiefs who must do more work in one division than the 11 Deputy Fire Chiefs did with two divisions prior to the reorganization.**

**The Association reiterates that the record evidence shows that Newark Deputy Fire Chiefs receive less in both salary and total compensation than most other Big 6 municipalities and less than the average of the Big 6 municipalities.**

**The Association seeks a four year agreement because the new contract will already have expired by the time this Award issues and provides for a three year agreement. The Association notes that it has included a 4.5% increase for 1999, the same percentage increase offered by the City to the Police Superiors in 1999.**

The Association seeks an Award which adopts its final proposals and rejects all of the City's Final Offer.

### Analysis

The City of Newark and The Newark Deputy Fire Chiefs Association were parties to a collective negotiations agreement which expired on December 31, 1995. The negotiations unit currently includes seven full-time employees holding the rank of Deputy Fire Chief in the Newark Fire Department. As the result of a reorganization, there is now one division (instead of two) covering the entire City with seven Deputy Chiefs (compared to eleven in 1994). The unit currently includes the following officers, based on the information provided by the City and the Association:

<b>Name</b>	<b>Rank</b>	<b>Year of Hire</b>	<b>Base Salary 1995</b>
Chrystal, E.	Dep Fire Chief	1962	74,991.80
Dunn, E.R.	Dep Fire Chief	1959	74,991.80
Finucan, J.P.	Dep Fire Chief	1969	74,991.80
Jones, L.F.	Dep Fire Chief	1970	68,210.00
Rydzewski, E.	Dep Fire Chief	1969	68,210.00
Smith, J.	Dep Fire Chief	1970	68,210.00
Snyder, B.	Dep Fire Chief	1970	68,210.00
<b>Base Salary Total:</b>			<b>497,815.40</b>

Jones, Rydzewski, Smith and Snyder were promoted to the rank of Deputy Fire Chief in May, 1996 and received \$68,210 at that time.

The disposition of this matter has been guided by the application of the eight statutory criteria set forth in N.J.S.A. 34-13A-16G. The evidence presented by the parties will be analyzed and evaluated under each of the statutory criteria.

1. **The interests and welfare of the public; considering, inter alia, the limitations imposed upon the employer by the CAP Law, N.J.S.A 40A:4-45.1 et seq.**

**In analyzing and evaluating the interests and welfare of the public, the arbitrator must confront the concerns of both parties and attempt to reconcile these concerns in the development of a conventional arbitration decision which is based on a reasonable determination of the issues.**

**The Association has submitted uncontradicted evidence which shows that fewer Deputy Fire Chiefs, working out of one division, are now performing the workload previously performed in 1994 by a larger number of Deputy Fire Chiefs working out of two divisions. The Newark Fire Department Annual Reports indicate that structural fires have increased from 1129 in 1994 to 1484 in 1995, 1297 in 1996 and 1170 in 1997. Although Fire Director Kossup pointed out that all fires do not require the actual involvement of the Deputy Fire Chiefs, it is their responsibility to initially respond and determine the need for their services. Thus, it appears that a smaller contingent of Deputy Fire Chiefs, with a lower total payroll cost, are now carrying out the various activities which the Deputy Fire Chiefs are required to perform in order to serve and protect the citizens of the City of Newark.**

**Certainly, the public interest of the residents of the City of Newark is served by the continued maintenance of a dedicated unit of Deputy Fire Chiefs which, as a result of high morale, is motivated to continue the productive performance of the various activities needed to protect the lives and property of the residents of the City. On the other hand, although the City residents seek to maintain a Deputy Fire Chief force which is minimal in size but productive in all of their required public safety activities, the**



**agenda of the City's residents and taxpayers includes a planned program intended to limit the costs of its uniformed services so that other City services may be preserved and enhanced and, at the same time, keep the tax rate as low as possible for a City population plagued with high unemployment and low per capita income.**

**Productivity and high morale are achieved and maintained when public safety officers receive adequate compensation for their training, experience and unique responsibilities. Morale and a commitment to dedicated performance of these unique responsibilities is dependent on a recognition by public safety officers that there is a reasonable correlation between their working conditions and the working conditions of other public safety officers in comparable communities. On the other hand, the Cityh has been buffeted by a significant reduction in State aid and declining real estate assessments due to tax appeals and seeks a modest wage adjustment in this unit, an action which it maintains would help the City to address their financial difficulties and other important priorities fir its residents.**

**The Association, citing the salaries and differentials between ranks for Deputy Fire Chiefs in the Big 6 municipalities, proposes a salary Offer which would, during the term of the proposed new agreement, eliminate the two-tier salary guide which appears in the expired contract and which would establish what it believes would be a fair differential between the rank of Deputy Fire Chief and the next lower rank of Battalion Chief. As noted above, the Association Offer would entail percentage increases as follows:**

<b>Year</b>	<b>NFDCA Grandfathered</b>	<b>NFDCA NonGrandfathered</b>
<b>1996</b>	<b>5.5%</b>	<b>5,5%</b>
<b>1997</b>	<b>5.5%</b>	<b>8.9%</b>

<b>1998</b>	<b>4.5%</b>	<b>7.8%</b>
<b>1999</b>	<b>4.5%</b>	<b>7.7%</b>

**On the other hand, the City proposes a three year agreement with 3.75% increases in 1996, 1997 and 1998. The City The City notes that, in its proposal, non-grandfathered deputy chiefs would receive Senior Pay effective 1/1/97 and this results in a 5.32% increase for 1997.**

