

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest \*  
Arbitration between \*  
 \*  
 \* DECISION  
 \* AND AWARD  
 \*  
CITY OF ORANGE TOWNSHIP \*  
 \*  
 \*  
-and- \* Docket No.  
 \* IA-97-130  
 \*  
ORANGE FIRE OFFICERS ASSOCIATION, \*  
FMBA LOCAL 210 \*  
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Before: Joel M. Weisblatt, Arbitrator

Appearances:

For the City  
McCormack & Matthews  
By: Thomas M. McCormack, Esquire

For the FOA  
Fox & Fox  
By: David I. Fox, Esquire  
Stacey B. Rosenberg, Esquire

**D E C I S I O N**

The City of Orange Township (the "City" or the "Employer") and the Orange Fire Officers Association, FMBA Local 210 (the "FOA") are parties to a collective negotiations agreement which had a duration through December 31, 1995. Negotiations for a successor agreement reached an impasse and a Petition to Initiate Compulsory Interest Arbitration was filed on June 12, 1997. Pursuant to the Rules and Regulations of the Public Employment Relations Commission, the undersigned Arbitrator was duly appointed to serve in this matter on September 19, 1997.

The Arbitrator met with the parties on November 24, 1997, February 9, 1998 and February 20, 1998 in an effort to assist them in achieving a voluntary resolution to their dispute. The impasse persisted. Evidentiary hearings were scheduled and held on April 24, 1998, May 28, 1998, October 7, 1998, November 4, 1998, November 20, 1998, December 22, 1998 and December 28, 1998. A stenographic transcript of the hearing was

taken and distributed to the parties and the Arbitrator. Pursuant to the mutual agreement of the parties, the Arbitrator approved the reopening of the record for the limited purpose of allowing the City to revise its final offer (to the terms set forth on page two of its brief) and allowing the FOA to submit documentation of a recent firefighters' contract agreement in Newark. The parties executed a mutual agreement to extend the interest arbitration time limits establishing June 15, 1999, as the date for the issuance of the interest arbitration award.

The parties were provided with the opportunity to argue orally, present documentary evidence and examine and cross-examine witnesses. An extensive record was created over the course of the seven days of hearing. Numerous witnesses were examined including several called to present expert testimony. Literally hundreds of documents were placed in evidence for consideration by the Arbitrator. Both parties have submitted substantial post-hearing briefs. The entire record has been carefully considered. The evidence has been

evaluated in light of the eight statutory criteria set forth in N.J.S.A. 34:13A-16(g).

The parties failed to mutually agree to a terminal procedure. Therefore, under N.J.S.A. 34:13A-(d)(2) the dispute shall be resolved through a determination by conventional arbitration. This resolution shall be reached through application of all of the relevant statutory criteria, giving due weight as appropriate, to the issues presented by the unsettled elements in dispute.

### Statutory Criteria

N.J.S.A. 34:13A-16(g) provides as follows:

g. The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why others are not relevant, and provide an analysis of the evidence on each relevant factor:

(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 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, that 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 P.L.1976, c. 68(C.40A:4-45.1 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 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 a proposed local budget.

(7) The cost of living.

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

### Final Offers

The revised final offer presented by the City is as follows:

1. Term of Contract: 4 years
2. Salary Increases:
 

1/1/96	5.5%
1/1/97	0%
1/1/98	3.0%
1/1/99	2.5%
3. Testing: Institution of a random testing program.
4. Longevity: Elimination of longevity for all employees hired after date of arbitration award.
5. Health Benefits: Elimination of health benefits for all retirees hired after date of arbitration award.
6. Rank Days: Elimination of rank days for all employees hired after date of arbitration award.



The revised final offer presented by the FOA is as follows:

Economic Proposals

1. Term of Contract: 5-year contract effective January 1, 1996 through December 31, 2000.
2. Salary Increases:
 

7/1/96	5.5%
1/1/97	3.0%
7/1/97	3.0%
7/1/98	3.5%
1/1/99	3.5%
7/1/99	3.5%
1/1/99	5.5%
3. Increase in License Stipends:  
 Modify Article X to provide the following increases in stipends:
  - (a) Fire Inspector License - \$500 increase effective 1/1/96;
  - (b) Electrical Contractor License - \$500 increase effective 1/1/96;
  - (c) Fire Sub-Code Official Stipend - effective 7/1/97 increase stipend from \$7,500 to \$9,950.

4. Seminar Days: Modify Article XXVII to add one additional seminar day for each licensed officer.
5. Personal Days: Modify Article XVI, Section A to provide that personal days are equal to 14 hours.
6. Vacation Benefits: Modify Article XVI, Section B, to permit Fire Officers, at their option, to convert 48 hours time due to four vacation days at the end of each year to be used for the next calendar year.
7. Holiday Benefits: Modify Article XVI to add one additional holiday, Martin Luther King, Jr. Day effective 1/1/98.
8. Holiday Pay in Base Pay: Modify Article X, Section H to provide that holiday pay in base pay to equal 110 hours for all eligible officers.
9. Annual Co-Payment: Eliminate \$600 annual co-payment.
10. Funeral Leave Benefits: Modify Article XVI, Section B making funeral days the same as in the OMEBA contract.

11. Clothing Allowance Increase: Effective 1/1/97, Modify Article XII to increase the clothing allowance by \$150.
12. Dental Plan for Retired Members: Modify Article XIII to provide a dental plan for retired members. This plan should only include currently employed Fire Officers of the Fire Department of Orange who retire after January 1, 1996.
13. Eyeglass Plan: Add to Article XIII an eyeglass plan for current Fire Officers/spouses/family as well as retired Officers/spouses/family who retire after January 1, 1996.
14. **Manning Levels for Purposes of Overtime & Acting Officer Assignment**: Modify Article IV as follows with regard to manning levels and acting officers' appointments when vacancies exist:
  - (a) All responding fire apparatus shall have a captain assigned at all times while in service.

(b) If a tour captain is not on duty, a captain will be assigned to fill that position.

(c) The tour Deputy Chief's responding vehicle should have a Deputy Chief assigned at all times while in service.

(d) If the tour Deputy Chief is not on duty a Deputy Chief will be assigned to fill that position.

15. Longevity: Modify Article IX, Section A, to provide that longevity pay of 14% begin at the beginning of the 23rd year of service.
16. Rank Days Benefit: Modify Article VII, Section C to provide two (2) additional rank days for Captains and three (3) additional rank days for Deputy Chiefs. All rank days may be used as personal days or vacation days at the option of the Officer. Fire Officers will have until March 1 of each year to exercise either option with regard to rank days.

Non-Economic Proposals

- A. Implementation of the 24/72-Hour Shift Schedule.
- B. Vacation Picks: Modify Article XIV to provide that the Fire Department will maintain current vacation picks even if the Officer is transferred, unless the Officer agrees to a change in vacation picks.
- C. Promotional Pay Freeze: Remove Article X, Sections F and G, which refer to expired promotional pay freeze and promotional lists that have expired.
- D. Random Drug Tests: The FOA is ready to accept the City's proposal regarding random drug testing provided that the drug testing procedures are "truly random", which means the testing is done in accordance with the specific procedures in the contract; including, but not limited to, limitations on the number of random tests which the City can impose each year. The FOA proposes that a joint labor-management committee be

established to finalize the contractual  
procedures for random drug testing.

### **Positions of the Parties**

The FOA has presented thorough arguments in support of the proposition that its final offer is the more reasonable proposal. This presentation addresses the statutory criteria.

