

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

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In the Matter of the Interest Arbitration

X Re: Docket No.
IA-97-94

between

X

TOWNSHIP OF EDISON

X

"Township"

X

-and-

X

EDISON PAID FIRE OFFICER'S
ASSOCIATION LOCAL NO. 2883

X

X

"Association"

-----X

APPEARANCES

For the Township

WEINER LESNIAK

Catherine M. Elston, Esq., of Counsel

For the Association

COURTER, KOBERT, LAUFER & COHEN, P.C.

Fredric M. Knapp, Esq., of Counsel

Stephen E. Trimboli, Esq., of Counsel

BEFORE: Martin F. Scheinman, Esq., Interest Arbitrator

BACKGROUND

The Association is the recognized collective bargaining representative for the Town's Fire Lieutenants, Fire Captains and Chief Fire Inspectors. The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 1995. Sometime prior thereto, they entered into negotiations for a successor agreement. Those negotiations proved unsuccessful and on or about March 7, 1997, the Association demanded interest arbitration. Pursuant to the rules and regulations of the State of New Jersey Public Employment Relations Commission ("the Commission"), I was designated to hear and adjudicate this dispute.

Initially, I met with the parties at their request in an attempt to mediate a settlement of this dispute. A number of unresolved issues were narrowed during mediation. However, the parties were unable to resolve all of their outstanding issues. Thereafter, formal interest arbitration commenced.

Hearings in this matter were held before me on December 16, 1997, February 2, 1998 and July 23, 1998.¹ At those hearings, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence relevant to the statutory criteria. This included budgetary and financial information. The parties submitted charts, graphs and data dealing with all of the

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At the July 23, 1998 hearing, the parties agreed in writing to waive the statutory time limits with the understanding that Arbitrator Scheinman shall issue this Opinion and Award as expeditiously as possible."

statutory criteria. Upon my receipt of same, the hearings were declared closed.

Thereafter, the parties submitted post-hearing briefs and reply briefs. I then requested certain clarifications of those exhibits and documents. Upon my receipt of same, the record was declared closed.

POSITIONS OF THE PARTIES

The Association has proposed a five (5) year Agreement with a term of January 1, 1996 through December 31, 2000. It notes that the Township has proposed an Agreement with an identical term.

The Association has proposed across the board wage increases of three and nine tenths percent (3.9%) on January 1 of each year of a five (5) year Agreement.

The Association maintains that its salary proposal is the most reasonable. It contends that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13A-16(g).

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the Association maintains that the interests and welfare of the public will be protected and promoted by the awarding of its wage proposal. It asserts that a stable work force among its Fire Officers is in the best interest of the public. The Association argues that its wage proposal is equitable and lends itself to a stable work force.

The Association contends that the Township's Fire Officers are continuously exposed to a higher rate of on-the-job hazards as compared with their counterparts in comparable communities. It argues that the Association's wage proposal, if awarded, will provide an incentive for the Township's Fire Officers to remain in their positions.

The Association also contends that its wage proposal is consistent with the wage increases agreed to by the Township and

International Association of Fire Fighters, Local 1197, which represents the Township's rank and file firefighters. It asserts that the Township has proposed an economic package for its Fire Officers which is less than the Township has agreed to grant its rank and file firefighters.

The Association further asserts that the Township's proposed economic package is substantially less than the economic package the Township has agreed to grant its police officers and police superior officers. For these reasons, it argues that the Township's wage proposal does not serve the interest or welfare of the public.

According to the Association, a Fire Inspector represented by Local 1197 is currently paid the same annual salary as a Fire Lieutenant represented by the Association, i.e., \$58,363.25. It maintains that the Township's wage proposal, if awarded, would result in the salaries of Fire Officers represented by the Association being surpassed at the lowest levels by the higher level salaries paid to firefighters represented by Local 1197. The Association insists that such an outcome could not possibly serve the interests and welfare of the public.

The Association acknowledges that the interest and welfare of the public criterion requires Interest Arbitrators to consider the constraints imposed by New Jersey's Cap Law. However, it maintains that the Township has presented no persuasive evidence that its wage proposal is necessitated by any Cap considerations. The Association contends the Township's voluntary agreements with its

three other uniformed bargaining units, i.e., firefighters, police officers and police superior officers, exceed the three and one-half percent (3.5%) permitted under the Cap Law in 1996, 1997, 1998, 1999 and 2000. Thus, it insists that "[t]here can be absolutely no CAP considerations when the Township has voluntarily entered into agreements with at least three other unions in excess of the 3.5% permitted under the CAP Law." (Association Brief at pg. 21)

The Association maintains that the Township's wage proposal disregards fairness and equity and, if awarded, will create instability among employees of the Township and its Fire Department. Thus, the Association argues that the Township's wage proposal "is contrary to the interests and welfare of the public and the interests of the employees themselves by virtue of the fact that disharmony would be created with other bargaining units by awarding the Township's proposal." (Association Brief at pg. 24)

For all of these reasons, the Association insists that the interests and welfare of the public would be best served by awarding the Association's wage proposal.

The Association maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions also supports awarding its wage proposal. It contends that the Township's wage proposal, if awarded, would result in wage increases for the Township's Fire Officers which are smaller than the wage increases granted to police and fire

department employees in other New Jersey jurisdictions. The Association relies upon the following data in support of that assertion.

<u>MUNICIPALITY</u>	<u>WAGE INCREASES</u>
Newark Firefighters	1/1/96 - 5.5% 1/1/97 - 5.5% 1/1/97 - 4.5%
West Orange Fire Supervisors	1/1/96 - 3.5% - 7/1/96 - 3.5% 1/1/97 - 3.5% - 7/1/97 - 3.5%
Elizabeth Firefighters	1/1/96 - 6.0% 1/1/97 - 4.0% 1/1/98 - 4.0%
Rahway Fire Supervisors	7/1/96 - 4.5% 7/1/97 - 4.5% 7/1/98 - 4.5%
Woodbridge Firefighters District One	1/1/97 - 3.75% 1/1/98 - 4.0% 1/1/99 - 4.25% 1/1/00 - 4.50%
Montclair FMBA Local 20	11/1/96 - 2% 7/1/96 - 3% 1/1/97 - 3% 7/1/97 - 1.75% 1/1/98 - 3% 7/1/98 - 1.75%
Summit FMBA Local 54	1/1/96 - 2% 1/1/97 - 3.9% 1/1/98 - 3.9%
Hamilton Township Fire District No. 6 FMBA Local 84	1/1/97 - 4% 1/1/98 - 4% 1/1/99 - 4%

(Association Brief at pg. 26)

Thus, the Association asserts that its wage proposal is lower than some of the wage increases granted to uniformed employees by

comparable jurisdictions. The Association further alleges that the Township's wage proposal is "not even in the ballpark" with these settlements from comparable jurisdictions. (Association Brief at pg. 27) Thus, it argues that the Association's wage proposal is supported by comparisons to the wage increases granted to uniformed employees in comparable jurisdictions.

The Association also maintains that its wage proposal is supported by the Town's wage settlements with its firefighters, police officers and police superior officers. It asserts that the Township has granted these other police and fire fighting personnel three and nine tenths percent (3.9%) wage increases on January 1, 1996, 1997, 1998, 1999 and 2000. The Association further asserts that the record establishes that since at least 1980, there has been relative parity between the economic settlements granted the Township's Fire Officers and the economic settlements granted the Township's firefighters. It contends that there is a rationale basis in the record to conclude that this economic pattern should continue. Thus, the Association argues that its wage proposal is supported by comparisons with the wage increases granted to the Township's other uniformed employees.

The Association, however, insists that "[t]here simply has never been a consistent pattern of benefits nor of settlements over the years between Fire Officers and Police Superior Officers or with rank and file Police Officers." (Association Brief at pgs. 28-29) Thus, it argues that I should award the Association's wage proposal because it is "consistent with the internal pattern

established by the Township with other bargaining units, especially the settlement reached with the firefighters represented by IAFF Local 1197, the employees directly supervised by Fire Officers represented by" the Association. (Association Brief at pg. 29)

The Association further alleges that the Township has approved pay raises of twelve percent (12%) from 1994 through 1997 for various non-union Township employees. (Association Exhibit no. 20) It asserts that on or about October 29, 1997, five (5) of these raises were granted voluntarily by the Township to Directors in the Mayor's administration. For this reason as well, the Association argues that evidence concerning comparability supports awarding the Association's wage proposal.