**Under the City's proposal, the differential between the highest paid Battalion Chief and the lowest paid Deputy Fire Chief would drop to \$722 in 1996, drop further to \$635.40 in 1997 and almost disappear in 1997 when it would drop to \$104.06.**

**The undersigned does not believe that either the Association proposal or the City proposal reasonably addresses the diverse concerns which must be reconciled in the development of this decision in order to be consistent with the public interests and welfare. As shown later in this decision, the Association proposal exceeds the rate of increase in the cost of living, exceeds the average of current wage increases, exceeds the rate of increase in the private sector and the rate of increase in the other uniformed service agreements negotiated with the City of Newark. On the other hand, the City proposal would decimate the differential between the non-grandfathered Deputy Fire Chiefs and the Battalion Chiefs because it is proposing for all Deputy Fire Chiefs a lesser percentage increase than was negotiated for Fire Officers for 1996, 1997 and 1998.**

**Accordingly, the undersigned intends to develop an Award which is more consistent with the public interests and welfare than the competing final offers submitted by the parties.**

**The statute requires, in the consideration of the interests and welfare of the public, that an assessment be made of the limitations imposed on the City by N.J.S.A. 40A:4-45.1 et seq., the CAP law. As will be noted in the "Lawful Authority" section of this analysis, the arbitrator's award will not exceed the limits imposed by the CAP law.**

**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**

**As other arbitrators have noted, it is difficult to compare the working conditions of public safety officers with the working conditions of private sector employees performing the same or similar services because of the lack of specific private sector occupational categories with whom a meaningful comparison can be made. The standards for recruiting public safety officers, the requisite physical qualifications for public safety officers and their training and the unique responsibilities which require public safety officers to be available and competent to protect the public in different emergent circumstances sets public safety officers apart from private sector employees doing somewhat similar work. Accordingly, this comparison merits minimal weight.**

**However, the rate of wage change in the private sector generally is a consideration which must be accorded significant weight. The rate of wage change in the private sector and the rate of wage change among public safety units are affected by the same national and local factors, such as the health of the economy, prevailing interest rates, status of unemployment,**

**rate of inflation and the impact of tax legislation. Accordingly, this factor merits consideration in conjunction with the rate of wage change in public employment in general and public employment in the same or similar comparable jurisdictions.**

**The undersigned is constrained to take administrative notice of information, excerpted from the Labor Relations Reporter, 152 LRR 398, dated 7/29/96, which indicates that nationwide private sector settlements have exhibited median average increases of 3% for 1996. However, the Labor Relations Reporter notes that wage increases of unspecified amounts and cost-of-living adjustments were not included in the tabulations of the medians. Accordingly, the rate of change in the private sector appears to be somewhat in excess of 3% for 1996. The Public Employment Relations Commission has furnished the arbitration panel with a report of private sector wage changes compiled by the New Jersey Department of Labor. This report, which shows changes in the average wages of private sector jobs covered under the state's unemployment insurance system, indicates a 2.18% increase in Essex County in 1997 and a total private sector wage increase of 4.75% in the State of New Jersey in 1997. A report, showing changes in average wages in Employment covered by unemployment insurance, Major Industry Division: New Jersey, 1996 and 1997, indicates a 4.5% change in 1997. In fashioning the Award in this matter, the undersigned has given this factor significant weight.**

**b. In public employment in general.**

**The BLS Report on Negotiations, 8:310, No.1298, dated 3/2/95, published by the Bureau of National Affairs, Inc., notes that State and local government contracts (usually negotiated in 1993 and scheduled for**

**renegotiation in 1995) showed settlement terms that yield annual wage changes (including COLA payments) averaging 2.5% in all State and Local Government contracts over their contract life. The same BLS Report notes that the rate of increase for protective services averaged 3.1%. However the BLS Report notes the following:**

**Recent settlements suggest a more favorable bargaining climate for at least some State and local government workers with contracts set to expire in 1995. As noted earlier, for the first time since the second half of 1990, settlements reached in the first six months of 1994 provided wage gains that were larger, on average, than those negotiated in the replaced contracts. Both first-year changes (3.0 percent) and annual changes over the contract term (3.3 percent) were at their highest level since the six month period from July 1990 to December 1990. In addition, the proportion of workers with decreases or no changes in their wage rates was considerably lower than in recent years.**

**Thus the BLS Report on Negotiations confirms the emergence of a more favorable collective negotiations climate in the public sector with fewer wage freezes and annual changes over the contract term increasing to 3.3 percent when parties negotiated renewal contracts for contracts expiring in 1995. This is an additional significant factor to which the undersigned has assigned weight and has been considered in the formation of the Award.**

**c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with N.J.S.A. 34:13A-16.2.**

**The Association argues that the most appropriate comparison is the one between Newark Deputy Fire Chiefs and the Deputy Fire Chiefs in the Big 6 municipalities. On the other hand, the City suggests that this comparison must be viewed in the context of relevant unemployment, per capita income and below poverty level statistics. The undersigned recognizes the effect of these factors on the ability of the municipalities to fund the salaries of the public safety employees. However, the statutory requirement for a comparison with comparable jurisdictions is most appropriately accomplished by a comparison with the Big 6 municipalities which are the major urban centers in New Jersey with similar if not totally comparable socio-economic problems. The Association has prepared an exhibit, A-5F, uncontradicted by the City, which compares total compensation of the Big 6 municipalities based on 1995 salary figures for a 25 year Deputy Chief and shows the following:**