With respect to the public interest and financial impact criteria, the FOA relies upon the testimony of its expert witness that the City was financially able to fund the salary increases sought by the FOA and "...most certainly able to do so at a level comparable to those found elsewhere over the past year, that is at least 4% per annum." That opinion testimony was based on a review of relevant financial documents emphasizing an "exceptionally good year" in fiscal year 1998 and that relatively optimistic projections had been realized and even exceeded. The fiscal year 1998 experience was attributed to "good management" and a "positive economic environment." Of particular note were positive trends relating to increasing: property values; gross property rates; ratables; tax collection

rates; and delinquent tax collections. The FOA points to a 1998 fiscal year tax collection of \$860,000 above that anticipated in the budget as a cornerstone of the positive fiscal performance. It contends that its expert witness correctly concluded that the City has "turned the corner" on past financial troubles, making "remarkable strides at recovery".

The FOA stresses that the comparability and overall compensation criteria are strongly supportive of its proposals. It maintains that unit employees are "...among the lowest paid fire officers in Essex County and Union County." Specific note is taken to the \$4,588 difference (in 1995 rates) between Orange and Irvington when comparing the fire captain's base rate. It asserts that the awarding of the City's position will cause that differential to grow even further. Specific comparisons are also stresses with Newark and East Orange fire officers. Particular note is made of the fact that among any comparison group of fire officers, only Orange Fire Officers contribute to the cost of their health benefits. The FOA insists that the inclusion of any year with a wage freeze "...is



inconsistent with the contract settlements and awards for police and fire employees."

With respect to the cost of living criterion, the FOA uses a long term perspective for analysis. It points out that over the 22 years preceding this contract period, unit employees wage increases are "...just modestly above the CPI." The salary rates increased, on average, 0.6% per year above the average annual increase in the cost of living for the 22 year period chosen.

In addressing the eighth criterion, the FOA assails the fact that there have been several demotions in the bargaining unit, presumably for economic reasons, while promotions have taken place in the police department. The FOA challenges the City's credibility with respect to the stability and continuity of employment factor. The significance of the risks associated with performing fire fighting tasks, compared to non-public safety jobs, is stressed, especially in light of evidence relating to workload and manning levels.

The FOA devotes considerable attention to the Interlocal Services Agreement into which the City entered involving the operation, maintenance and management of the City's water system. It asserts that the City received "a significant monetary windfall" in the form of the initial franchise payment and, additionally, substantial annual payments for a period of 30 years. The FOA contends that the City's own expert witnesses confirm that this significant source of revenue has enabled the City to establish surpluses. It further argues that the long term payout of the funds dispels the contention that this is a one-shot source of revenue. The FOA maintains that \$4.4 million dollars is currently available for "any municipal purpose", including the costs associated with the dispute at hand.

The FOA points to the testimony of one of the City's financial experts, Thomas Banker, to draw certain comparisons with the City of East Orange. It stresses that, despite a history of deficits and fiscal difficulties, East Orange did not propose a wage freeze

in any year. It points out that East Orange was able to fund increases of 3.0%, 3.0%, 3.0% and 3.25%, for 1996, 1997, 1998 and 1999, respectively. The FOA further points out that its expert testified that Orange is in a superior financial situation to East Orange, rather than a similar one.

With respect to the CAP Law, the FOA emphasizes the fact that the index rate limitation can be expanded to 5.0% simply through the approval of an ordinance by the governing body; no separate voter approval is necessary. It characterizes such action as common in Essex County municipalities, even as *pro forma*. The FOA asserts that the CAP rate in any given year should not be dispositive of the salary increase rates.

The FOA places particular emphasis in its position on the issue of the 24/72 hour shift. It notes that the matter has been found to be mandatorily negotiable by the Public Employment Relations Commission. The FOA maintains that there is testimonial and documentary evidence in the record strongly supporting the contention that the 24/72 hour shift is in the public

interest and has been recently negotiated or awarded in numerous jurisdictions.

The FOA presents arguments with respect to certain issues that warrant some individual note in discussing its position. Initially, the issue of duration is addressed placing the length of the term in context with the expiration date of the old and proposed agreements. The FOA points out that the duration proposed by the City will last no more than six or seven months beyond the issuance of the award and the finalization of the current negotiations. Although the five year term proposed by the FOA is acknowledged to be greater than the norm, even that duration provides a prospective term of only one and one-half years until expiration. The FOA relies on the importance of labor peace and stability to urge the selection of its proposed duration.

With respect to the 1996 element of the salary issue, the FOA suggests that the City has "reneged" on an earlier agreement for a one-year extension to the prior contract. It further stresses the fact that the

rank and file firefighters received the proposed 5.5% increase for that year and that salary increases for the two groups have been "...virtually the same over the past 10-15 years."

The FOA supports its proposed increases in the license stipends by stressing the additional training and duties performed by employees holding these special licenses. It points out that the license holders are required to obtain and maintain the licenses at their own cost and on their own time.

The FOA contends that elimination of the \$600 benefits co-payment which it had previously negotiated with the City was also an element of a side-letter agreement which the City has "renege" upon. It also argues that no such benefits contribution exists in any police or fire contract among the municipalities in Essex County. The FOA further suggests that since the benefits are placed through the State Health Benefits Plan, the co-payment may be in violation of the law governing that Plan.

Lastly, the FOA argues that its contract "...should not be dictated by the PSOA contract." The FOA seeks to establish that there are elements of the record worthy of greater weight than the impact of the contract negotiated between the City and the Police Superior Officers Association. A number of other comparisons are stressed, primarily with East Orange and Irvington. The FOA proposal is characterized as reasonable and justified, despite its variation from the police superiors negotiated agreement. The FOA concludes that the statutory criteria establish its offer as more acceptable than the proposals of the City. It seeks to have the FOA proposals awarded herein.

The City opens its position statement with the assertion that it faces well documented economic difficulties common to an urban municipality in an urban county. It asserts that "...it is clear that in the light of said conditions, the city's offer to these valued and dedicated employees is clearly more

reasonable and appropriate than the one being advanced by the bargaining unit." The City acknowledges an aggressive effort to improve its fiscal conditions but warns that success in this area "...does not erase the ongoing economic plight of Orange." As with the FOA's presentation, the City addresses the statutory criteria.

In discussing the public interest criterion, the City cautions that the costs of providing the vital services associated with this unit of employees must be seen in full context. The implications of a wage increase is said to have direct effects on costs in other areas, i.e. pensions, longevity, and other benefits. The City also suggests that there will be the indirect impact of the effect this contract resolution will have on contracts with other bargaining units. The City takes particular note of the failure of the FOA analysis to take into considerations the repetitive, ongoing costs attributable to increases in base wages and other continuing economic benefits.

The City contends that the evidence reveals a shifting tax burden in Orange. It asserts that there has been a significant shift from commercial to residential as the source of property tax revenues. It also notes that there has been the highest tax rate increase of any municipality in Essex County. The City argues that the public interest demands a balancing between supporting the vital services provided and protecting the taxpayers from a fiscal crisis which could reverse the positive strides recently achieved by the City.

With specific respect to the FOA's 24/72 hour shift proposal, "the City does not vigorously oppose" such a change. However, it urges a finding that the public interest demands certain conditions of the implementation of the plan. It suggests that the change must be department-wide, that all time on the books must be appropriately converted, and that it be implemented for a finite period of time as a trial period.