The Association also maintains that the salaries paid to the Township's Fire Lieutenants and Fire Captains compare unfavorably to the salaries paid to their counterparts in municipalities throughout New Jersey. It asserts that Edison's Fire Lieutenants ranked fifteenth (15) when compared to Fire Lieutenants in twenty one (21) comparable municipalities and that Edison's Fire Captains ranked twelfth (12) when compared to Fire Captains in twenty one (21) comparable municipalities. The Association further asserts that Fire Captains in the neighboring community of New Brunswick ranked second statewide in terms of salary and that New Brunswick's Battalion Chiefs ranked first. It submits the following data in support of these assertions:

1995 Salary Rankings *
Lieutenant/Captain/Battalion Chief

<u>TOWN</u>	<u>LT./CAPT.</u>	<u>CAPT./BATT. CHIEF</u>
1 Jersey City	\$66,426	\$72,532
2 New Brunswick	\$65,300 (1994)	\$73,973 (1994)
3 Kearny	\$64,113	\$73,050 (Deputy Chief)
4 Ridgewood	\$63,982	\$70,321 (1994)
5 Patterson	\$63,845 (1994)	N/A
6 Irvington	\$62,794	\$70,822 (Deputy Chief)
8 Passaic	\$61,015	\$65,575
9 Weehawken	\$61,039	\$71,416
10 Hillside	\$61,003	\$68,935
11 Woodbridge	\$60,054 (1997)	N/A
12 Harrison	\$59,602 (1996)	\$70,090 (Deputy Chief - 1996)
13 Rahway	\$59,340 (1996)	\$66,137 (1996)
14 Elizabeth	\$59,260	\$65,482
15 Edison	\$58,363	\$65,658
16 Morristown	\$57,050	\$59,015 (Dep - 1994)
17 West New York	\$56,900	\$77,600 (Dep)
18 Orange	\$56,677	\$63,435 (Dep)
19 Belleville	\$56,545 (1993)	\$74,769 (1993)
20 Teaneck	\$55,590	\$59,432
21 Bloomfield	\$53,652	\$61,161

Captain/Battalion Chief Average = \$68,300

Edison 65,658 = 2,642 below average (96.13%) of average

Lieutenant/Captain average = \$60,128

Edison \$58,363 = \$1,765 below average (97%) of average.

* unless otherwise noted

(Association Exhibit No. 3)

Thus, the Association argues that "the awarding of the Township's proposal for wages would drive salaries of Edison's Fire Officers even lower when compared to other paid Fire Officers throughout the state." (Association Brief at pg. 32) However, the Association insists that its wage proposal, if awarded, "would serve to at least maintain the relative position of Fire Officers in Edison compared with other municipalities." (Association Brief at pg. 32)

For these reasons, the Association argues that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Association maintains that it has proposed that its members receive the same benefit improvements as those the Township granted to its rank and file firefighters. It contends that the current inconsistent treatment of Fire Officers in comparison with the Township's rank and file firefighters, provides a disincentive for any firefighter to seek promotion to the Fire Officer ranks.

The Association also claims that if the Township's wage proposal were awarded, senior Township firefighters with twenty two (22) or more years of experience would earn as much as Fire Lieutenants and Chief Fire Inspectors. It insists that "[s]uch a

perversion of the salary structure is wholly unwarranted by the evidence in the record and is inconsistent with any concept of sound labor relations." (Association Brief at pg. 34)

For these reasons, the Association insists that this criterion also supports the awarding of its wage proposal.

As to the criterion regarding stipulations between the parties, the Association maintains that the only stipulations entered into by the parties were to waive the statutory time limit for issuing an Award and for the Award to be based upon an Agreement with a five (5) year term.

As to the criterion regarding the lawful authority of the Township, the Association maintains that this requires an evaluation of the Township's authority to pay for the Association's proposal pursuant to the requirements of New Jersey's Cap Law. It contends the Township's voluntary agreements with its three other uniformed bargaining units exceed the three and one-half percent (3.5%) permitted under the Cap Law in 1996, 1997, 1998, 1999 and 2000. The Association also argues that the Township has presented no persuasive evidence that its wage proposal is necessitated by any Cap considerations. Thus, it insists that there is no evidence that the Township lacks the lawful authority to pay for the wage increases proposed by the Association.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Association maintains that the impact of its wage proposal, if awarded, would be "marginal". It argues that this conclusion is supported by an

analysis of the Township's budget by the Association's expert, Vincent Foti.

The Association also asserts that the Township's economic settlement with Local 1197 is virtually identical to the wage and benefit improvements being proposed by the Association. "Accordingly," it argues that "whatever impact may arise for the seventeen (17) members of [the Association's] bargaining unit would be surpassed greatly by any voluntary settlement with the scores of firefighters represented by Local 1197." (Association Brief at pg. 36)

The Association further asserts that the Township reached identical wage increase settlements for 1996 through 2000 with both of its police unions. Since those police unions represent all of police personnel, the Association maintains that the cost of those voluntary settlements greatly exceeds the cost of the wage and benefit improvements being proposed by the Association.

The Association points out that it is representing only (17) seventeen employees in this proceeding, but that the three (3) bargaining units discussed above, i.e., the Firefighters, the Police Officers and the Police Superiors, contain approximately two hundred and eighty (280) employees. "Accordingly, [it argues,] there is no way imaginable that the awarding of the economic offer of the Fire Officer's Association would have any adverse impact whatsoever upon the Township of Edison, its taxpayers or upon the general public." (Association Reply Brief at pgs. 2-3)

The Association maintains that by all measures, Edison is a

rich municipality. As an example, the Association asserts that the Middlesex County Board of Taxation has determined that the Township has 6.7 billion dollars in taxable property. Since the Association's bargaining unit is comprised of only seventeen (17) Fire Officers, the Association contends that awarding its economic proposals would not have a significant impact on the Township or its residents and taxpayers.

In summary, the Association argues that when all of the relevant data is considered, it is clear that the Township can afford to pay for the Association's wage proposals without having a negative impact on the Township, its residents or its taxpayers. Thus, it insists that this criterion also supports awarding the Association's wage proposal.

As to the criterion concerning the cost of living, the Association maintains that it is not a key factor in this dispute. It notes that both the Association's and the Township's wage proposals exceed the current rate of increase in the cost of living. While the Association acknowledges that the cost of living is currently increasing at a relatively low rate, it also points out that in the early and mid 1980s, the rates of increase in the Consumer Price Index were in the double digit range. However, it argues that Fire Officers never received double digit wage increases. Instead, during that period of time, employers protested and downplayed the importance of the cost of living criterion. In the Association's view, the Township cannot now claim that the cost of living is of major importance. Thus, it

insists that the cost of living criterion is of minimal significance in this proceeding. For these reasons, the Association argues that its wage proposal is consistent with the statutory requirement to consider the cost of living.

As to the criterion regarding the continuity and stability of employment, the Association maintains that Township's wage proposal, if awarded, would lower morale among Fire Officers, create discontent among them and adversely impact upon labor relations in Edison. It asserts that "[f]ailing to award the ... Association its proposed wage increases would seem to defy common-sense in view of the voluntary settlement" between the Township and its other union represented uniformed personnel. The Association further asserts that such a lack of logic would lead to poor moral, disharmony and poor labor relations. That, in turn, the Association contends, would have a negative impact upon the continuity and stability of employment among the Township's Fire Officers. Thus, it insists that this criterion also favors awarding the Association's wage proposal.

For these reasons, the Association argues that an analysis of all of the relevant statutory criteria establishes the reasonableness of its wage proposal and that it ought to be awarded.

The Association has proposed that effective upon execution of the Agreement, longevity rates be frozen for employees receiving longevity benefits in excess of ten percent (10%) of their base salaries, and that the longevity benefits available to all other

Fire Officers be capped at ten percent (10%) of their base salaries. In return for this cost saving measure, the Association also has proposed that effective January 1, 1998, employees with twenty two (22) years of completed service be paid a senior officer differential equal to six and one-quarter percent (6-1/4%) of their base salary. It maintains that identical proposals were agreed to by the Township and the union representing its rank and file firefighters. Therefore, the Association argues that its longevity and Senior Officer differential proposals are reasonable and should be awarded.

The Association rejects any suggestion by the Township that the Associations' Senior Officer differential proposal is unreasonable because more Fire Officers would be eligible for that benefit than would firefighters on a percentage basis. It points out that since supervisors tend to have more years of service with an employer than the employees they supervise, it makes sense that Fire Officers on average would have more years of service with the Townships than firefighters. The Association insists that "[t]o now penalize the [F]ire [O]fficers and deny them the senior officer differential in light of their number of years of dedicated service [would be] grossly unfair." (Association Reply Brief at pg. 12) For this reason as well, it argues that the Association's Senior Officer differential proposal should be awarded.

The Association has proposed that each Fire Officer be given the option of reducing his or her insurance coverage in return for a payment equal to fifty percent (50%) of the difference between

that employee's original and reduced insurance premiums. It contends that an identical cost saving measure was agreed to by the Township and Local 1197. Therefore, the Association insists that its insurance proposal is reasonable and ought be awarded.

The Association has made four (4) proposals regarding sick and disability leave. These were based upon the settlements covering the other uniformed personnel in the Township.

The Association has proposed that employees who are absent from duty for three (3) consecutive work days provide, upon request of the Township, certification from a licensed physician. It also has proposed that the Township's Mayor be permitted to request a physician to determine whether employees are entitled to use paid sick time at the Township's cost and that proof of illness be by a certification signed by a licensed physician. The Association has further proposed that the Township be permitted to implement a disability insurance program providing that after seven (7) days of sick leave an employee shall receive full pay from the insurance company for a period up to one (1) year under the terms of that policy. It also has proposed that during the period an employee receives full pay, the employee shall endorse over to the Township any Workers Compensation benefit checks received by the employee within forty eight (48) hours of receipt of said checks.

The Association maintains that identical sick leave and disability proposals were agreed to by the Township and the union representing its rank and file firefighters. Therefore, it argues that the Association's sick leave and disability proposals are

reasonable and should be awarded.