<b>Newark (upper)</b>	<b>91,790.16</b>
<b>Newark (lower)</b>	<b>83,772.00</b>
<b>Jersey City</b>	<b>95,676.84</b>
<b>Paterson</b>	<b>107,652.08</b>
<b>Elizabeth</b>	<b>80,941.36</b>
<b>Camden</b>	<b>97,155.34</b>
<b>Trenton</b>	<b>97,397.80</b>

**As can be seen from the above figures, both the grandfathered and non-grandfathered Newark Deputy Fire Chiefs trail all but one Big 6 municipality. It should also be noted that all of the Big 6 municipalities have one or two salary steps whereas the non-grandfathered Newark Fire Deputy Chiefs require six years to achieve the Senior Step.**

When one compares the differential between the rank of Battalion Chief and Deputy Fire Chief in the Big 6 municipalities, using base salary figures, the following appears:

**1996**

<b><u>Municipality</u></b>	<b>Batt. Chief</b>	<b>Dep Chief</b>	<b>Dep Chief(2)</b>	<b>Diff (1)</b>	<b>D.(2)</b>
<b>Jersey City</b>	<b>75361</b>	<b>84877</b>		<b>12.63%</b>	
<b>Trenton</b>	<b>71877</b>	<b>83626</b>		<b>16.35%</b>	
<b>Paterson</b>	<b>80185</b>	<b>89837</b>		<b>12.04%</b>	
<b>Newark</b>	<b>70149</b>	<b>77804</b>	<b>70872</b>	<b>10.91%</b>	<b>1%</b>
<b>Elizabeth</b>	<b>68086</b>	<b>75507</b>		<b>10.90%</b>	
<b>Camden</b>	<b>62295</b>	<b>85418</b>		<b>37.12%</b>	
<b>Average:</b>	<b>71326</b>	<b>82845</b>		<b>16.66%</b>	

**1997**

<b><u>Municipality</u></b>	<b>Batt. Chief</b>	<b>Dep Chief</b>	<b>Dep Chief(2)</b>	<b>Diff (1)</b>	<b>D.(2)</b>
<b>Jersey City</b>	<b>78300</b>	<b>88187</b>		<b>12.63%</b>	
<b>Trenton</b>	<b>75829</b>	<b>87808</b>		<b>15.80%</b>	
<b>Paterson</b>	<b>82992</b>	<b>92981</b>		<b>12.04%</b>	
<b>Newark</b>	<b>74008</b>	<b>80722</b>	<b>74643</b>	<b>9.07%</b>	<b>.86%</b>
<b>Elizabeth</b>	<b>70809</b>	<b>78527</b>		<b>10.90%</b>	
<b>Camden</b>	<b>67989</b>	<b>91918</b>		<b>35.20</b>	
<b>Average:</b>	<b>74988</b>	<b>86691</b>		<b>15.94</b>	

**1998**

<b><u>Municipality</u></b>	<b>Batt. Chief</b>	<b>Dep Chief</b>	<b>Dep Chief(2)</b>	<b>Diff (1)</b>	<b>D.(2)</b>
<b>Jersey City</b>	<b>81354</b>	<b>91803</b>		<b>12.84%</b>	
<b>Trenton</b>	<b>75829</b>	<b>87808</b>		<b>15.80%</b>	
<b>Paterson</b>	<b>85481</b>	<b>95770</b>		<b>12.04%</b>	
<b>Newark</b>	<b>77338</b>	<b>83749</b>	<b>77442</b>	<b>8.29%</b>	<b>.13%</b>
<b>Elizabeth</b>	<b>73642</b>	<b>82505</b>		<b>12.04%</b>	
<b>Camden</b>	<b>72129</b>	<b>97516</b>		<b>35.20%</b>	
<b>Average:</b>	<b>77629</b>	<b>89859</b>		<b>16.03%</b>	

The figures used for Newark are the salaries proposed by the City in its Final Offer. As can be seen in the above charts, the grandfathered Newark Fire Deputy Chiefs' differential trails the other Big 6 differentials significantly. The non-grandfathered Newark Fire Deputy Chiefs' differentials, pursuant to the City Offer, fade from an insignificant 1% in 1996 to an almost non-existent differential (.13%) in 1998.

When the base salaries of the Big 6 municipalities are computed, (excluding Newark), the following base salary averages for Deputy Fire Chief result:

<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>
<b>78904</b>	<b>83853</b>	<b>87884</b>	<b>91898</b>

The average for 1998 does not include Trenton since this figure was unavailable. The average salary for Deputy Fire Chief in the Big 6 municipalities increases from \$78,904 in 1995 to \$91,898 in 1998, a 16.5% increase over three years or an average of 5.5% per year.



**The other comparable which must be accorded significant weight in this analysis is the history of pay raise percentages for the uniformed services in the City of Newark since 1994 and this chart is listed below:**

<b>Unit</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
<b>Fire D.C.</b>	<b>5.00</b>	<b>3.5</b>				
<b>Police D.C.</b>	<b>5.00</b>	<b>3.5</b>	<b>3.75</b>	<b>3.75</b>		
<b>Fire Off.</b>		<b>4.5</b>	<b>5.5</b>	<b>5.5</b>	<b>4.5</b>	
<b>Police Sup.</b>			<b>5.5</b>	<b>5.5</b>	<b>4.5</b>	<b>4.5</b>
<b>Fire FF</b>		<b>5.00</b>	<b>5.5</b>	<b>5.5</b>	<b>4.5</b>	
<b>Police Off.</b>		<b>5.00</b>	<b>5.5</b>	<b>5.5</b>		
<b>Average:</b>		<b>4.3</b>	<b>5.15</b>	<b>5.15</b>	<b>4.5</b>	<b>4.5</b>