Similarly, the City argues that the public interest criterion is critical with respect to its random drug testing proposal. It agrees in concept to the need to provide established procedures and safeguards for the program.

The City concedes that an analysis under the comparability criterion reveals that this bargaining unit is not one of the higher salaried groups of fire officers. However, the City points out that it expends an inordinately high proportion of its revenue on fire services compared to other municipalities. The City maintains that the Fire Officers fare well when past salary increases are compared to state and local government employees generally and even better when compared to private sector employees generally.

The City's greatest emphasis under the comparability criterion is a comparison with the Police Superiors Officers Association contract in Orange which was settled while this matter was in the hearing stage. It contends that its offer herein is the "same compensation package" negotiated between the City and

the SOA. The City asserts that this direct comparison is "...highly relevant and supportive of the City's position."

In examining the overall compensation criterion, the City characterizes the unit as receiving a "relatively competitive salary" and other economic benefits equal to or greater than a majority of municipal bargaining units. It claims that the review of this factor validates the City's position.

The City notes that the parties have entered into no stipulations that would be relevant to the determinations herein.

The City suggests that there is no dispute between the parties as to the lawful authority of the employer and that that criterion is not relevant.

With respect to the financial impact criterion, the City calculates the cost of the FOA proposals to be \$1,010,713, nearly double the cost of its own \$514,130 package. The City again stresses the fact that

additions to base salary have a fiscal impact "in perpetuity" on the taxpayers and the governing unit. It further reiterates the ripple effect any resolution might have on other bargaining units. It argues that the FOA expert witness "grossly underestimated" the cost of the Union's proposal and that an accurate view would reveal a package placing an "undue burden" on the taxpayers.

The City claims that the cost of living criterion weighs heavily in support of its proposals. It notes that the City's position costs 11% over four years and that the FOA's offer reflects a 31% increase (in salary alone) over five years. Based on three years of data, 1996 through 1998, the City projects that the cost of living will be well below the City's own offer for the contract period. It characterizes the FOA's proposals as "astonishingly" in excess of the cost of living. The City also argues that the bargaining unit has had salary increases outpacing the rise in the cost of living for the period of 1991 to 1996.

The City addresses the eighth criterion with the assertion that no unit employees have left the City's employ for similar employment elsewhere. It maintains that the workforce in the Orange Fire Department is stable.

The City places particular attention on a discussion of both the economic and fiscal condition of the community. With respect to the economic condition, the City argues that it faces a struggle based on: demographic data; employment statistics; income levels; property values; and tax burdens. With respect to the fiscal condition of Orange, the City notes substantial limitations to the resources available to deliver municipal services. The factors noted include: stability or instability of the tax rate; bond rating; tax ratable base; reliance on non-recurring revenues; trends in real estate values; and demographics. The City asserts that it cannot be expected to fund the compensation levels being sought by the FOA. It argues that the issues herein cannot be viewed in a vacuum but must be considered in context. It seeks a result which

will not undermine the City's efforts to "turn the corner" in the face of its fiscal challenge.

In conclusion, the City contends that "...both logic and law dictate that the proposal as offered by the City be accepted by this arbitrator and awarded to this bargaining unit."

### Discussion and Analysis

The *public interest* is always a relevant criterion in resolving an interest arbitration dispute. There are numerous elements to the public interest factor but the Arbitrator believes that this initial criterion is always worthy of substantial weight in determining the most reasonable resolution of the parties' dispute. Consider that, the services provided by the employees at issue are a particularly critical aspect of providing for the public safety. The City's ability to attract, retain and promote effective fire officers has a direct impact on the quality of life of the residents of the City. Fiscal responsibility is another component of the public interest that is directly relevant to the considerations in this interest arbitration. The public interest elements of the CAP Law must also be considered. Additionally, the morale of employees and the impact of this contract in the context of the overall labor relations process in the City are important considerations in relation to the public interest.

The record establishes that the employees in this bargaining unit, Fire Officers, perform a critically important function for the residents of the City of Orange. Fire protection is an important public need in any ordinary setting, however, in an urban environment with older building structures, it is of enhanced significance. Further, the record establishes that the number of alarms in the City have dramatically increased while the manning levels have been somewhat flat over a ten year period. This is indicative of increased productivity; the number of alarms per man is relatively high when compared to other jurisdictions. It is also relevant to point out the obvious, fighting fires includes a personnel risk component that is truly difficult to quantify. While injury and death statistics are compiled and have been placed on the record, it is meaningful to recognize that unit employees are committed to performing their duties, protecting the public, directly in the face of the dangers at hand.

It is in the public interest for the City to maintain a compensation structure which allows it to hire and retain skilled and dedicated employees in the fire department. Maintaining a reasonably competitive salary and benefit structure in the department is the most effective basis for accomplishing that goal. In considering a Fire Officers contract dispute with respect to the public interest, this may require an examination of the context of unit compensation with the rank and file Firefighters (supervised by this unit) and Superior Officers in the police department (who have parallel responsibilities regarding public safety). The public interest supports the concept that the various compensation programs for public safety units be in reasonable balance with each other. Just as a substandard wage and benefit package could undermine employee morale, an imbalance in the overall public safety compensation structure could have morale implications for one unit or another.

Consistency and balance in the overall labor relations process is also a meaningful element of the public interest criterion. In the case at hand there



are issues relating to a common contract year (1996) with other units already long settled and the implications of an offer for that year by a prior administration which was never consummated in a formal agreement. Additionally, there is the impact of evidence of a resolution of the negotiations of a 1996-1999 contract for the Police Superior Officers which was recently concluded.

Fiscal responsibility is a factor included in the public interest criterion because it is directly related to the municipality's ability to continue to provide public services. By statute, this includes consideration of the restrictions imposed by the CAP Law which limits budget appropriations from one year to the next. In the case at hand the Arbitrator has carefully examined the City's fiscal situation, looking at trends over a multi-year period to reach some conclusions as to the impact of the issues herein on future budgets. Some key elements are: the nature and health of the City's revenue sources; the City's ability to collect its taxes; trends comparing anticipated revenues to actual revenues; and

consideration of year end balances (actual revenues minus actual expenditures and reserved funds).

The contract terms awarded herein are fashioned to reflect consideration of all of the aforementioned elements of the public interest. Each of those factors, to varying degrees, has had an impact on the construction of the resolution of the dispute.

The five year duration proposed by the FOA is clearly in the public interest. Had the City proposal for four years been awarded, the contract would expire in little over six months from the issuance of the award; even less time following full implementation. The parties would be immediately into another collective bargaining cycle and negotiations could begin anew in just a matter of months. Continuous bargaining over terms and conditions of employment is not in the public interest. The public is well-served when the parties can conclude an agreement covering a fixed term into the future, allowing the next round of negotiations to be based on some reflection of the working experience under an existing contract. The

public is also served when the parties are able to establish a period of time when they are not in conflict over negotiations. Extended negotiations which continue long past contract expiration dates and leave little time to withdraw from a bargaining stance establish a cycle of potential frustration over the time lapse. That is not conducive to a sound labor-management relationship. Extending this contract duration for a fifth year may serve to break the cycle.