The Association has proposed that effective January 1, 1996, the salary of Chief Fire Inspectors be increased to a rate equal to the salary paid to Fire Captains. It contends that the Association's Chief Fire Inspector proposal is supported by evidence concerning the statutory criteria. Therefore, the Association argues that its Chief Fire Inspector proposal is reasonable and ought to be awarded.

The Association has proposed that the employee designated by the Township as the Ryan White Officer while off duty receive overtime. It contends that an identical provision was agreed to by the Township and Local 1197. Therefore, the Association insists that its Ryan White proposal is reasonable and ought be awarded.

The Association has proposed that the Township pay Fire Officials or Fire Subcode Officials a rate twelve percent (12%) above the highest rank, i.e., Captain. It contends that the Township and the union representing its rank and file firefighters agreed that Fire Subcode Officials would be paid two thousand dollars (\$2000) in additional annual salary which would count as annual salary for pension purposes. For this reason, the Association argues that its Fire Official proposal is reasonable and ought be awarded.

The Association has proposed that the Agreement's reopener language be amended to read as follows: "In the event that any other Township employee receives any economic or non-economic benefits greater than or in addition to those provided, the

Association at its option may reopen the contract for further negotiations." It contends that the Association's reopener proposal is supported by evidence concerning the statutory criteria. Therefore, the Association argues that its reopener proposal is reasonable and ought to be awarded.

The Association has proposed that employees required to be on jury duty receive full compensation less any payments received from the court for attendance as jurors. It also has proposed that personal days not be part of vacation schedules. The Association maintains that identical jury duty leave and personal day proposals were agreed to by the Township and Local 1197. Therefore, it argues that the Association's jury duty leave and personal day proposals are reasonable and should be awarded.

The Association has proposed that, as permitted by Township ordinance, the title of Fire Lieutenant be modified to Fire Captain and that the title of Fire Captain be modified to Fire Battalion Chief. It asserts that the record demonstrates that the Township's Fire Lieutenants do the work performed by Fire Captains in comparable communities and that the Township's Fire Captains do the work performed by Fire Battalion Chiefs in comparable communities. Thus, the Association argues that its title change proposal is supported by the record and ought to be awarded.

The Association has proposed that a new provision be added to the Agreement which would provide that in the event that an employee is killed or seriously injured in the line of duty, any units directly involved will be relieved of duty for the balance of

the shift with pay. The Association insists that this injury in the line of duty proposal is reasonable and should be awarded.

The Association has proposed that Article XV, Section 5 of the agreement read as follows:

For Fire Officers hired after December 31, 1997 and subsequently promoted, vacation schedule for Chief Inspector and Training Officer to be capped at 42 working days and vacation schedule for Tour Officers to be capped 16 working days.

As Fire Officers hired before December 31, 1992 retire or leave the employee of the Township, the most senior employee hired after January 1, 1993 will be treated for vacation pay purposes so that the number of employees eligible to receive vacation benefits will remain frozen at the number of Firefighters employed by the Township on December 23, 1992.

(Association Brief at pg. 14)

It contends that an identical provision was agreed to by the Township and the union representing its rank and file firefighters. Therefore, the Association insists that its vacation proposal is reasonable and ought be awarded.

The Association has made non-economic proposals concerning the Agreement's union business, personnel file, agency shop and drug testing provisions. It asserts that all of its non-economic proposals are reasonable as well as identical to provisions agreed to by the Township and Local 1197. Therefore, the Association argues that its non-economic proposals concerning the Agreement's union business, personnel file, agency shop and drug testing provisions ought be awarded.

In all, the Association submits that its final offer comports more closely than the Township's with all of the relevant statutory

criteria set forth in N.J.S.A. 34:13A-16 (g). It asks that its final offer be awarded.

The Township, on the other hand, maintains that its final offer is the more reasonable one. Like the Association, the Township has proposed a five (5) year Agreement with a term of January 1, 1996 through December 31, 2000.

The Township has proposed that employees not be granted a wage increase in 1996 or 1997, and that they be awarded a two percent (2%) wage increase on January 1 of 1998, 1999, and 2000. It also has proposed that any wage increase awarded not be retroactive.

The Township maintains that its salary proposals are the most reasonable. It contends that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13A-16(g).

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the Township maintains that its wage proposals best serve the public interest. It points out that as "the repository of the public trust", the Township is "compelled to keep the costs of fire service at a rate that is neither oppressive nor overbearing to its taxpayers." (Township Brief at pg. 3)

The Township also notes that the Association is the only uniformed bargaining unit that has failed to come to terms with the Township. It acknowledges that the Township's three (3) other uniformed unions, i.e., Police Officers, Firefighter and Police

Superiors, received annual three and nine tenths percent (3.9%) wage increases over a five (5) year term. However, the Township insists that these other three (3) uniformed unions also agreed to major givebacks which are opposed by the Association. As examples, the Township asserts that "with respect to two police unions, terminal leave was eliminated and accumulated sick leave capped; all unions froze longevity, and Local 1197 and PBA Local 75 also froze starting salaries; all three unions reduced and capped vacation time." (Township Brief at pgs. 3-4) Thus, it argues that the three and nine tenths percent (3.9%) wage increase was accompanied by cost saving devices which the Association is opposing.

For these reasons, the Township insists that its wage proposal best serves the interest and welfare of the public and ought to be awarded.

The Township maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions also supports awarding its wage proposal. It contends that a comparison of the settlements with the Township's three (3) other uniformed unions shows a pattern of settlement that is premised upon major givebacks for salary increases.

The Township acknowledges that its settlements with its three (3) other uniformed unions were not "parallel in every respect; benefits and 'givebacks' vary from union to union." (Township Brief

at pg. 6) However, it asserts that "all three unions reduced and capped vacation days; all three unions froze longevity at 10% or 12.5%; and critically, with respect to the two subordinate unions that received a 'senior officer differential' of 6.25% after 22 years of service, starting salaries were frozen and two steps were added to the salary schedule." (Township Brief at pg. 7) The Township contends that there are other givebacks which the Association has refused to accept, as well as benefit improvements being proposed by the Association which the Township's other three (3) uniformed unit did not receive.

For these reasons, the Township argues that based upon its settlements "with the Police Superiors, Local 1197 and PBA Local 75", the three and nine tenths percent (3.9%) annual wage increase over five (5) years awarded to those other uniformed unions, should not be awarded to the Association.

The Township maintains that the following municipalities are comparable to Edison: "Pleasantville, Madison, Plainfield, North Bergen, Jersey City, Clifton and Perth Amboy...." (Township Brief at pg. 21) It contends that these communities are comparable to the Township with respect to density, income and median residential value. The Association asserts that comparisons with these seven (7) comparable communities shows that the Township's Fire Officers have a higher salary schedule and superior holiday, vacation, sick leave and personal day benefits. It further asserts that the Township's Fire Officers receive other benefits which are not received by their counterparts in comparable jurisdictions.

The Township maintains that the communities relied upon by the Association for comparisons are not comparable to Edison. It asserts that communities relied upon by the Association as comparables, such as Newark, West Orange, Rahway, Woodbridge, Montclair, Summit and Hamilton Township, "are not appropriate comparables as they differ from Edison in many respects but particularly with regard to population density: all of the [Association's] comparables have either a higher population or density or both." (Township Reply Brief at pg. 4) The Township submits the following data in support of those assertions:

Union's Comparables

	POPULATION*	AREA**	DENSITY***
EDISON	90,402	30.17	2,934
West Orange	40,802	12.11	3,228
Elizabeth	106,298	12.32	8,930
Woodbridge	95,152	23.04	4,040
Montclair	38,045	6.30	5,986
Summit	20,192	6.05	3,265
Hamilton Township	17,722	111.26	144
	INCOME****	RESIDENTIAL VALUE*****	
EDISON	\$55,837	\$186,200.00	
West Orange	\$59,056	\$202,800.00	
Elizabeth	\$31,478	\$145,400.00	
Woodbridge	\$50,457	\$160,000.00	

Montclair	\$65,842	\$271,700.00
Summit	\$83,876	\$321,400.00
Hamilton Township	\$44,821	\$ 93,400.00

- * T13 - 1994 Estimated Population
- ** T13 - Area in Square Miles
- *** T13 - 1994 Population Density
- **** T13 - Median Family Income, 1989
- ***** T13 - Median Residential Property Value, 1990

(Township Reply Brief at pg. 5)

For these reasons as well, the Township insists that its wage proposal is supported by the relevant evidence concerning comparability.

The Township also maintains that comparisons to the wage increases of non-uniformed employees in the private and private sectors also support awarding the Township's wage proposal. It asserts that "[i]n no instance during 1996, 1997 or 1998 did wage increases [in the private sector] rise above 3.0%." (Township Brief at pg. 6) The Township further asserts that "first year wage increases for state and local government were [even] lower, reported at 3.0% for 1998 and 2.5% for the first and second quarters of 1997." (Township Brief at pg. 6) For these reasons, it argues that the Township's wage proposal is more in line with the pattern of wage increases in the public and private sectors.