**The undersigned believes that the “comparables” listed above closely conform to the requirements of N.J.S.A. 34:13A-16.2 since they measure employment conditions of law enforcement officers and firefighters, offer a comparison of employment conditions of employees in negotiations units in the same City and contain reference to employment conditions of similar titles employed in the Big 6 municipalities.**

**The undersigned, in the consideration of the statutory criterion of “Comparables” also takes administrative notice of a summary of Interest Arbitration Awards and voluntary settlements issued by P.E.R.C. since January 1, 1997 which generally cover the same time frame implicated in this proceeding. The charts below reflect only wage increases provided in 1996, 1997 and 1998, the years involved in this proceeding. The arbitration awards list all conventional arbitration awards to the date of the report. The undersigned has not included the State/SLEU conventional award because of the inability to translate bonuses and dollar amounts to comparative**

percentages. However, it appears that inclusion of this conventional award would lower the average because the award provides for a \$250 cash bonus in 1996 plus uniform maintenance or clothing allowance. In 1997 and 1998 a 3.5% increase is provided.

Settlements

	1/1/96	7/1/96	1/1/97	7/1/97	1/1/98	7/1/98
New Milford	2.0%	2.0%	3.5%		2.0%	2.5%
Franklin	4.0%		4.2%			4.2%
Mendham	4.0%		4.25%			
Bordentown	4.0%		4.5%			4.5%
Montclair	2.0%	3.0%	3.0%	1.75%	3.0%	1.75%
Marlboro	4.0%		4.75%		4.65%	
Hillside		2.9%		3.0%		3.5%
Hamilton		4.0%		4.0%		4.0%
Princeton	3.9%		3.9%		3.9%	
Verona	3.0%		3.0%	3.0%	3.0%	5.0%
Lebanon	4.0%		4.5%		4.5%	
Camden	3.9%*		3.9%*		3.9%*	

(Co. Pros)

\*plus 1.1% for top step

After adjusting for the split increases, the average increase in 1996 is 3.8%, in 1997 it is 4.4% and in 1998 it is 4.38%.

Interest Arbitration Awards

	1/1/96	7/1/96	1/1/97	7/1/97	1/1/98	7/1/98
Far Hills	4.0%		4.0%		4.25%	
Hackettstwn	3.4%		3.5		3.5%	

<b>Emerson</b>	<b>4.0%</b>	<b>3.5%</b>	<b>2.0%</b>	
<b>Hudson Co</b>	<b>5.0%</b>	<b>5.0%</b>	<b>5.0%</b>	
<b>Rutherford</b>	<b>3.75%</b>	<b>3.75%</b>	<b>2.0%</b>	<b>2.0%</b>
<b>Allendale</b>	<b>4.0%</b>	<b>3.75%</b>	<b>3.50%</b>	
<b>W. Caldwell</b>	<b>4.95%</b>	<b>4.0%</b>	<b>4.0%</b>	
<b>Bernards</b>	<b>3.5%</b>	<b>3.75%</b>	<b>4.0%</b>	
<b>Average:</b>	<b>4.19%</b>	<b>3.91%</b>	<b>3.53%</b>	

**When one combines average increases in settlements and Interest Arbitration Awards, the pattern of increases for 1996, 1997 and 1998 appears as follows:**

	<b>1996</b>	<b>1997</b>	<b>1998</b>
<b>Settlements:</b>	<b>3.8</b>	<b>4.4</b>	<b>4.38</b>
<b>IA Awards:</b>	<b>4.19</b>	<b>3.91</b>	<b>3.53</b>
<b>Average:</b>	<b>4.00</b>	<b>4.16</b>	<b>3.96</b>

**It is noted that the average of Interest Arbitration Awards is on a downward slope. However, it appears that the average, between settlements and Interest Arbitration Awards, is still higher than the rate of increase in the Consumer Price Index. In addition, the composite three year increase in IA Awards is 11.63% in a three year period of the contract term being considered herein. Accordingly, the undersigned believes that the above listed salary comparisons are pertinent and should provide guidance in the development of the Award in this matter.**

**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.**

**The consideration of this statutory criterion is based on the evidence and analysis noted above in the study of Criterion No. 2 and the conclusion reached in the study of Criterion No. 2 is equally applicable to this criterion. It should be noted that the employees in this unit receive an outstanding package of medical and hospitalization benefits and, during the term of this agreement, there will be no change in the level of benefits provided to the employees. In the development of this Award, the undersigned has been mindful of the City's insurance cost burden in this area.**

**The current agreement contains an annual hazardous duty pay stipend of \$850. In the Agreement between the City of Newark and the Newark Fire Officers Union covering the period from Jan.1, 1995 through Dec. 31, 1998, the parties modified Hazardous Duty Pay for all members of Firefighting Divisions to provide for an increase of \$53.00 on Jan. 1, 1996 to \$903.00, an increase of \$25.00 on Jan. 1, 1997 to \$928.00 and an additional \$25.00 effective Jan. 1, 1998 to \$953.00. The Association seeks the same increases. The City has previously agreed to these modest improvements in the hazardous duty pay for a unit which functions under the leadership of the Deputy Fire Chiefs and no evidence has been offered to distinguish the need for a modest increase in this stipend between the two units. The undersigned believes the requested increase is modest, not too far above the CPI increase and is needed to maintain an appropriate differential between the Fire Officers and the Deputy Chiefs. The requested increase in hazardous**