The Arbitrator takes particular note of certain aspects of the City's fiscal position that relate to the public interest criterion. There is no doubt that the City has recently emerged from a very desperate financial situation. As recently as Fiscal Year 1996, the City experienced a budgetary shortfall in operations of approximately \$2.6 million when comparing the actual expenditures (plus reserved funds) to actual revenues. The greatest portion of this shortfall was driven by the realization of revenues at about \$2.07 million below that anticipated in the budget. The two following fiscal years have seen a recovery for the City. Revenues have been realized in excess of

that budgeted and they exceed expenditures in order to establish and maintain a reasonable operations fund balance. However, the City's success in "turning the corner" on dire fiscal difficulties cannot be viewed in a vacuum. The Arbitrator must give weight to the fact that this recovery is very recent and that the fiscal situation may still be somewhat fragile. Particular note must be taken of the substantial use of funds from a one-time revenue source, the initial payment on the transfer of the City's water system. The financial impact factors will be discussed in greater depth under criterion number six (financial impact).

The five year package has been formulated with consideration of the implications of the CAP Law which restricts a municipality's ability to appropriate expenditures above the prior year's level of expenditures. The CAP Law considerations were clearly a prime force in shaping the City's final offer. It specifically notes that the salary increases for years three and four are drawn directly from the CAP Law rate of increase calculated on the statutory formula. Therefore it is obvious that the City indirectly

acknowledges that the first four years of salary rate increases present no CAP Law problem. Note that the CAP Law does not require that any single line item of the budget be limited to the CAP rate for the given year. It operates on an aggregate basis. Further, the statute does allow the municipality to increase the limitation to 5.0% simply through the adoption of an ordinance. There will be no necessity to rely on that option based on the award issued herein, however.

The Arbitrator points out that, although the salary rate increase of 3.7% for calendar year 2000 is clearly in excess of the formula rate for the CAP Law, there should be adequate time to address the need for this salary increase in the budget for that year. The actual impact of this small bargaining unit will not serve to cause any CAP problem but the Arbitrator acknowledges that there may be a ripple effect with other public safety units which could put some pressure on the budget. The Arbitrator also acknowledges the impact in certain years of deferred charges which must be funded within the CAP limits of the budgetary cycle in which the deferred charges appear. Other elements

of the public interest require some balancing in formulating this package and placing the 3.7% increase in the fifth year gives the City the maximum opportunity to plan for the adjustments necessary to accommodate the cost under the CAP restrictions. In sum, the public interest considerations under the CAP Law support the selection of the City's salary package offer for the first four years and the implementation of 3.7% as the increase for the fifth year to achieve balance (based on other public interest consideration discussed further on in this section) in the package.

The record establishes that the City has negotiated a four year collective bargaining agreement with the Police Superior Officers Association. That contract provided salary rate increases at the very same percentage increases proposes by the City herein for the Fire Officers unit. Consistency in collective bargaining is clearly an element under the public interest criterion. The fact that the City seeks to be consistent in the salary increases provided for these two parallel bargaining units supports the maintenance of overall morale in the area of public safety.

Consider, for example, the reaction of the Fire Officers if they were facing a lesser increase than the Police Superior Officers for that period of time. Indeed, the record already has evidence of a similar reaction in terms of the FOA position concerning the salary rate increase for 1996; at hearings occurring before the SOA achieved the 5.5% 1996 increase realized by the rank and file police and firefighter units, the FOA assailed the City for failing to offer that rate. Consistency among inter-related units provides the collective bargaining process with a certain predictability which is clearly in the public interest. Consistency is not an absolute. It allows for variations, within reason, but generally speaking it is worthy of considerable weight under the public interest criterion.

The first four years of the contract, as proposed by the City, will allow unit salaries to remain reasonably competitive in that the City should still be able to attract and retain skilled and dedicated Fire Officers. However, the pay rates will experience some loss of competitive position as a result of average

annual increases moderately below the average rates in the labor marketplace [specific comparisons will be discussed at greater length under the comparability criterion analysis]. It is necessary to provide a fifth year salary rate increase that is squarely within the competitive range to balance the moderate shortcomings of the initial four years. This fifth year balances the public interest in addressing the past fiscal problems, with their current implications, yet striving to maintain a reasonably competitive compensation structure.

One of the expert witnesses presented by the City was Thomas Banker. Mr. Banker devoted a portion his testimony to a discussion of economic and fiscal conditions of a municipality, as distinct factors from each other. The economic condition refers to the underlying factors reflecting the ability to conduct economic activity. This would include: population changes, demographics, workforce skill levels, employment levels, property values and tax burdens. Fiscal condition refers to the degree that the



municipal government can gather and use resources in a responsible manner to provide services.

The City has made some significant short term strides toward improving its fiscal condition, most dramatically reflected in its ability to generate and regenerate budget surplus while continuing to provide an adequate level of services. However, Mr. Banker's testimony points out ongoing concerns about the economic condition of the City, noting low median income levels, problematic property value issues, a high tax rate and high unemployment rates. Additionally, Mr. Banker provides some basis to believe that the fiscal recover, while very encouraging, may be fragile, considering: reliance on non-repeating revenue sources, the tax collection rates and bond ratings. The award herein gives due weight to the public interest elements of the impact of the economic and fiscal conditions of the City.

The public interest criterion is particularly important with respect to the issue of the 24/72 hour shifts proposed by the FOA. The FOA presented

unrefuted testimony that in other jurisdictions the 24/72 hour shift schedule has served to improve productivity. The Union Township Battalion Chief who has studied the issue and appeared as a witness, testified to increases in workload absorbed without increases in manpower. He specifically identified reduced levels of sick and injury leave as the source of the improved productivity. The State FMBA President also appeared to testify as to experiences in other jurisdictions where there were efficiencies and savings as a result of the 24/72 hour schedule. He revealed that nationally, about 70% of firefighters work on a 24 hour shift schedule. The Union Township Battalion Chief did acknowledge, on cross-examination, that the 24/72 hour schedule normally requires both officers and the rank and file to be on the same schedule. However, the parties stipulated that, if recalled, that witness would say that a split implementation is feasible in Orange. The State FMBA President acknowledged, on cross-examination that implementation of the 24/72 hour schedule is normally first negotiated with the larger, rank and file group before the officers. He also stated that he was unaware of any municipality where

the 24/72 hour schedule had been implemented on a split basis between the rank and file and the officers unit.

The Arbitrator notes that the City does not vigorously oppose the concept of the 24/72 hour schedule. It emphasizes certain conditions for the conversion. The City seeks to condition the change to a department-wide switch. It also seeks a determination that all leave time, whether on the books or prospective, be converted to reflect the shift change. Finally, the City seeks a finite trial period for the 24/72 hour schedule.

The conceptual structure of the 24/72 hour schedule and the conditions proposed by the City are all found to be supported by the record under the public interest criterion. These proposals are not mutually exclusive. They can be implemented in conjunction with each other.

The Arbitrator finds that under the record at hand, the Award herein shall provide a negotiations reopener clause relating to the 24/72 hour shifts.

This reopener shall be triggered immediately upon the negotiation or awarding of a 24/72 schedule for the rank and file firefighters in Orange. It shall be for the limited purpose of negotiating a switch to that schedule for the Fire Officers. The reopener shall be subject to statutory interest arbitration as the resolution mechanism should an impasse occur. Any switch implemented as a result of the reopener shall convert accumulated and prospective leave time to adjust for the shift change. Finally, the issue of a finite trial period for the implementation of the 24/72 hour schedule shall be a subject for the parties' reopened negotiations.