Finally, the Township contends that the Association's reliance upon salary increases granted to certain Township officials "is a blatant attempt to misguide [the] Arbitrator." (Township Reply

Brief at pg. 6) It asserts that the increases received by these officials were lower than the wage increase being proposed by the Association. The Township further asserts that these officials, like the Township's other employees, gave the Township valuable givebacks in return for their wage increases. For this reason as well, the Township argues that the Association's wage proposal is not supported by the relevant evidence concerning comparability.

For all of these reasons, the Township argues that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Township maintains that its Fire Officers are well compensated in terms of wages and benefits.

As to the criterion regarding stipulations between the parties, the Township maintains that the parties entered into the following stipulations at the July 23, 1998 hearing in this proceeding:

1. **Article VI, Section 6** will be modified to reflect the current practice which is to call in either a captain or a lieutenant.
2. **Article X, Section C1** will be modified to reflect that fees may not exceed the prevailing rate the Township pays the Township attorney.
3. **Article X, Section E1** will be modified to provide that in no event will the reimbursement exceed the prevailing rate the Township pays the Township attorney.
4. **Article XII, Section 3** will be modified to include all subjects covered to the extent mandated by Title VII and the New Jersey Law Against Discrimination.
5. **Article XIV, Section 2** will be modified to delete the phrase "at the request of either party."

6. **Article XV, Section 8C** will be modified to provide that any compensation checks shall be endorsed over to the Township within 48 hours.
7. **Article XV, Sections 11 and 12** will be deleted.
8. **Article XVI, Section 2** will be modified to conform with the new Interest Arbitration Act.
9. **Article XVI, Section 3** will be deleted.
10. **Article XXVI, Section 1**, will be modified to add: "This section will conform with the requirements of the Federal Labor Standards Act."
11. **Article XXX, Section 1** will be modified to conform with the requirement of the Americans with Disabilities Act of keeping medical data in a separate, confidential file under lock.
12. **Article XXX, Section 4** will be modified to include the "Mayor and his/her designee" as those permitted to review personnel files.
13. **Article XXXI, Section 1**, will be modified as follows: "Circumstances surrounding the filing of a complaint or the preferring of charges against a Fire Officer shall be investigated by the Edison Fire Department or Police Internal Affairs.
14. **Article XXXI, Section 4** will be modified to delete the word "representation".
15. A **Complete Agreement Provision** will be added.

The Township agreed to withdraw, from its final offer, the proposals as set forth on Exhibit 18A:

1. **Article VI, Section 1**
2. **Article XII, Section 1.**
3. **Article XV, Section VI.**
4. **Article XXIV, Section VI.**

(Township Brief at pg. 29-30)

As to the criterion regarding the lawful authority of the Township, the Township maintains that "an analysis of the Township's SFY 1999 budget reflects that with the proliferation of

salary increases and without the benefit of significant reductions in other areas, the Township will find it extremely difficult to remain within CAP for future budgets." (Township Brief at pg. 33) It contends that awarding the Association's wage increase proposal without adequate reductions in benefits, will force the Township to "face a serious budgetary dilemma relating to the 'Cap' in fiscal year 2000." (Township Brief at pg. 33) For this reason, the Township argues that evidence relating to this criterion also supports awarding the Township's wage proposal.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Township maintains that its wage proposal is more consistent with the financial limitations facing Edison. It asserts that "acceptance of the Fire Superiors offer will have a significant negative affect on the municipal element of the local property tax." (Township Brief at pg. 31)

The Township contends that between 1988 and 1998, property taxes in the Township rose at a rate exceeding five percent (5%) per year, which, it points out, is well in excess of inflation. It asserts that "[u]sing 1988 as the base year, the average home is worth 13.4% less in 1998, but pays 61% more in property taxes." (Township Brief at pg. 31) The Township also maintains that increases in state aid have not kept pace with increases in the municipal budget, thereby resulting in a municipal budget increasingly reliant on property taxes as a funding mechanism.

The Township maintains that it is facing other budgetary

problems. It asserts that the Township has large and rapidly increasing pension obligations for its fire, police and other unionized employees. The Township further asserts that state tax appeals have substantially eroded its tax base.

For these and other reasons, the Township insists that "it appears inevitable that the Township is likely" to require a tax increase of "possibly more than 10% on the local rate." (Township Brief at pg. 39)

The Township further maintains that "the acceptance of the Fire Superiors offer [will have] a significant negative impact on each sector of ... property tax payers." (Township Brief at pg. 39) It also asserts that "acceptance of the Fire Superiors offer would make it extremely difficult for the Township to maintain existing programs and services while preventing it from expanding existing local programs and services and would also prevent the Township from initiating new programs and services." (Township Brief at pg. 41)

The Township rejects any suggestion by the Association that awarding the Association's economic proposal will not impose a financial hardship on the Township due to the small size of the Association's bargaining unit. It asserts that the Association's economic package, if awarded, would cost the Township \$633,210 over five (5) years, whereas the Township's economic package, if awarded, would cost the Township only \$74,283 over five (5) years. (Township Brief at Chart 19) The Township further asserts that the cost of accumulated sick time for the Association's members is

"astronomical". It maintains that seven (7) Township Fire Officers have over one hundred thousand dollars (\$100,000) of accumulated sick time, that seven (7) other Township Fire Officers have over eighty thousand dollars (\$80,000) of accumulated sick time, and that three (3) Township Fire Officers have over fifty thousand dollars (\$50,000) of accumulated sick time.

For all of these reasons, the Township argues that the criterion concerning the financial impact on the governing unit, its residents and taxpayers, supports awarding the Township's wage proposals.

As to the criterion concerning the cost of living, the Township maintains that the cost of living increased by trivial amounts in 1996, 1997, and 1998. It submits the following data in support of that assertion:

CONSUMER PRICE INDEX(T17)

	<u>JAN</u>	<u>FEB</u>	<u>MAR</u>	<u>APR</u>	<u>MAY</u>	<u>JUN</u>
1998	0.0	+0.1	+0.0	+0.2	+0.3	+0.1
1997	N/A	N/A	+0.1	+0.1	+0.1	+0.1
1996	+0.4	N/A	+0.4	+0.4	+0.3	+0.1
	<u>JULY</u>	<u>AUG</u>	<u>SEPT</u>	<u>OCT</u>	<u>NOV</u>	<u>DEC</u>
1998	+0.2	N/A	-----	-----	-----	-----
1997	+0.2	+0.2	+0.2	+0.2	+0.1	+0.1
1996	+0.3	+0.1	+0.3	N/A	N/A	+0.3

(Township Brief at pg. 44)

The Township contends that the Association's proposed annual wage increases of three and nine tenths percent (3.9%) greatly exceeds the one and seven tenths percent (1.7%) increase in inflation in 1997 and 1998. Thus, it insists that this criterion also supports awarding the Township's wage proposals.

As to the criterion regarding the continuity and stability of employment, the Township maintains that continuity and stability of employment within the Township requires that the Township's final wage offer be awarded. It insists that the financial condition of the Township is "fragile" and that there must be cuts in the "soaring cost of Police and Fire salaries." (Township Brief at pg. 46) For these reasons, the Township argues that this criterion also supports awarding its salary proposal.

With respect to Article II, Section 1, which deals with Association business, the Township has proposed that the Association's Executive Board be limited to two (2) members. It asserts that Deputy Fire Chief Campbell testified that as the Agreement now stands, if no limitation is imposed, manpower problems may arise if all Fire Officers are attending an Association meeting. For this reason, the Township argues that its Association business proposal is reasonable and ought to be awarded.

With respect to Article II, Section III, the Township has proposed that the last sentence of that provision be deleted. It

contends that Local 1197 agreed to the same revision in its contract with the Township.² Therefore, the Township argues that the revision it has proposed in Article II, Section II, of the Agreement should also be awarded.

With respect to Article III, Section I, the Township has proposed that Fire Officers be prohibited from posting indecent material on bulletin boards and from defacing official notices posted on those bulletin boards. It maintains that the purpose of the Township's bulletin board proposal is to prevent violations of both State and Federal laws concerning sexual harassment and sexual discrimination. For this reason, the Township argues that its bulletin board proposals are reasonable and ought to be awarded.

With respect to Article III, Section II, the Township has proposed that the Fire Chief have access to the Fire Captains' office in case of an emergency. It asserts that the record shows that this access is needed to communicate official business to firefighters on their off-duty time and to receive interoffice mail. For these reasons, the Township argues that its access proposal is reasonable and ought to be awarded.

The Township has proposed that Article XI, Section II, of the Agreement be changed from "one working day off to one-half working day [off] to attend the funeral of a non-immediate family member." (Township Brief at pg. 15) It also has proposed the deletion of Article XI, Section III, which the Township asserts permits

²

The Township's brief incorrectly refers to this provision as Article II, Section II. (Township Brief at pg. 14)

unspecified and unlimited time off for out of state funerals. The Township insists that this provision is overly broad and could cause a hardship if many Fire Officers are attending the same out of state funeral. For these reasons, it argues that the Township's funeral leave proposals are reasonable and ought to be awarded.

The Township has proposed that it be given the authority to change a Fire Officers work schedule upon thirty (30) days advance notice to the Association. It asserts that the record shows that awarding this proposal would generate cost savings for the Township. Therefore, the Township argues that its work schedule proposal is reasonable and ought to be awarded.