**duty pay will be included in the Award.**

**The City has included in its Offer a request that, effective January 1, 1998, three (3) of the holidays, to which the employees represented by this collective bargaining unit are entitled, will be credited toward compensatory time. However, there is nothing in the record to support the need for this change or information concerning the consequences of this change. In the absence of sufficient information with which to evaluate this proposal, the undersigned will leave the existing contractual terms in place and not include any modification in this area in the Award.**

**The employees in this unit enjoy an outstanding overall compensation package except for the inadequate differential between the pay of the highest paid battalion chief and the lowest paid Deputy Fire Chief. This deficiency is harmful to the perseverance of an appropriate chain of command and an obvious irritant and cause for deterioration of morale among the non-grandfathered Deputy Fire Chiefs. This award will attempt to address this deficiency in a conservative manner, within the overall wage settlement pattern of the City and its other uniformed bargaining units and with a consideration for the fiscal constraints on the City.**

**4. Stipulations of the parties.**

**There are no pertinent, substantive stipulations of the parties which require consideration in this matter.**

**7. The cost of living.**

**Table 16 by Expenditure Category, Consumer Price Index for all Urban Consumers, indicates a 2.72% increase from January, 1995 to January, 1996 and a 3.32% increase from January, 1996 to December, 1996, amounting to a 6.2 percent increase in 1995 and 1996.**

**This low level of inflation has persisted for several years and, despite the improved conditions now apparent in the national economy, the inflation rate has not accelerated to date.**

**Both the City's proposal and the Association proposal would entail annual increases which are in excess of the present rate of inflation. However, the City and this unit have previously negotiated agreements which have provided salary increases above the going rate of inflation. In fact, as shown in the chart above, all of the increases negotiated by the City with its various uniformed services have exceeded the CPI index.**

**The undersigned notes that the City Offer in this matter is closer to the current inflation rate than the Association Offer. Accordingly, this factor was one of the considerations in fashioning an Award whose cost is closer to the City Offer than the Association Offer which significantly exceeds the CPI index.**

**5. The lawful authority of the employer; considering, inter alia, the limitations imposed upon the employer by the CAP Law. N.J.S.A. 40A:4-45.1 et seq.**

**6. The financial impact on the governing unit, its residents and taxpayers.**

**The arbitrator 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 of 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.**

**At this point, based on the factors analyzed above, the terms of the economic award will be listed and the costs calculated in order to determine how the award will comport with the two statutory criteria listed above.**

**Term:**

**The Association seeks a four year agreement while the City requests a three year agreement. The undersigned notes that, upon the issuance of this Award, the parties will already have started the fourth year since the expiration of the prior agreement at the end of 1995. The award of a three year term would throw the parties immediately into a belated start of negotiations for a new contract. Furthermore, the Award constructed herein provides for a gradual remedy to the differential problem while limiting the implementation costs in recognition of the financial constraints on the City. The gradual remedy envisioned in the Award can best be accomplished over a four year term. Accordingly, the new agreement shall have a four year term beginning Jan. 1, 1996 and ending on Dec. 31, 1999.**

**Salaries:**

**In consideration of the financial constraints faced by the City, including unemployment, poverty, loss of State Aid, low per capita income and loss of revenue due to reassessments, the undersigned has utilized percentage salary increases which the City has negotiated with the other uniformed services, apparently with full recognition of its limited economic**

**resources and its goal of providing better services to the residents and taxpayers of the City of Newark.**

**The undersigned has also continued the two tier system of compensation during the term of this agreement and has followed the City suggestion that all four non-grandfathered Deputy Fire Chiefs move to a "one step for all" status on Jan. 1, 1997 and Jan. 1, 1998. However, the undersigned has allocated to the non-grandfathered Deputy Fire Chiefs the same percentage increase negotiated with the Fire Officers (including Battalion Chiefs) for 1996, 1997 and 1998. For 1999, the undersigned has allocated the same percentage (4.5%) which the City negotiated with the Police Superiors. In addition, the Award retains the Senior Pay Step as of the 5<sup>th</sup> year of service in the rank of Deputy Fire Chief and allocates to this Step the same salary level received by the Grandfathered Deputy Fire Chiefs in 1999. The undersigned has allocated to the Grandfathered Deputy Fire Chiefs in 1996 and 1997 the same percentage increase which was negotiated by the City with the Deputy Police Chiefs, 3.75% in 1996 and 3.75% in 1997. The undersigned is constrained to place no value on the Deputy Police Chief arbitration concerning beeper pay because it was a temporary benefit which has terminated. The other additional benefits gained by the Deputy Police Chiefs are not easily measurable and, in any event, do not warrant the allocation of a greater percentage to the grandfathered Deputy Fire Chiefs in 1996 and 1997. For the years 1998 and 1999, the undersigned has allocated 4.5% to the grandfathered Fire Deputy Chiefs, the same percentage negotiated by the City with the Fire Officers, the Police Superiors and the Firefighters in 1998 and the same percentage negotiated by the City with the Police Superiors for 1999.**



As noted above, the Award will include for this unit the increase in Hazardous Duty Pay previously negotiated with the Fire Officers. Listed below is the Economic Award, the costs of the competing proposals, the cost of the Arbitrator's proposal, a comparison of the costs of the competing offers with the Arbitration Award, using base wages only, and an analysis of the "Differential" problem. For ease of comparison and evaluation, the undersigned has used base wages only. The true additional costs would include additional longevity and holiday pay and the additional hazardous duty pay. Of these factors, only the longevity is significant and each of the competing costs and the arbitrator's award should be increased by approximately 15% to actually reflect true costs.