The reasons why this result is in the public interest are fairly obvious under the evidence presented. There is uncontroverted testimony of efficiencies and cost savings attributable to the 24/72 hour schedule, as compared with the current 10/14 hour shift structure. Further, there is similar evidence to suggest that the 24/72 hour shift system may improve productivity. Additionally, the City does not voice opposition to the basic concept. The City's concerns

as to conditional implementation present equally obvious public interest considerations. Supervisors in a fire department must be more effective when they work on the same shift structure as the employees they supervise. A department-wide approach to the schedule is simply more reasonable on its face. Note too, that the witnesses presented by the FOA acknowledged the general acceptance of the belief that supervisors and rank and file employees be on compatible schedules. The advance understanding that any leave time, whether accrued or prospective, be converted to account for the change is plain and logical. The proposed change was not intended to increase or decrease the leave benefits. It is a fully independent issue. The conversion of time, currently taken in 10 or 14 hour days (averaging 12 hours) is a simple computation when switching to a 24 hour work day. It was also noted that the larger, rank and file units are normally the contracts where the change to a 24/72 hour structure is initially established. The supervisors, using the City's own rationale, must then be fully expected to follow.

The reopener clause mechanism awarded by the Arbitrator is merely a vehicle to allow for the swift implementation of the 24/72 hour schedule upon the City's reaching such an understanding with the rank and file firefighters. The reopener is designed to avoid any legal challenge that might arise in the face of an automatic "parity" provision. However, given the positions of the parties expressed in this proceeding, the Arbitrator has little doubt that they will be able to quickly reach a voluntary agreement to implement the change for the Fire Officers. The issue of whether there should be a finite period as a trial implementation is best left to the reopened negotiations. It is most likely in the public interest that that period, if any, parallel the implementation agreement reached with the rank and file.

The *comparability criterion* is a factor which demands considerable weight in deciding the issues presented in the interest arbitration at hand. It is significant to note that under this criterion, there are separate elements of evidence weighing in support of each of the two positions presented by the parties.

This criterion presents several fairly specific conclusions which may actually suggest results that appear to be in conflict with each other. The weight attributed to these competing analyses is reflected in the discussion which follows and lends some measure of support to the positions of each party.

The Arbitrator finds, under this record, that internal comparisons with other employee units in the City of Orange to be of greatest significance. Particular weight is attributed to comparisons with the other public safety employees; especially with the Police Superior Officers. There are several reasons why these comparisons warrant the greatest emphasis. First of all, they are contracts negotiated with the same employer as the one involved in this dispute. They reflect a direct view of how that employer has managed its resources with respect to labor relations. It can provide an insightful impression of the employer's own values with respect to the budget, revenues, tax implications, future planning and programmatic priorities. Further the employees perform in the same labor marketplace as each other. In many

cases they have complimentary or parallel functions. In certain cases they promote from one unit to the other. In one respect, the fact that the Police Superior Officers, in supervising rank and file public safety employees, perform the job most similar to the Fire Officers. Historically, there has been a demonstrable, although not identically patterned, relationship among the compensation packages negotiated by these public safety employee groups. Finally, and of considerable significance, it must be noted that the Police SOA settlement is a dramatically recent event of direct relevance to the case at hand.

The 1996 element of the package awarded herein was relatively easy to reason out. The police and fire rank and file groups, as the last year in a prior agreement, received salary increases of 5.5%, effective July 1, 1996. The Police SOA recently negotiated an increase of 5.5%, effective January 1, 1996. The FOA proposes an increase of 5.5%, effective July 1, 1996 while the City proposes the FOA contract receive the same 5.5%, effective 1/1/96 in the Police SOA contract. In terms of internal comparability, the rate couldn't



be clearer, all these elements point to an increase of 5.5%. In terms of the implementation date, the more recent nature of the Police SOA settlement and the close parallel of the supervisory roles, makes the January 1, 1996 implementation date most reasonable.

There is no data for the two rank and file public safety units beyond 1996. The remainder of the Police SOA package is of importance for the same reasons noted above. The entire SOA salary settlement (including 1996) reveals the following:

Effective 1/1/96	-	5.5%
Effective 1/1/97	-	-0-
Effective 1/1/98	-	3.0%
Effective 1/1/99	-	2.5%

The Arbitrator attributes substantial weight toward this element of the comparability criterion. The comparison with the Police Superior Officers warrants considerable importance in the process of determining the resolution of the dispute at hand.

An examination of the internal comparison of wage increases negotiated by the FOA and the FMBA

(representing the rank and file firefighters in Orange)  
is clearly relevant. Consider the following:

<u>Date</u>	<u>FMBA</u>	<u>FOA</u>
1/1/92	2.0%	-
7/1/92	4.0%	6.25%
1/1/93	2.0%	-
7/1/93	4.0%	6.25%
1/1/94	2.0%	2.0%
7/1/94	2.0%	2.0%
1/1/95	2.0%	2.0%
7/1/95	2.0%	3.0%
1/1/96	-	[subject to current contract negotiations]
7/1/96	5.5%	

This comparison reveals a close similarity between the salary rate increases of the two units. However, there is clearly no established patterned formula as a matter of bargaining history. The salary increases awarded herein are consistent with the above evidence, as applied to the concepts of the comparability criterion.

Another element of the internal comparison with the Police SOA relates to the FOA proposal to end the \$600.00 employee contribution to non-salary benefits. Exhibit A-44, the 1994-95 Police SOA interest arbitration award, reveals that the arbitrator

implemented that non-salary benefit employee co-payment for the Police Superior Officers as part of a package also improving their longevity compensation. That arbitrator specifically noted that, "[B]ut for this employee contribution toward non-salary benefits, I would have rejected the proposed longevity increase." The FOA bargaining unit received the increase in longevity benefits and also implemented the non-salary benefit employee contribution (\$600) in its 1994-95 contract. Exhibit C-24 establishes that the 1996-99 contract between the City and the Police SOA continues to include both the improved longevity schedule and the non-salary benefit employee co-payment.

Other internal comparisons, with rank and file police and firefighters, do provide some support for the FOA proposal to eliminate the contribution in that those units do not make the co-payment. However, it is important to note that in the two year period 1994-95, the FOA and Police SOA bargaining units received 1% more in base salary increases over that received by the rank and file firefighters (9%, aggregate over two years versus 8%). Additionally, comparisons with

other fire departments in Essex County also support the FOA's efforts to eliminate the contribution from the FOA contract. However, the comparison worthy of greatest weight with respect to this issue is the direct comparison with the Police SOA. The bargaining history of implementation could not be clearer; the 1994-95 Police SOA interest arbitration award provides the substantial basis for retaining the co-payment in the FOA contract. The actual existing language of the FOA contract provides further basis for this determination, however, that shall be discussed in relation to the eighth criterion.

A comparison of salary rates for employees performing the same or similar functions in other Essex County municipalities is clearly relevant. Consider the following data as to the maximum rates for Fire Captain in effect in the last year of the prior contract, 1995:

<u>Municipality</u>	<u>Salary</u>
Maplewood	\$62,435
Irvington	62,165
Belleville	61,550
South Orange	61,410
Bloomfield	61,161
Newark	58,816

West Orange	58,266
East Orange	58,357
<b>Orange</b>	<b>58,177</b>
Montclair	57,403
Millburn	55,663

The salary rates in Orange are on the lower end of the comparison group. The Deputy Chiefs rate compares even less favorably. However, they are still within a competitive range. The evidence under this criterion supports salary increases somewhat higher than those proposed by the City, however, there is insufficient basis in this comparison to raise salaries at the rather extreme rates sought in the FOA proposed package.