The Township has proposed that the Agreement's overtime provisions be amended "to eliminate payment of overtime for off-duty court appearances when an action is brought against a firefighter by the Township or by a firefighter against the Township." (Township Brief at pg. 16) It asserts that none of the Township's other uniformed union agreements provides for overtime for off-duty court appearances under these circumstances. Therefore, the Township argues that its overtime proposal is reasonable and ought to be awarded.

The Township has proposed that Article X, Section B3 and Section E1, of the Agreement be amended by adding the phrase "to the extent required by law" to those sections. It also has proposed that Article X, Section E1, of the Agreement be amended by adding "that in no event will the reimbursement exceed the prevailing rate the Township pays the Township Attorney." The

Township maintains that the other aspects of its proposal regarding Article X of the Agreement, have been agreed to by the Association. Thus, it insists that all of its proposals regarding Article X are clearly reasonable and ought to be awarded.

The Township has proposed deleting Article XIII, Section 2, of the Agreement. It asserts that Article XIII, Section 2, is in contravention of New Jersey State law. Therefore, the Township argues that its proposal is reasonable and ought to be awarded.

The Township has proposed limiting "the number of employees to two who are qualified to be excused from their work assignments during hours of negotiation." (Township Brief at pg. 17) It points out that the Township's Agreement with Local 1197 provides for a specific number of employees to attend negotiating sessions. Therefore, the Township argues that its proposal is reasonable and ought to be awarded.

The Township has proposed that "effective January 1, 1996 sick time for the Chief Inspector and Training Officer ... be reduced from 15 sick days to 8, and for fire officials, from 7 sick days to 1. Sick time shall also be cumulative through 1995. The Township also proposes that a one year sick leave shall exhaust all sick time, personal days, and vacation time." (Township Brief at pg. 17) It asserts that the Township requires the cost savings which would be generated by awarding these proposals. The Township further asserts that it is "[e]xtremely relevant ... that in two PBA settlements, terminal leave was eliminated and a cap of \$20,000 was put on accumulated sick time." (Township Brief at pg. 17) For

these reasons, it argues that the Township's sick leave proposals are reasonable and ought to be awarded.

The Township has proposed that Fire Officers be required to work "at least 13 hours (or more than half a shift) to qualify for nonchargeability for a sick day." (Township Brief at pg. 18) It asserts that similar provisions can be found in the Township's agreements with its three (3) other uniformed employee unions. Thus, the Township argues that its proposal is reasonable and ought to be awarded.

The Township has proposed deleting Article XX, Section 1, of the Agreement. It asserts that the Township should not be paying someone who no longer works for the Township. For this reason, the Township argues that its proposal is reasonable and ought to be awarded.

The Township has proposed that the number of personal days for Chief Inspectors and Training Officers be reduced from ten (10) personal days to two (2) personal days and that the number of personal days for all other Fire Officers be reduced from three (3) personal days to one (1) personal day. It asserts that the record shows that awarding this proposal would generate cost savings for the Township. Therefore, the Township argues that its personal day proposal is reasonable and ought to be awarded.

The Township has proposed eliminating all of the Agreement's educational benefits except for those concerning Emergency Medical Technician training. It asserts that the record shows that awarding this proposal would generate cost savings for the Township.

Therefore, the Township argues that its education benefit proposal is reasonable and ought to be awarded.

The Township has proposed that prescription drug benefits for Fire Officers be changed from a two dollar (\$2.00) co-payment to a five dollar (\$5.00) co-payment for generic drugs, and from a two dollar (\$2.00) co-payment to a ten dollar (\$10.00) co-payment for brand name drugs. It asserts that prescription drug proposal is supported by evidence of comparability. Thus, the Township argues that its prescription drug proposal is reasonable and ought to be awarded.

The Township has proposed the following reduction in vacation days for all employees of Local 2883:

Expired Contract		Township Proposal	
<u>Ch. Ins. - TO/Tour</u>		<u>Ch. Ins. - TO/Tour</u>	
1-5	16/6	Year 1	No Vacation
6-10	24/9	2-6	8/6
11-15	32/12	7-11	12/9
16-20	40/15	12-16	16/12
21+	48/18	17+	20/15

(Township Brief at pg. 19)

It asserts that the Township's three (3) other uniformed employee unions all agreed to reduce and cap the vacation time of their members. Therefore, the Township insists that its vacation proposal is reasonable and ought to be awarded.

The Township has proposed that longevity be fixed at rates that were in effect in 1996 and be capped at ten percent (10%). It asserts that the Township's three (3) other uniformed employee unions all agreed to freeze and cap the longevity benefits of their

members. Therefore, the Township insists that its longevity proposal is reasonable and ought to be awarded.

The Township has proposed eliminating a wage differential of twelve and one half percent (12-1/2%) as well as hazardous duty pay. It also has proposed eliminating shift differential as a housekeeping detail. The Township asserts that the record shows that awarding these proposals would generate cost savings for the Township. Therefore, it argues that the Township's differential and hazardous pay proposals are reasonable and ought to be awarded.

Finally, the Township has proposed eliminating the Agreement's past practice provision.

The Township opposes the Association's proposal for a Senior Officer differential. It acknowledges that a Senior Officer differential was granted to the Township's PBA and Firefighter Locals. However, the Township insists that "there is no pattern of settlement with respect to this issue as to the contracts that have already settled with the Township: only the two subordinate uniformed divisions received this benefit - the Police Superiors were not granted `senior officer differential.'" (Township Brief at pg. 10) It also contends that none of the comparable municipalities relied upon by the Association grant their Fire Officers a Senior Officer differential. For these reasons, the Township argues that the Association's Senior Officer differential proposal is unreasonable and should not be awarded.

The Township also maintains that there is no basis in the record for changing the job title of Township Fire Lieutenants to

captains and the job titles of Township Fire Captains to battalion chiefs, as proposed by the Association. It asserts that the comparisons relied upon by the Association in support of its title change proposals "failed to take into account the difference in demographics between the municipalities compared." (Township Brief at pg. 27) For this as well as other reasons, the Township insists that the Association's job title change proposals are unreasonable and should not be awarded. In all, the Township maintains that its final offer best comports with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16(g). It asks that its final offer be awarded.

OPINION

Several introductory comments are appropriate here. In the absence of an agreement to the contrary by the parties, the procedure to be used in this matter is conventional interest arbitration. As Interest Arbitrator, I must adhere as follows to the statutory criteria set forth in N.J.S.A. 34:13A-16(g).

[The Interest Arbitrator must] 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 the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and the welfare of the public. Among the items the arbitrator 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) Comparisons of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding 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 sections 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, salaries, 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 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 shall take into account, to the extent the 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 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.

Accordingly, and with these principles in mind, I now turn to the facts of this dispute.

Both the Association and the Township have proposed a five (5)

year Agreement with a term of January 1, 1996 through December 31, 2000. For the following reasons, I agree with the parties' preference for a five (5) year Agreement.

A five (5) year Agreement makes good sense. First, an Award covering a five (5) year period will enable the parties involved in this proceeding to have a sufficient period of time to resume their relationship free from the interruptions of collective bargaining.

Second, it is important to note that an Award of an Agreement of three (3) years or less would require that negotiations between the parties for a successor Agreement begin immediately. An Award of an Agreement of only four (4) years would require negotiations between the parties to begin if not immediately, then in a very short time. Either result would be unduly burdensome on both the Township and the Association.

Third, since I have awarded certain changes in the benefits received by Fire Officers, the parties must have a sufficient period of time to evaluate those changes before entering into collective negotiations during which the parties may seek to alter some or all of those changes. Fewer than twelve (12) months, which is when a four (4) year Agreement would expire, is not a sufficient period of time in which to evaluate the changes awarded, herein.

Thus, I have formulated this Award based upon a contract term of five (5) years, covering the period January 1, 1996 through December 31, 2000.

I now turn to the remaining components of the parties' proposals. The Association has proposed across the board

increases of three and nine tenths percent (3.9%) on January 1 of each year of a five (5) year Agreement. This amounts to a nineteen percent (19%) increase over five years (5) years.

The Township has proposed that employees not be granted a wage increase in 1996 or 1997, and that they be awarded a two percent (2%) wage increase on January 1 of 1998, 1999, and 2000. This amounts to a six percent (6%) increase over five years (5) years, or an average annual increase of one and two tenths percent (1.2%). The Township also has proposed that any wage increase awarded not be retroactive.

After carefully considering the evidence and arguments submitted by the parties concerning the relevant statutory criteria, I am persuaded, for the following reasons, that the Association's wage proposal is the most reasonable. Therefore, it shall be awarded.

In order to determine with specificity the appropriate economic package, it is necessary to analyze each of the statutory criteria in relation to the positions proffered by the parties.

As to the interests and welfare of the public, I agree with the Township that its citizens are not benefitted by a salary increase which the Township cannot afford and which results in reductions in other needed services. Therefore, logically, the Township's proposal, which is lower than the Association's, is preferred when evaluating the economic interests and welfare of the public.

However, the public's interests and welfare are also served by

a Fire Department that is stable and whose morale is high. Here, the record demonstrates that the Township has four (4) uniformed bargaining units, i.e., Police Officers, Police Superiors, Firefighters and the Fire Superiors represented by the Association. The record further demonstrates that the Township has agreed to grant its Police Officers, Police Superiors, and Firefighters wage increases of three and nine tenths percent (3.9%) on January 1, 1996, 1997, 1998, 1999 and 2000. For this reason, I am persuaded that a wage package which unnecessarily deviated from the type of salary increases the Township has already agreed to provide to its other uniformed employees, would dramatically and negatively affect the morale of the Township's Fire Officers.