**Salary Award:**

**Non-Grandfathered Deputy Fire Chiefs**

<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
72067	77182	80655	84285
Sr. Pay (*)			88150

(\*) Non-Grandfathered Deputy Fire Chiefs are entitled to Senior Pay on Jan. 1 of their 5<sup>th</sup> year as Deputy Fire Chief.

**Grandfathered Deputy Fire Chiefs**

<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
77804	80722	84355	88150

**Hazardous Duty Pay for all Deputy Fire Chiefs**

<u>1996</u>	<u>1997</u>	<u>1998</u>
903	928	953

**Cost of City Proposal - Base Wages Only**

<u>Deputy Fire Chief</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>
Jones	70872	74643	77422
Smith	70872	74643	77422
Snyder	70872	74643	77422
Rydzewski	70872	74643	77422
Finucan	77804	80722	83749
Chrystal	77804	80722	83749
Dunn	77804	80722	83749
Bitter (*)	77804	80722	
Raymond (**)	77804		
Totals:	672508	621460	561015

(\*) Ret. 11/1/97 - not shown with a base wage cost in 1998

(\*\*) Ret. 8/1/96 - not shown with a base wage cost in 1997

**Cost of Association Proposal - Base Wages Only**

<u>Deputy Fire Chief</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Jones	72067	78510	84633	91149
Smith	72067	78510	84633	91149
Snyder	72067	78510	84633	91149
Rydzewski	72067	78510	84633	91149
Finucan	79116	83468	87224	91149
Chrystal	79116	83468	87224	91149
Dunn	79116	83468	87224	91149
Bitter (*)	79116	83468		
Raymond (**)	79116			
Totals:	683848	647912	600204	638043

**(\*) Ret. 11/1/97 - not shown with a base wage cost in 1998**

**(\*\*) Ret. 8/1/96 - not shown with a base wage cost in 1997**

**Cost of Arbitration Award - Base Wages Only**

<u>Deputy Fire Chief</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
Jones	72067	77182	80655	84285
Smith	72067	77182	80685	84285
Snyder	72067	77182	80685	84285
Rydzewski	72067	77182	80685	84285
Finucan	77804	80722	84355	88150
Chrystal	77804	80722	84355	88150
Dunn	77804	80722	84355	88150
Bitter (*)	77804	80722		
Raymond (**)	77804			
<b>Totals:</b>	<b>677288</b>	<b>631616</b>	<b>575685</b>	<b>601590</b>

**(\*) Ret. 11/1/97 - not shown with a base wage cost in 1998**

**(\*\*) Ret. 8/1/96 - not shown with a base wage cost in 1997**

**Cost Comparison of Competing Offers and Arb. Award - Base Wages Only**

	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>3yr.Tot</b>	<b>4yrTot</b>
<b>City</b>	<b>672508</b>	<b>621460</b>	<b>561015</b>		<b>1854983</b>	
<b>Ass'n.</b>	<b>683848</b>	<b>647912</b>	<b>600204</b>	<b>638043</b>	<b>1931964</b>	<b>2570007</b>
<b>Award</b>	<b>677288</b>	<b>631616</b>	<b>575685</b>	<b>601590</b>	<b>1884589</b>	<b>2456179</b>

**Three Year Cost of Association Offer exceeds City Offer by: 76981**

**Three Year Cost of Award exceeds City Offer by: 29,606**

**Three Year Cost of Award is less than Association Offer by: 47375**

**Four Year Cost of Award is less than Association Offer by: 83828**

**Differential Analysis**

**Award:**

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
<b>Battalion Chief</b>	<b>66492</b>	<b>70144</b>	<b>74008</b>	<b>77338</b>	
<b>(*) Dep Fire Chief 68310</b>	<b>68310</b>	<b>72087</b>	<b>77182</b>	<b>80855</b>	<b>84285</b>
<b>Differential</b>	<b>2.73</b>	<b>2.77</b>	<b>4.29</b>	<b>4.55</b>	
<b>Dep Fire Chief</b>	<b>74992</b>	<b>77804</b>	<b>80722</b>	<b>84355</b>	<b>88150</b>
<b>Differential</b>	<b>12.78</b>	<b>10.92</b>	<b>9.07</b>	<b>9.07</b>	

**(\*) Non-Grandfathered Deputy Fire Chiefs**

**Non-Grandfathered Deputy Fire Chiefs shall receive the 1996 rate as of 5/96.**

**City Offer:**

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
<b>Battalion Chief</b>	<b>66492</b>	<b>70144</b>	<b>74008</b>	<b>77338</b>	
<b>(*) Dep Fire Chief 68310</b>	<b>68310</b>	<b>70872</b>	<b>74643</b>	<b>77442</b>	
<b>Differential</b>	<b>2.73</b>	<b>1.04</b>	<b>0.86</b>	<b>0.13</b>	
<b>Dep Fire Chief</b>	<b>74992</b>	<b>77804</b>	<b>80722</b>	<b>83749</b>	
<b>Differential</b>	<b>12.78</b>	<b>10.92</b>	<b>9.07</b>	<b>8.29</b>	