An examination of the same data for the year 1996, using the January 1, 1996 increase of 5.5% for Orange (as proposes by the City and awarded herein) creates the following chart:

<u>Municipality</u>	<u>Salary</u>
Irvington	\$66,915
South Orange	65,150
Maplewood	64,901
Belleville	64,473
West Orange	62,115
Newark	62,051
<b>Orange</b>	<b>61,377</b>
Montclair	60,308
East Orange	58,357
Millburn	57,472

The position of the Orange Fire Captain is moderately improved, although this improvement will be eroded by the lack of a 1997 salary increase.

Comparisons with Irvington and East Orange are particularly meaningful for proper consideration of the comparability criterion. These two municipalities are geographically proximate, are responding to very similar economic and fiscal pressures, reflect somewhat similar urban environments, and present reasonably comparable working responsibilities.

An interest arbitration award was issued on August 21, 1998, providing the terms of resolution for the dispute between the City of East Orange and its firefighters, represented by FMBA Local No. 23. The duration of that new agreement extends from January 1, 1996 through June 30, 1999. The new agreement provided for a one year trial period for a 24/72 hour schedule. The salary rate increases awarded are as follows:

East Orange FMBA 1996-99 Contract

<u>Date</u>	<u>% Salary Rate Increase</u>
1/1/96	3.0%
1/1/97	3.0%
1/1/98	3.0%
1/1/99	3.25%

The 12.25% aggregate increase over a 42 month period represents an annualized average increase of 3.5% over the life of the contract.

The City of Irvington and FMBA Local No. 14 reached a settlement of the contract dispute covering firefighters for a duration from July 1, 1997 through June 30, 2000. The salary rate increases can be charted as follows:

Irvington FMBA 1997-2000 Contract

<u>Date</u>	<u>% Salary Rate Increase</u>
7/1/97	2.5%
7/1/98	3.0%
7/1/99	3.0%

The 8.5% aggregate increase over a three year period represents an annualized average increase of 2.83% over the life of the contract.

It is these comparisons with Irvington and East Orange which helped shape the salary rate increase component for the fifth year of the contract. Consider that the average annual increase rate for the East Orange contract is 3.5%; the 3.7% awarded herein for the 5th year is moderately higher. The annual average increase in the Irvington contract for its 3 years is 2.83%; that same computation for the life of the contract awarded herein is 2.94%. The last three years of this contract, closely matched to the three in Irvington, average 3.07%. The fifth year increase awarded herein is also fully consistent with the 3.75% salary rate increase recently negotiated by the City of Newark and its firefighters union as the year 2000 component of a four year contract. The 3.7% increase awarded in the fifth year serves to keep the salary rates in Orange reasonably competitive, balancing the continuing concern over economic and fiscal conditions with a need to respond to comparability with fire officers in other relevant jurisdictions.

The City presented evidence relating to public and private sector employees, generally, with respect to



wage increases for 1996 and 1997. Exhibit C-16 includes data on the Employment Cost Index (compiled by the U.S. Department of Labor) separated for private industry workers and state and local government employees. The private sector increases were 3.2% for 1996 and 3.0% for 1997. The state and local government figures were a little lower at 2.8% and 2.7% for 1996 and 1997, respectively. The increases awarded for the contract herein are quite reasonable in light of this general data. The weight attributed to evidence of a general, rather than a specific, focus is limited in that its direct application to the issues at hand is not as clear. This general information is helpful in shaping a reasonable package but it is not as directly relevant as evidence clearly demonstrated to be closely related to the employer and the employees at hand.

The overall compensation presently received by the employees at issue herein is reasonably competitive in the labor marketplace. The salary component is somewhat low but within a competitive range as discussed under the comparability criterion. The longevity provision, which was improved in the last

collective bargaining agreement, has a top level of 14%, added to base pay. Only Newark shares this 14% maximum longevity rate, the highest level in Essex County [Exhibit A-86]. It is 4% higher than the modal maximum level of 10%. Similarly, the vacation benefits [Exhibit A-89] enjoyed by Orange Fire Officers are well above the average. On the other hand, the clothing allowance and holiday benefits are somewhat below average.

One element of the overall compensation that is somewhat unusual for the "industry" is the \$600.00 contribution toward non-salary benefits. It must be acknowledged that this marginally diminishes the overall compensation package of the unit employees. However, as previously discussed, this was a component of the establishment of the improved longevity benefit and does not put the overall compensation structure out of balance.

In sum, the overall compensation levels are reasonably competitive in their current form. The package of salary and benefits is neither unreasonably

rich nor substandard. It is higher in certain areas and lower in others but balanced on an overall basis. This criterion cannot support the extensive and somewhat extraordinary list of benefit improvements found in the FOA's final offer. Perhaps it is a casualty of conventional arbitration to find an employee organization with as far reaching a list of benefit improvements at this late stage of impasse resolution. Nonetheless, under the overall compensation criterion, the Arbitrator finds that the contract changes awarded are the only ones warranted by the record. The overall compensation criterion weighs in support of balance and moderation in formulating the changes to be implemented in the parties contract.

The parties entered into no *stipulations* which would serve to have a determinative force in the proceeding at hand.

With respect to the *lawful authority* criterion the Arbitrator finds that the package awarded herein is fully consistent with that component of the Act. Of greatest significance under this criterion is the

finding that the award presented is in full consideration of limitations imposed by the CAP Law [P.L.1976, c. 68 (C.40A:4-45.1 et seq.)]. The Arbitrator has carefully considered Sheet 3b from the City's budgets for a period of five fiscal years. The record establishes clearly that the award herein will not create any conflict with the CAP Law restrictions. For the first four years of the five year duration, the City's offer has been selected and awarded. That offer, which mirrors the City's voluntary agreement with the Police SOA, was clearly drafted with close consideration of the implications of the CAP Law. Indeed, certain portions of the offer were labeled as matching the effective CAP rate for that particular year.

The evidence reveals that, although the CAP Law implications for Orange are more constraining on its budget than current experiences in many other communities, recent history has seen some fairly dramatic improvement in Orange's ability to appropriate within the CAP Law limitations. A modest level of CAP bank has been established which creates a little

flexibility for the municipality. Further, the fifth year, in which the salary rate increase exceeds the Cap index, provides the City with some measure of planning time to accommodate the 3.7% salary increase in that year. There are numerous options available to the City to deal with this cost factor in the year 2000. The Arbitrator notes that one of those options is the increase of the CAP limit to up to 5% by local ordinance. However, that is a policy determination to be made by the governing body. This award is in no way predicated upon reliance of passing such an ordinance. The Arbitrator finds that the package is reasonable under the lawful authority criterion and that the City is capable of funding the costs for this unit, if it so decides, under the statutory CAP index structure without reliance on the ordinance.

The financial impact criterion is of substantial importance in the matter at hand. As noted earlier, the City has experienced significant problems arising from its economic and fiscal condition over a period of several years. The recent successes in fiscal

condition are acknowledged and considered in light of the full financial picture.

Under any analysis it must be noted that the tax rate in Orange is relatively high. The City asserts that for 1997 it was the highest rate in the County at 27.150 (Exhibit C-4). However, the remarkably low equalization ratio for the assessed value of taxable property in Orange must be carefully considered. The equalization rate for 1997 is only 16.50%, meaning that properties are assessed at merely a small fraction of their fair market value. In order to draw a more meaningful comparison, the equalized tax rate must be considered. This data accounts for the assessment variations from municipality to municipality in computing an equalized tax rate for comparison purposes. The equalized rate of 4.48 for Orange is still the third highest in the County, behind only Irvington and East Orange, which have dramatically higher rates. However, it is still nearly 40% above the County average equalized rate of 3.21.