Thus, I also am persuaded that a wage package which unnecessarily deviated from the type of salary increases the Township has already agreed to provide to its other uniformed employees, would not serve the interests and welfare of the citizens of the Township. After all, the interests and welfare of the public criterion is not limited solely to the public's financial interests and welfare. By necessity, it also must involve the community's interest and welfare in having its Fire Department continue to serve its essential needs and provide essential services.

The Township is correct in pointing out that its other uniformed employees agreed to givebacks in exchange for wage increases which have not been agreed to by the Association. That fact, however, is not a sufficient reason to deny the Association's

members the wage increases the Township has already agreed to provide its other uniformed employees. Rather, it is a reason to grant the Township some of the benefits changes it has proposed.

Therefore, I find that the statutory criterion concerning the interest and welfare of the public favors awarding the wage increase proposed by the Association.

The second criterion requires a comparison of the wages, salaries, hours and conditions of employment of Edison Fire Officers with those of other employees performing the same or similar services in the public sector in comparable jurisdictions, in comparable private employment and in public and private employment in general.

The Association presented evidence that the wages paid to the Township's Fire Officers do not compare well to the wages paid to their counterparts in twenty (20) other New Jersey municipalities. (Association Exhibit No. 3) It also has presented evidence that the three and nine tenths percent (3.9%) wage increase the Association has proposed is less than the wage increases granted to firefighters and fire officers in five (5) different New Jersey communities. (Association Brief at pg. 26)

The Township has argued that the Association's comparisons with certain communities are inappropriate because of demographic differences between those municipalities and Edison. The Township, however, also has relied upon comparisons to communities which are demographically different than Edison. For example, the Township has relied upon comparisons with Pleasantville, which is

significantly smaller and poorer than Edison. (Township Brief at Chart 12) According to the Township, Pleasantville has a population of 17,073 whose average income is \$34,380, whereas Edison has a population of 90,402 whose average income is \$55,837. (Township Brief at Chart 12) The differences between Edison and Pleasantville are even more dramatic if one focuses upon the residential values of homes in each community. According to the Township, the residential values of homes in Pleasantville is \$74,200, whereas the residential value of homes in Edison is \$186,200. (Township Brief at Chart 12)

Comparability, however, rather than identity of communities, is all that is required by the statute. Differences in degrees of comparability can be taken into account when evaluating evidence drawn from jurisdictions with different degrees of comparability to the Township. Thus, I find that comparisons drawn by both the Association and the Township between the Township's Fire Officers and their counterparts in comparable communities with somewhat different demographics are relevant to this dispute. Not surprisingly, the comparisons to comparable communities drawn by the Association tend to support its wage increase proposal and the comparisons to comparable communities made by the Association tend to support its wage increase proposal.

Even more relevant, however, are the comparisons drawn by the parties between the Township's Fire Officers and Township's other uniformed employees. After all, these uniformed employees work in the same community. In addition, the work performed by the

Township's firefighters is very similar to the work performed by the Township's Fire Officers. Although police officers and firefighters perform different job duties, it is well accepted that they are more comparable to each other than they are to non-uniformed employees in both the private and public sectors.

As noted above, the record demonstrates that the Township has agreed to grant its Police Officers, Police Superiors, and Firefighters three and nine tenths percent (3.9%) wage increases on January 1, 1996, 1997, 1998, 1999 and 2000. This evidence regarding comparability clearly supports awarding the Association's wage proposal, which is identical to the wage increases the Township has already agreed to provide its Police Officers, Police Superiors, and Firefighters.

The next criterion deals with the overall compensation received by the Township's Fire Officers. I agree with the Township that the overall compensation received by its Fire Officers is good. I also agree with the Township that the benefits received by its Fire Officers tend to be similar or superior to the benefits received by Fire Officers in comparable jurisdictions. However, the overall compensation of the Township's Fire Officers would not fare relatively well with the overall compensation received by other Fire Officers in comparable jurisdictions, if I were to award the wage proposal being proposed by the Township. Under those contract terms, the Township's Fire Officers would fall behind their counterparts in comparable jurisdictions in terms of overall compensation and benefits. As noted above, they would also

fall behind the Township's other uniformed employees in terms of overall compensation if I were to award the wage proposal being proposed by the Township. Thus, I find that this criterion also demonstrates the appropriateness of awarding a wage increase greater than the increase being proposed by the Township.

As to the criterion concerning the stipulations of the parties, I note that the Township and the Association agreed to waive the statutory time limit for issuing an Award and both requested that the Award be based upon an Agreement with a five (5) year term. I also find that the parties entered into the following stipulations at the July 23, 1998 hearing in this proceeding:

1. **Article VI, Section 6** will be modified to reflect the current practice which is to call in either a captain or a lieutenant.
2. **Article X, Section C1** will be modified to reflect that fees may not exceed the prevailing rate the Township pays the Township attorney.
3. **Article X, Section E1** will be modified to provide that in no event will the reimbursement exceed the prevailing rate the Township pays the Township attorney.
4. **Article XII, Section 3** will be modified to include all subjects covered to the extent mandated by Title VII and the New Jersey Law Against Discrimination.
5. **Article XIV, Section 2** will be modified to delete the phrase "at the request of either party."
6. **Article XV, Section 8C** will be modified to provide that any compensation checks shall be endorsed over to the Township within 48 hours.
7. **Article XV, Sections 11 and 12** will be deleted.
8. **Article XVI, Section 2** will be modified to conform with the new Interest Arbitration Act.

9. **Article XVI, Section 3** will be deleted.
10. **Article XXVI, Section 1**, will be modified to add: "This section will conform with the requirements of the Federal Labor Standards Act."
11. **Article XXX, Section 1** will be modified to conform with the requirement of the Americans with Disabilities Act of keeping medical data in a separate, confidential file under lock.
12. **Article XXX, Section 4** will be modified to include the "Mayor and his/her designee" as those permitted to review personnel files.
13. **Article XXXI, Section 1**, will be modified as follows: "Circumstances surrounding the filing of a complaint or the preferring of charges against a Fire Officer shall be investigated by the Edison Fire Department or Police Internal Affairs.
14. **Article XXXI, Section 4** will be modified to delete the word "representation".
15. A **Complete Agreement Provision** will be added.

The Township agreed to withdraw, from its final offer, the proposals as set forth on Exhibit 18A:

1. **Article VI, Section 1**
2. **Article XII, Section 1.**
3. **Article XV, Section VI.**
4. **Article XXIV, Section VI.**

(Township Brief at pg. 29-30)

These stipulations shall be made part of the Award. Although relevant to this proceeding, these stipulations are not relevant to a decision regarding what level of wage increase the Township's Fire Officers should be awarded.

As to the lawful authority of the employer, I note the existence of New Jersey's Cap Law. I agree with the parties that this criterion requires an evaluation of the Township's authority, pursuant to the requirements of New Jersey's Cap Law, to pay for

the wage increases being proposed by the parties. The Association has persuasively argued that the Township has the budgetary flexibility to pay for the Association's wage proposal within the framework of New Jersey's Cap Law. The Township has not presented any persuasive evidence to the contrary. This is not to say that the Township has failed to present a compelling case that it cannot afford to pay for the wage increases proposed by the Association without being awarded the givebacks agreed to by its other uniformed employees. However, that type of evidence is more appropriately considered when evaluating the parties' benefit proposals. Thus, there can be no dispute that the Township has the lawful authority to pay for the wage increases awarded herein.

The statutory criteria concerning the financial impact of the parties' proposals on the governing unit, its residents and taxpayers, essentially asks for an analysis of the Township's ability to pay for the parties' proposals.

The Township has made a compelling case that it is not flush with money. However, I am not persuaded, as the Township asserts, that awarding the Association's wage proposal "would make it extremely difficult for the Township to maintain existing programs and services while preventing it from expanding existing local programs and services and would also prevent the Township from initiating new programs and services." (Township Brief at pg. 41)

According to the Township, the Association's economic package, if awarded, would cost the Township \$633,210 over five (5) years, whereas the Township's economic package, if awarded, would cost the

Township only \$74,283 over five (5) years. (Township Brief at Chart 19) Thus, according to the Township, the difference between the parties' economic proposals amounts to \$558,927 over five (5) years, or approximately \$112,000 per year.

As pointed out in an affidavit by the Township's auditor, Robert Morrison, the Township's "ratable base and equalized valuations" currently stand at \$7.14 billion dollars. (Township Exhibit No. 20 at pg. 3) The municipal budget adopted by the Township for fiscal year 1998 contained more than seventy four million dollars (\$74,000,000) in appropriations. (Township Exhibit No. 20 at pg. 5) Given these facts, I agree with the Association that even if its entire economic package were awarded, the impact on the Township and its residents and taxpayers would be minimal. However, since the Association's entire economic proposal is not being awarded, awarding the Association's wage increase proposal will have even less of an impact on the Township and its residents and taxpayers.