**(\*) Non-Grandfathered Deputy Fire Chiefs**

**Association Offer:**

	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
<b>Battalion Chief</b>	<b>66492</b>	<b>70144</b>	<b>74008</b>	<b>77338</b>	
<b>(*) Dep Fire Chief 68310</b>	<b>68310</b>	<b>72087</b>	<b>78510</b>	<b>84633</b>	<b>91149</b>
<b>Differential</b>	<b>2.73</b>	<b>2.77</b>	<b>6.08</b>	<b>9.43</b>	
<b>Dep Fire Chief</b>	<b>74992</b>	<b>79116</b>	<b>83468</b>	<b>87224</b>	<b>91149</b>
<b>Differential</b>	<b>12.78</b>	<b>12.79</b>	<b>12.78</b>	<b>12.78</b>	

**(\*) Non-Grandfathered Deputy Fire Chiefs**

Although the undersigned's Award has been influenced by the substantially higher differentials in the Big 6 municipalities between Deputy Fire Chief and Battalion Chief, the undersigned has been constrained to improve this differential modestly because of the small differential shown, in 1997, between the highest paid Police Deputy Chiefs and their highest paid immediate subordinates, Police Captains, as shown below:

Police Dep. Chief Sr.: 74643.39  
 Police Capt. Sr.: 73210  
 Differential: 1433.39 or 1.96%

The annual differential between the cost of the City Offer and the Arbitrator's Award appears as follows:

1996	1997	1998	1999	3yr.Tot
City	672508	621460	561015	
Award	677288	631616	575685	
Diff:	4780	10156	14670	29,606

The undersigned must again note that this differential does not include the increased cost of longevity and holiday pay and the increase in hazardous duty pay and , therefore, may be understated by approximately 15%.

The statutory criterion relating to the lawful authority of the Employer specifically requires consideration of the limitations imposed upon the employer by the CAP Law, N.J.S.A. 40A:4-45.1 et seq. Under the CAP Law, an employer is limited to expenditures within a specified index rate unless it takes the required steps to utilize the maximum CAP rate of 5%. The City has not submitted any evidence which would establish that these amounts would endanger the limitations imposed upon the employer by the Cap Law.

**In 1998, the total general appropriations in the City's Cap were \$311,981,000. Thus, it is clear that there is no impediment, by way of the Cap Law, to the lawful authority of the City to implement the Arbitration Award.**

**Similarly, it must be pointed out that the cost differential between the Arbitrator's Award and the City Offer will have minimal impact on a 1998 budget in which the total appropriations were approximately \$440,995,000. Furthermore, as can be seen from the chart on Page 43 of this Award, the payroll cost for this unit is lower in each year than the base year of 1996, as follows:**

	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>
<b>Totals:</b>	<b>683848</b>	<b>647912</b>	<b>600204</b>	<b>638043</b>

**This is attributable to the reduction in the number of Deputy Fire Chiefs and the replacement of retired Deputy Fire Chiefs with newly appointed, lower salaried Deputy Fire Chiefs. Since it appears that the workload of the Deputy Fire Chiefs is being adequately handled by the smaller staff, this unit has effectively contributed to the general budget to help defray other expenses or enhance services to the residents and taxpayers of the City of Newark.**

**The City, concerned about the financial impact on the governing unit, residents and taxpayers, has cautioned against the adoption of the Association proposal because other uniformed services units would seek similar increases and place a significant burden on the City's overburdened budget. Firstly, it must be noted that this Award has not accepted the Association Offer. Furthermore, it is hardly likely that a seven member unit's negotiation result would become the negotiation pattern for the much larger other uniformed negotiations units. In any event, instead of creating a new pattern, this Award has drawn on the pattern of settlements already**

**negotiated by the City and, even in 1999, is following the salary increase percentage negotiated by the City with the Police Superiors.**

**Inasmuch as the difference in cost of the Award above the cost of the City Offer is minimal and, in fact, the payroll cost of this unit is lower in 1997, 1998 and 1999 than in 1996, the arbitrator need not make a comparison of the percentage of the municipality purposes element required to fund the employees' contract in the preceding local budget year; consider the impact of the award for each income sector of the property taxpayers of the local unit ; consider the impact of the award on the ability of the municipality to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the municipality in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the municipality in its proposed budget.**

**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.**

**Although each party maintains that adoption of its position will enhance the continuity and stability of employment of this unit of Deputy Fire Chiefs, the undersigned does not believe that there is sufficient evidence in the record to support a finding that the continuity or stability of employment would be significantly affected by the adoption of either Offer. Although the record indicates that, in a very small unit, there are four recent promotions and two recent retirements, there is no evidence that prior officers have left**

**this unit voluntarily to accept higher paying jobs in other communities. On the other hand, it appears that the City has been able to attract replacements when needed and to retain a competent and professional Deputy Fire Chiefs unit, as evidenced by a unit consisting of seven officers each of whom have given the City more than twenty five years of service.**

**The undersigned believes that the improvement in the "differentials" between Deputy Fire Chiefs and Battalion Chiefs will enhance the continuity and stability of the various negotiation units in the Fire Department. The undersigned believes that the compensation package developed in this award is fair and reasonable. A fair and reasonable compensation package, applied within the confines of budgetary constraints, should promote stability and continuity of employment in this unit by encouraging employees to persevere in their public safety efforts. The differential between Deputy Fire Chief and Fire Chief is subject to correction by the Employer's modification of the Fire Chief's salary.**