The City presents a comparison of tax rates from 1993 to 1996 for all communities in Essex County (Exhibit C-10). Once again this data is limited by the failure to provide equalized rates. However, as a measure of change for each community, the failure to use equalized figures is less problematic because the equalization ratios are not terribly dynamic over a short period unless there is a revaluation of property. The City stresses the 40% increase in the Orange rate over that time frame, the highest in the County, to emphasize its tax burden. However, it is meaningful to note that the greatest portion of that increase was in the first year, 1993-94. Indeed, using the City's own figures, the increase from 1994 to 1996 is only 10.37% for Orange and well within a range experienced by other communities.

The City's tax collection rate is another problematic matter. It has been basically flat over recent years but it is at levels consistently below 91%. While there has been a fairly steady experience of unanticipated tax collections, the tax collection issue is of concern. The relatively low rate places

pressure on the budget in several ways. Of particular note is the requirement to provide for uncollected taxes, noting that the school and county taxes must be paid to those respective bodies at 100%, and the limitations the tax collection rate places on budgeting anticipated tax revenues for the following year.

The City has been able to be somewhat less reliant on property taxes as a revenue source over the last few years because of its use of funds generated by an interlocal government agreement involving the water system. This agreement provided the City with an initial concession fee in excess of \$14.1 million. The FOA seems to believe that in this revenue source it has "found the money." The fact is that approximately \$12 million of that initial concession fee has already been appropriated in the budgets for fiscal years 1997, 1998 and 1999. Specifically, \$7.5 million was appropriated in FY 1997, \$2.217 million in FY 1998 and \$2.25 million in FY 1999. The FOA also points to annual franchise payments of \$2.3 million per year for the first five years, with an upward scale thereafter, as a further example of a "windfall" to the City. In point of fact



the City's Chief Financial Officer credibly explained that these annual payments were calculated to represent the value of the annual net revenue realized by the City from the water system prior to the transfer. That old source of revenue disappeared with the transfer. The new funds, it was explained, were not a new source of revenue but a replacement for the end of the prior revenue source.

The Arbitrator is quite concerned with the FOA's belief that it has "found the money" to finance the extraordinary economic proposal in its final offer. It bears recollection that the package proposed by the FOA includes salary increases totaling 27.5% over 5 years; the elimination of a \$600 non-salary benefit contribution negotiated in the very last contract; and economic improvements in 10 other benefit areas of the contract. The initial concession fee is not a repeating revenue source and it has been significantly exhausted in a relatively short period of time. The economic improvements sought by the FOA are repeating in nature, meaning that they must be funded anew in each budget. It is unrealistic to believe that

non-repeating sources of revenue can be reasonably relied on for extensive increases to costs of a repetitive nature. It is true that there appear to be other elements of the water system transfer agreement that will provide additional revenues to the City. However, these too do not appear appropriate to support extensive repeating costs. The value of the water system agreement is that it has allowed the City to stabilize its tax rate and regenerate some fund balance. It appears that this source of funds will be able to continue to serve that purpose on a moderate level over a period of time. However, it is not reasonable to believe that the water system intergovernmental agreement, as a source of revenue, can be relied upon to support a permanent dramatic upswing in the City's compensation program.

The Arbitrator finds that the economic package awarded herein is structured in such a way that will not create any adverse impact on the taxpayers or the governing body. It is a reasonable balance over five years which is designed to allow continued stabilization in the tax rate. Indeed, based on the

evidence at hand the Arbitrator finds that the award for this unit will not, in and of itself, cause any change in the municipal purpose tax rate component. The Arbitrator also finds that the economic changes as a result of the award herein will not have any impact on the governing unit's ability to continue to provide the current level of services or any other planned services relating to the budgetary evidence in the record at hand.

The *cost of living* criterion warrants some weight in reaching the final determination in this matter. Exhibit A-38, Table 3 reveals that the CPI-U for the New York/Northeast New Jersey region, as measured in July of each year, can be charted as follows:

<u>Year</u>	<u>July CPI-U</u>	<u>% Change</u>
1995	158.2	-
1996	162.3	2.59%
1997	166.7	2.71%
1998	170.8	2.46%

The available data on this record indicates that the package awarded is clearly reasonable in light of this

criterion. The annual average increase provides a moderate real wage increase component but the overall impact is within reasonable distance of the cost of living trend.

The eighth statutory criterion initially relates to the *continuity and stability of employment*, but it also includes a consideration of other factors ordinarily and traditionally considered in collective bargaining in both the public and private sectors. With respect to the continuity and stability of employment, the package awarded herein will certainly maintain a reasonably competitive compensation structure. There is no evidence to suggest that there is any risk of flight of bargaining unit members; indeed these officers are clearly dedicated career employees who have made a substantial, long term commitment to the community. The package is also designed to protect against further fiscal crisis which could force instability through reductions in force or demotions.

The concept of pattern bargaining or internal consistency among bargaining units is among the most common considerations in the collective bargaining process, whether the public or private sectors is involved. The impact of the Police SOA settlement must be viewed as a component of the eighth criterion as well as an element of comparability. That settlement, with salary rate increases identical to those proposed by the City herein, must be recognized as a particularly compelling consideration under the traditional and ordinary aspect of that criterion. Further, that negotiated settlement failed to eliminate the \$600.00 non-salary benefit contribution which the FOA seeks to eliminate in this proceeding.

Bargaining history and the negotiated intent of existing contract language is a meaningful factor under the ordinary and traditional component of the eighth criterion. In the case at hand, it is relevant to examine the precise contract language negotiated by the parties with respect to the non-salary benefit contribution, Article X, Section A.:

Each fire officer shall contribute \$600.00 annually as a co-payment toward non salaried benefits, to be determined by the City, effective July 1, 1995. This amount will not be increased through June 30, 2001. Also, at least until June 30, 2001 no currently retired fire superior officer nor any fire superior officers who retire prior to June 30, 2001 will be required to make the \$600 co-payment after retirement. Any changes to this Article X Salaries, A. will be subject to negotiation by the parties.

There is a clear indication of intent for the above language to remain in place for a period of at least five years. This contract provision was obviously viewed in the long term as it was negotiated. It is true that the parties left themselves an out in the final sentence of the clause, but, in light of the current Police SOA contract, the Arbitrator finds no compelling basis to alter the co-payment negotiated in the last contract.

The eighth criterion, as it relates to bargaining history and negotiated intent, is also relevant with respect to the FOA's proposal to delete "obsolete" references to a promotional pay freeze. The relevant language in Article X, Section G, reads as follows:

This salary freeze for Fire Captain and Deputy Fire Chief shall remain in effect until the

expiration of the current Department of Personnel promotional list.

Although one might reasonably assume that a list dating to 1994-95 has probably expired, the record does not establish, in point of fact, that the list referenced has expired, as asserted by the FOA. However, given the obvious negotiated intent of the parties, the Arbitrator finds it important to identify the promotional list as the one in effect when the 1994-95 contract was drafted. The eighth criterion fully supports a determination that Article X, Section G, should be modified to identify the promotional list referenced as the current one in effect when the 1994-95 contract was drafted. There is no evidence of an intent for the promotional pay freeze to survive that list and the City made no effort to reinstitute the freeze. Bargaining history and prior negotiated intent are clearly factors traditionally and ordinarily used in the course of determining the resolution of negotiations over terms and conditions of employment. Of course, if the promotional list in effect when the 1994-95 contract was drafted is, in fact, expired, it would only make sense for the parties to mutually agree

to delete the freeze language rather than rely on the modification ordered herein, which effectively renders the freeze inoperative if the list has expired.