Expressed another way, there is no persuasive evidence in the record that the Township cannot afford to provide its small unit of Fire Officers with the same wage increases it has granted its much larger complement of firefighters and police officers. To the contrary, the record shows that the Township can afford to pay such wage increases to its Fire Officers without having a significant impact on the Township's finances and budgetary processes.

Thus, I find that the record evidence concerning the financial circumstances of the Township and its residents and

taxpayers, supports awarding a wage increase greater than the increase being proposed by the Township.

As to the cost of living, I recognize that the increases awarded, herein, are higher than current increases in the cost of living. However, I also recognize that in the past Fire Officers did not receive wage increases equal to the cost of living when the increase in the cost of living was running in the double digits or close to the double digits. Under those circumstances, common sense required that salary increases be less than the cost of living.

This is not surprising. It is ordinarily the case that in periods of very high inflation, salary increases tend to lag behind the rate of inflation. Conversely, in times of low inflation, when the cost of living is quite moderate, wage adjustments often exceed the cost of living. Pursuant to historic trends in the cost of living and Fire Officer wage rates, I find that the wage increases awarded, herein, to be the appropriate result. The awarded increases exceed recent increases in the cost of living, but reflect the long term historic trends in the cost of living.

Thus, I have incorporated relevant evidence concerning the cost of living into this Award. Stated otherwise, the increases awarded, herein, reflect and take into account the declining cost of living.

The final criterion concerns the continuity and stability of the employment of Edison's Fire Officers. The evidence establishes that the present complement of Fire Officers has a high level of

continuity and stability in their employment. That is, there is no evidence to suggest that the Township's Fire Officers face the imminent threat that their positions will be eliminated or that the number of Fire Officers will be reduced.

However, the Association has persuasively argued that if the Township's wage proposal were awarded, certain senior firefighters could end up making more than some of the Fire Officers who supervise them. This would discourage firefighters from seeking promotion to the Fire Officer ranks. That, in turn, would have a negative impact on the continuity and stability of employment within Edison's Fire Department.

As noted above, I also am persuaded that failing to award Edison's Fire Officers the same percentage wage increase granted to the Township's Police Officers, Police Superiors and Firefighters, would have a negative impact on the morale and cohesion within the Edison Fire Department. This, too, would have a negative impact on the continuity and stability of employment within Edison's Fire Department. It might also lead to a perversion of the salary structure which cannot advantage either party.

For these reason, I find that the evidence concerning this statutory criterion also supports awarding the wage increases proposed by the Association.

In summary, in light of all of the statutory criteria, as described in detail above, I award the following wage increases to the Township's Fire Officers:

January 1, 1996

3.9% across-the-board

January 1, 1997	3.9% across-the-board
January 1, 1998	3.9% across-the-board
January 1, 1999	3.9% across-the-board
January 1, 2000	3.9% across-the-board

These increases balance the legitimate right of the Township's Fire Officers to be compensated appropriately without unduly burdening the residents and taxpayers of Edison.

In making these findings, I have emphasized and maintained the wage increase pattern among uniformed employees within the Township. This makes good sense. It permits firefighting and police personnel with similar skills and working under similar conditions to be compared as required by the relevant statute. It also permits the Township to more predictably budget its resources and to avoid the possible "leapfrogging" and "one-up-manship" which is so devastating to the Township's budgetary process providing the same percentage income contributes to stable labor relations within the Township's Fire and Police Departments.

Moreover, the record evidence demonstrates the Township had desired this pattern bargaining from at least 1980. There has been relative parity between the increases granted to firefighters and Fire Officers for almost twenty (20) years.

In addition, adherence to this wage increase pattern will provide an impetus for quick settlements which has a number of advantages for the Township's Fire and Police Departments. Quick settlements make it possible for the Township to know the future cost of its fire and police services, thereby making it easier for

the Township to make correct decisions regarding manpower and its financial commitments. Quick settlements also avoid the morale problems usually associated with a drawn out negotiations process. Providing the same percentage increase also assures that no bargaining unit will be advantaged by the speed of the bargaining process. Finally, quick resolution advantages the Township by freeing labor relations, fire and police personnel to address other pressing issues.

The magnitude of the wage increase awarded, herein, might be more than the size of the increase I would have awarded if this wage increase pattern were ignored. However, ignoring the wage increase pattern among the Township's uniformed personnel would not only destroy the pattern, but would encourage each Fire and Police Association to attempt to deviate from the established pattern due to the economic realities at the time of their negotiations or interest arbitration proceedings. Such positions would be harmful to the Township.

Thus, after carefully considering the evidence concerning the statutory criteria, I have concluded that the Township's Fire Officers shall be awarded a wage increase equivalent to the wage increases already granted to the Township's Firefighters, Police Officers and Police Superiors. I now turn to the parties other economic and non-economic proposals.

The Association has proposed that effective upon execution of the Agreement, longevity rates be frozen for employees receiving longevity benefits in excess of ten percent (10%) of their base

salaries, and that the longevity benefits available to all other Fire Officers be capped at ten percent (10%) of their base salaries. In return for this cost saving measure, the Association also has proposed that effective January 1, 1998, employees with twenty two (22) years of completed service be paid a senior officer differential equal to six and one-quarter percent (6-1/4%) of their base salary.

The Township also has proposed that longevity be fixed at rates that were in effect in 1996 and be capped at ten percent (10%). The Township, however, opposes the Association's proposal for a senior officer differential.

The record demonstrates that the Township's Police Officers and Firefighters agreed to freeze and cap the longevity benefits of their members at ten percent (10%), as proposed by both the Township and the Association. (Township Exhibit No. 19B) It further demonstrates that a senior officer differential equal to six and one-quarter percent (6-1/4%) of base salary was granted to the Township's Police Officers and Firefighters. (Township Exhibit No. 19B)

The Township's Police Superiors, however, did not agree to freeze and cap the longevity benefits of their members at ten percent (10%) and did not receive a senior officer differential equal to six and one-quarter percent (6-1/4%) of base salary. Instead, the Township and its Police Superiors agreed that "[e]ffective April 1, 1998, employees receiving longevity payments in excess of twelve and one-half (12.5%) will have their rates

frozen at the rate in effect as of April 1, 1998. For all other employees, the longevity scale shall be capped at twelve and one-half percent (12.5%) effective April 1, 1998." (Township Exhibit No. 19B) The record further demonstrates that in return for this cap on longevity, the Township and its Police Superiors agreed to increase holiday pay by computing it "on the basis of 180 work days per year." (Township Exhibit No. 19B)

For purposes of longevity and the proposed senior officer differential, I am persuaded that the Firefighter Superior Officers represented by the Association are more akin to the Township's Police Superiors than the rank and file firefighters and police officers supervised by those Superior Officers. After all, Superior Officers, on average, have worked more years for the Township than the rank and file employees they supervise. Thus, a much higher percentage of those Superior Officers would receive a senior officer differential if one were awarded.

In addition, there is no evidence in the record that fire superiors in comparable communities receive a senior officer differential on top of longevity pay.

For these reasons, I find that the Association's proposed senior officer differential is not supported by evidence concerning the statutory criteria. Therefore, it shall not be rewarded.

On the other hand, capping Fire Officer longevity payments at twelve and one-half percent (12.5%) in return for a substantial increase in holiday pay, as was agreed to by the Township and its Superior Police Officers, also is not a reasonable option. Only

Fire Officers with twenty five (25) or more years of experience receive longevity benefits in excess of twelve and one-half percent (12.5%). Thus, few Fire Officers would be affected by a twelve and one-half percent (12.5%) cap on longevity benefits. However, every Fire Officer would receive a large increase in holiday pay if their holiday pay were computed "on the basis of 180 work days per year." (Township Exhibit No. 19B) Thus, I find that awarding the Township's Fire Officers the changes in longevity pay and holiday pay agreed to by the Township and its Police Superior Officers would not result in any savings to the Township. To the contrary, I find that, in all likelihood, it would impose additional costs on the Township.

For all of these reasons, I shall not award any changes in Fire Officer longevity benefits.

The Association has proposed that each Fire Officer be given the option of reducing his or her insurance coverage in return for a payment equal to fifty percent (50%) of the difference between that employee's original and reduced insurance premiums. The record demonstrates that an identical cost saving measure was agreed to by the Township and its Firefighters. In addition, the Association's health insurance proposal, if awarded, could reduce the Township's health insurance costs and poses no danger of increasing those costs. For these reasons, I find that the Association's health insurance proposal is reasonable and ought be awarded.

The Association has made four (4) proposals regarding sick

leave and disability leave based upon the settlements of the Township's other uniformed personnel. The Association has proposed that employees who are absent from duty for three (3) consecutive work days provide, upon request of the Township, certification from a licensed physician. It also has proposed that the Township's Mayor be permitted to request, at the Township's expense, that a physician determine whether employees are entitled to use paid sick time and that proof of illness be by a certification signed by a licensed physician. The Association has further proposed that the Township be permitted to implement a disability insurance program providing that after seven (7) days of sick leave an employee shall receive full pay from the insurance company for a period up to one (1) year under the terms of that policy. It also has proposed that during the period an employee receives full pay, the employee shall endorse over to the Township any Workers Compensation benefit checks received by the employee within forty eight (48) hours of receipt of said checks.