**In the resolution of this dispute, the undersigned has deemed each of the statutory criteria relevant (except for the criterion relating to stipulations) and has assigned due weight to the criteria discussed above. In addition, the undersigned has carefully considered the evidence and arguments presented by the parties. In this analysis, the undersigned has assigned weight to the trend in private sector increases and other public sector increases generally as well as the current rate of increase in the Consumer Price Index. The undersigned has given great weight to an internal comparison of negotiated agreements within the City of Newark regarding other uniformed services and a comparison with similar titles in the Big 6 municipalities. The undersigned has considered the financial**



**constraints of the City in developing this Award.**

**The undersigned believes that the arbitrator's award does not require expenditures which will exceed the City's lawful authority. In my role as an arbitrator with conventional authority, I have sought to develop an award which addresses and balances the concerns of both parties. The undersigned believes that the interests and welfare of the public will benefit by an Award containing a reasonable compensation package which will have a modest financial impact on the City's residents and taxpayers and contribute to employee morale and motivation and the continuity and stability of employment in this negotiations unit by improving the "differential" situation.**

**Accordingly, based on an evaluation of the evidence submitted and the arguments advanced by each party and, after due consideration of each of the statutory criteria contained in N.J.S.A. 34:13A-16, the undersigned renders the following**

**INTEREST ARBITRATION AWARD**

**1. Term: The term of the agreement shall be from January 1, 1996 through December 31, 1999.**

**2. Salary:**

**Non-Grandfathered Deputy Fire Chiefs**

<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
72067	77182	80655	84285

**Sr. Pay (\*) 88150**

**(\*) Non-Grandfathered Deputy Fire Chiefs are entitled to Senior Pay on Jan. 1 of their 5<sup>th</sup> year as Deputy Fire Chief.**

**Non-Grandfathered Deputy Fire Chiefs shall receive the 1996 rate as of 5/96.**

**Grandfathered Deputy Fire Chiefs**

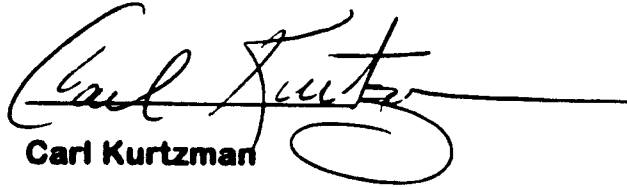
<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
77804	80722	84355	88150

**3. Hazardous Duty Pay for all Deputy Fire Chiefs**

<u>1996</u>	<u>1997</u>	<u>1998</u>
903	928	953

**4. Any other issues submitted in this proceeding are denied.**

**5. All of the provisions of the prior agreement shall be retained in the new agreement, except as modified by this award or the agreement of the parties.**



**Carl Kurtzman**

**Arbitrator**

**Dated: January 22, 1999**

**State of New York )**

**County of Nassau )**

**On the 22nd day of January, 1999, before me personally came and appeared Carl Kurtzman, to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.**



**ROBERTA CAPONI  
NOTARY PUBLIC, State of New York  
No. 4795025  
Qualified in Nassau County  
Commission Expires February 28, 2000**

Re: 1A-97-82

The parties, City of Newark and Deputy Fire Chiefs Ass'n, approve the request of the arbitrator for an extension to Jan. 31, 1999 for the filing of an award in 1A-97-82

City of Newark  
Phillip R. Jurdell

Deputy Fire Chiefs Ass'n  
Paul [unclear]

# **CARL KURTZMAN**

**Arbitration · Mediation · Fact Finding**

**September 18, 1998**

**Phillip R. Dowdell, Ass't. Corp. Counsel  
City of Newark Law Dept.  
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**Paul L. Kleinbaum, Esq.  
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Newark, New Jersey 07102-5410**

**RE: City of Newark  
and  
Newark Deputy Fire Chiefs Assn.  
Docket No. IA-97-82**

**Gentlemen:**

**At the hearing in this matter on September 17, 1998, the undersigned made the following ruling concerning the request of the City of Newark that it be permitted to submit proposals on issues not listed in the interest arbitration petition or in a timely response.**

**In its March 4, 1997 letter, the City objected to the processing of the Interest Arbitration petition during the pendency of a Clarification of Unit petition and requested an extension of time to file a response to the Interest Arbitration petition. In Director of Arbitration Hundley's letter, he advised that the interest arbitration process should proceed. Hundley did not address the City's request for an extension of time to file a response. There is nothing in the prior record to explain why the City could not or did not follow up on that request until a year after learning that the petition would be processed.**

**These facts were available to Arbitrator Haber when he exercised his discretion to deny the City's request for an extension of time to file a response to the petition. The Public Employment Commission has held that the City has not demonstrated that the arbitrator abused his discretion.**

**The previous arbitrator was aware that health benefit proposals had been discussed during negotiations and mediation. Arbitrator Haber exercised his discretion in denying the City's request to submit the health benefit proposals to interest arbitration. The Public Employment Relations Commission held that the arbitrator did not abuse his discretion in denying this request of the City.**

**This arbitrator acknowledges the claim of Counsel for the Deputy Fire Chiefs that the PERC decision is the law of the case. However, the arbitrator also acknowledges the City contention that it can submit to a new arbitrator its arguments regarding the submission of its proposals.**

**This arbitrator believes that all of the facts now presented to this arbitrator were previously presented and available to the prior arbitrator. This arbitrator believes that the previous arbitrator exercised his discretion correctly. Based on these facts, this arbitrator exercises his discretion in a similar manner and denies the City's request for an extension of time to file a response to the interest arbitration petition. This arbitrator also exercises his discretion to deny the City's request to submit to interest arbitration health benefit proposals which were discussed during negotiations and mediation.**

**Very truly yours,**

**Carl Kurtzman  
Arbitrator**