The FOA's response to the City's proposal for random drug testing is the suggestion that a joint labor-management committee be formed in order to finalize procedures for implementing the program. This is an approach that is quite common in both the public and private sectors. It serves to raise the acceptance of the validity of the process because it raises the trust level of the employees. Jointly developed procedures create a drug testing program that is more likely to be secure, providing reliable results. The City and FOA's positions are found to be consistent with respect to this issue. The establishment of a plan through a joint labor-management committee is supported by the eighth criterion and, due to the greater likelihood of its acceptance and effectiveness, it is warranted under the public interest criterion as well.



The total net annual economic change for each year of the agreement can be computed in terms of either percentage changes or dollar changes. The computation of the percentage total net annual economic change for each year of the award herein is very straightforward. The following calculations represent the total net annual economic changes for each year.

1996	-	5.5%
1997	-	0
1998	-	3.0%
1999	-	2.5%
2000	-	3.7%

Since salary is the only economic benefit which is improved, the total net annual economic change mirrors the salary rate increases. To the extent that salary rate increases have a direct cost impact in other benefit areas such as longevity, these percentages also accurately reflect the changes when applied to a base figure including the benefit as well.

Using the 1995 base salary calculations presented by the FOA in Exhibit A-21, the unit-wide base salary

cost component of the annual change can be calculated as follows:

1996	-	\$102,274
1997	-	0
1998	-	58,854
1999	-	50,517
2000	-	76,634

The City urges a cost analysis including certain benefit areas such as longevity and holiday pay. Using the City's methodology, the dollar value of the net annual change, including its impact on certain economic benefits, can be calculated as follows:

1996	-	\$111,521
1997	-	0
1998	-	64,175
1999	-	55,084
2000	-	83,562

The Arbitrator has considered the total net economic change for each year of the agreement. Irrespective of the method of calculation, the Arbitrator finds the package awarded herein to be most reasonable under the statutory criteria. The earlier discussion and

analysis of each criterion has been accomplished in consideration of the computations set forth above.

The evidentiary record simply does not support the changes sought by the City with respect to longevity, health benefits for retirees, and rank days. These items appear reasonable as currently set forth in the contract. They were not addressed in the recently negotiated Police SOA contract and compelling reasons for the changes were not supported under the statutory criteria.

Similarly, the record does not support contractual changes with respect to the following issues presented by the FOA: license stipends; seminar days; personal days; vacation benefits; holiday benefits; holiday in base pay; funeral leave benefits; clothing allowance; dental plan for retirees; eyeglass plan; manning levels; rank days; and vacation picks (non-economic). There is a lack of compelling evidence for the sought after changes above. The FOA could not provide sufficient supporting facts for any of these items to warrant adjustment from the *status quo* under the

statutory criteria. The current status of each item appears reasonable. Further, it is significant to note that the above list of items includes numerous economic issues. The earlier discussion with respect to the public interest, lawful authority and financial impact criteria establish that the economic package awarded was crafted in light of considerable concern over the potentially fragile nature of the City's fiscal revival. The evidence established that there was little or no room beyond the package for further labor costs for this unit, much less sufficient funds to finance the extraordinary economic package presented by the FOA. The discussion under the overall compensation and comparability criteria was also significant in determining that the extensive "other benefits" list above be rejected.

In conclusion, the statutory criteria, as applied to the evidence presented, establishes that the resolution of the issues in dispute at interest arbitration be as follows:

- (1) DURATION: January 1, 1996 through December 31, 2000
- (2) SALARY:     Effective 1/1/1996   - 5.5%  
                  Effective 1/1/1997   - 0  
                  Effective 1/1/1998   - 3.0%  
                  Effective 1/1/1999   - 2.5%  
                  Effective 1/1/2000   - 3.7%

(3) 24/72 HOUR SCHEDULE:

The contract shall include a negotiations reopener clause for the specific purpose of implementing a 24/72 hour schedule. This reopener shall be triggered immediately upon the negotiation or awarding of a 24/72 schedule for the rank and file firefighters in Orange. It shall be for the limited purpose of negotiating a switch to that schedule for the Fire Officers. The reopener shall be subject to statutory interest arbitration as the resolution mechanism should an impasse occur. Any switch implemented as a result of the reopener shall convert accumulated and prospective leave time to adjust for the shift change. Finally, the issue of a finite trial period for the implementation of the 24/72 hour schedule shall be a subject for the parties' reopened negotiations.

(4) DRUG TESTING: The contract shall establish a joint labor-management committee for the express purpose of implementing a random drug testing program for unit employees, with appropriate protective procedures.

(5) PROMOTIONAL PAY FREEZE: Article X, Section G, shall be modified to identify the Department of Personnel promotional list [the expiration of which triggers the end of the promotional pay freeze] as the promotional list in effect at the time the 1994-95 contract was drafted.

(6) ALL OTHER TERMS: The prior contract shall remain in full force and effect except as modified herein or by the express mutual agreement of the parties. All other proposals presented by either party are hereby rejected.

These terms have been determined in accordance with the statutory requirements and shall be awarded herein as the final resolution of all issues in dispute at interest arbitration. As a closing note, it is particularly disappointing that the parties were unable to reach a voluntary resolution of this dispute. The parties could have resolved this matter much more

swiftly and inexpensively through voluntary resolution. Although there were certainly a substantial number of competing considerations, the record seemed to point, quite clearly, to the result awarded.

**A W A R D**

For the foregoing reasons, in accordance with N.J.S.A. 34:13A-16 et seq., IT IS HEREBY ORDERED that all issues in dispute at interest arbitration be resolved as follows:

(1) DURATION:

January 1, 1996 through December 31, 2000.

(2) SALARY:     Effective 1/1/1996   - 5.5%  
                  Effective 1/1/1997   - 0  
                  Effective 1/1/1998   - 3.0%  
                  Effective 1/1/1999   - 2.5%  
                  Effective 1/1/2000   - 3.7%

Retroactive payments shall be made in accordance with the effective dates of each pay rate increase.

(3) 24/72 HOUR SCHEDULE:

The contract shall include a negotiations reopener clause for the specific purpose of implementing a 24/72 hour schedule. This reopener shall be triggered



immediately upon the negotiation or awarding of a 24/72 schedule for the rank and file firefighters in Orange. It shall be for the limited purpose of negotiating a switch to that schedule for the Fire Officers. The reopener shall be subject to statutory interest arbitration as the resolution mechanism should an impasse occur. Any switch implemented as a result of the reopener shall convert accumulated and prospective leave time to adjust for the shift change. Finally, the issue of a finite trial period for the implementation of the 24/72 hour schedule shall be a subject for the parties' reopened negotiations.


(4) DRUG TESTING: The contract shall establish a joint labor-management committee for the express purpose of implementing a random drug testing program for unit employees, with appropriate protective procedures.

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promotional list in effect at the time the 1994-95 contract was drafted.

(6) ALL OTHER TERMS: The prior contract shall remain in full force and effect except as modified herein or by the express mutual agreement of the parties. All other proposals presented by either party are hereby rejected.

Dated: June 10, 1999  
Skillman, N.J.

  
\_\_\_\_\_  
Joel M. Weisblatt  
Arbitrator

On this 10th day of June, 1999, before me personally came and appeared Joel M. Weisblatt, 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 the same.

  
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Attorney-at-law