The record demonstrates that identical sick leave and disability proposals were agreed to by the Township and the union representing its rank and file firefighters. It further establishes that analogous provisions were agreed to by the Township and the unions representing its Police Officer and Police Superiors. There is no reason why similar provisions should not be part of the Agreement between the Association and the Township. Therefore, the Association's sick leave and disability proposals shall be awarded.

The Association has proposed that effective January 1, 1996, the salary of Chief Fire Inspectors be increased to a rate equal to the salary paid to Fire Captains. There is no persuasive evidence in the record concerning the statutory criteria which supports this proposal. Therefore, it shall not be awarded.

The Association has proposed that the employee designated by the Township as the Ryan White Officer while off duty receive overtime. The record demonstrates that the Township and the union representing its firefighters have agreed to a provision which provides that "[i]n the event an employee designated by the Township as the Ryan White Officer is required by the Township to act in his capacity as the Ryan White Officer while off duty, he shall be entitled to overtime...." (Township Exhibit No. 19B) I am persuaded that Fire Officers should be entitled to the same consideration for being required to act as the Ryan White Officer while off duty. Therefore, the Association's Ryan White overtime proposal shall be awarded.

The Association has proposed that the Township pay Fire Officials or Fire Subcode Officials a rate twelve percent (12%) above the highest rank, i.e., Captain. This proposal is not supported by record evidence concerning comparability. Fire Officers in comparable communities do not enjoy such a benefit. In addition, any payments made by the Township to rank and file firefighters serving as Fire Subcode Officials were not part of the parties' most recent memorandum of agreement. Maintaining a wage or benefit pattern that exists between two (2) groups of employees

should not be confused with making those wages and benefits identical. Any discrepancy between the amounts paid to Township Firefighters and Township Fire Officers who serve a Fire Subcode Officials existed prior to the Township and its firefighters agreeing to the terms of their 1995-2000 agreement. To eliminate this difference would upset the pattern in wages and benefits that exists between the Township's firefighters and its Fire Officers. There is no persuasive reason in the record why this difference should not be continued. Thus, the Association's Fire Official proposal shall not be awarded.

Currently, the parties' Agreement does not contain a reopener provision. The Association has proposed that the following reopener language be added to the Agreement: "In the event that any other Township employee receives any economic or non-economic benefits greater than or in addition to those provided, the Association at its option may reopen the contract for further negotiations."

There is no persuasive evidence in the record supporting the Association's reopener proposal. After all, the Township's other uniformed employees have already reached agreements with the Township and there is no evidence that the Township intends to reopen those agreements in order to improve the wages and benefits of its uniformed employees. Therefore, the Association's reopener proposal shall not be awarded.

The Association has proposed that employees required to be on jury duty receive full compensation less any payments received from

the court for attendance as jurors. It also has proposed that personal days not be part of vacation schedules. There is no persuasive evidence in the record supporting these proposals. Therefore, they shall not be awarded.

The Association has proposed that, as permitted by Township ordinance, the title of Fire Lieutenant be modified to Fire Captain and that the title of Fire Captain be modified to Fire Battalion Chief. There is no persuasive evidence in the record supporting these proposals. Even if the Township's Fire Lieutenants do some of the work performed by Fire Captains in comparable communities, and the Township's Fire Captains do some of the work performed by Fire Battalion Chiefs in comparable communities, there is no evidence that this a new phenomenon. Thus, I am persuaded that the salaries paid to the Township's Fire Lieutenants and Fire Captains already reflect the duties they perform in excess of the duties performed by some of their counterparts in comparable jurisdictions. Therefore, the Association's title change proposal shall not be awarded.

The Association has proposed that a new provision be added to the Agreement which would provide that in the event that an employee is killed or seriously injured in the line of duty, all units directly involved will be relieved of duty for the balance of the shift with pay. While I am, of course, sensitive to this issue, the fact remains that there is no persuasive record evidence supporting this proposal. Therefore, the Association's injury in the line of duty proposal shall not be awarded.

Currently, the Township provides Fire Officers with the following vacation benefits:

Section 1.

The agreed annual vacation periods paid to employee's are as follows:

- A. 1 year to the end of 5th Year of completed service:
Steady Day Officers - 16 Working Days
Tour Officers - 12 Working Days
- B. Beginning of 6th Year to the end of the 10th year of completed service:
Steady Day Officers - 24 Working Days
Tour Officers - 18 Working Days
Tour Officers - 18 Working Days
- C. Beginning of 11th year to the end of the 15th Year of completed services:
Steady Day Officers - 32 Working Days
Tour Officers - 24 Working Days
- D. Beginning of 16th year to the end of the 20th year of completed services:
Steady Day Officers - 40 Working Days
Tour Officers - 30 Working Days
- E. Beginning of 21st year to the end of career:
Steady Day Officers - 40 Working Days
Tour Officers - 36 Working Days

Section 2.

Effective January 1, 1993, the agreed annual vacation periods paid to employees are as follows:

- A. 1 year to the end of the 5th Year of completed services:
Chief Inspector and Training Officer - 16 Working Days
Tour Officers - 6 Working Days
- B. Beginning of 6th Year to the end of the 10th year of completed Services:
Chief Inspector and Training Officer - 24 Working Days
Tour Officers - 9 Working Days
- C. Beginning of 11th Year to the end of the 15th Year of completed services:

Chief Inspector and Training Officer - 32 Working Days
Tour Officers - 12 Working Days

D. Beginning of 16th year to the end of the 20th year of completed services:

Chief Inspector and Training Officer - 40 Working Days
Tour Officer - 15 Working Days

E. Beginning of 21st year to the end of career:

Chief Inspector and Training Officer - 48 Working Days
Tour Officers - 18 Working Days

(Association Exhibit No 21 at pgs. 27-28) at pg. 14)

The Association has proposed that the following vacation provision be added to the Agreement:

For Fire Officers hired after December 31, 1997 and subsequently promoted, vacation schedule for Chief Inspector and Training Officer to be capped at 42 working days and vacation schedule for Tour Officers to be capped 16 working days.

As Fire Officers hired before December 31, 1992 retire or leave the employee of the Township, the most senior employee hired after January 1, 1993 will be treated for vacation pay purposes so that the number of employees eligible to receive vacation benefits will remain frozen at the number of Firefighters employed by the Township on December 23, 1992.

(Association Brief at pg. 14)

The Township has proposed the following reduction in vacation days for its Fire Officers:

Expired Contract
Ch. Ins. - TO/Tour

1-5	16/6
6-10	24/9
11-15	32/12
16-20	40/15
21+	48/18

Township Proposal
Ch. Ins. - TO/Tour

Year 1	No Vacation
2-6	8/6
7-11	12/9
12-16	16/12
17+	20/15

(Township Brief at pg. 19)

Thus, both parties have proposed reducing vacation benefits for the Township's Fire Officers. The record demonstrates that the Township's Police Officers, Police Superiors and Firefighters have all agreed to reduce vacation benefits for new hires in a manner analogous to the reductions proposed by the Association. (Township Exhibit No. 19B) Therefore, the Association's vacation proposal is clearly the more reasonable and shall be awarded.

The Association has made non-economic proposals concerning the Agreement's union business, personnel file, agency shop and drug testing provisions. All of these proposals were agreed to by the Township and the union representing its Firefighters. Some of them, such as the agency shop and the drug testing provisions, benefit the Township as well. Therefore, the Association's non-economic proposals concerning the Agreement's union business, personnel file, agency shop and drug testing provisions shall be awarded.

Article II, Section 1, of the Agreement provides that the Township "shall grant time off without loss of pay to the Executive Board Members of [the] Association to conduct Association business on the State or Local level and to attend monthly meetings which require their attendance." (Association Exhibit No. 21 at pgs. 1-2) The Township has proposed that the Association's Executive Board be limited to two (2) members. The size of the Association's Executive Board is an internal union matter which should not be influenced by the Township. In addition, there is no persuasive evidence in the record supporting this Township proposal.

Therefore, it shall not be awarded.

The Township has proposed that the deletion of the last sentence of Article II, Section 3, of the Agreement which reads as follows: "In the event that a meeting lasts longer than four (4:00) p.m. and a member of the Negotiating Committee is scheduled for his tour of duty, i.e. six (6:00) p.m. shift, that member or members shall be excused from that night shift." (Association Exhibit No. 21 at pg. 2) Since the Association has made the identical proposal, it shall be awarded.

With respect to Article III, Section 1, of the Agreement, the Township has proposed that Fire Officers be prohibited from posting indecent material on bulletin boards and from defacing official notices posted on those bulletin boards. It maintains that the purpose of the Township's bulletin board proposal is to prevent violations of both State and Federal laws concerning sexual harassment and sexual discrimination. This proposal is clearly reasonable. Therefore, it shall be awarded.

Article III, Section 2, of the Agreement provides "the office now being occupied by the Fire Captain, Room A-260, shall be for the exclusive use of the said Officers as a meeting room and Association Records Room. No other department or organization shall have access to this room without express permission of the ... Association." (Association Exhibit No. 21 at pgs. 2-3) The Township has proposed that the Fire Chief have access to this office in case of an emergency. There is no persuasive reason in the record for the Township's Fire Chief to have access to the

Association's records room. This is a sensitive issue which is best left for the parties to work out. Therefore, this proposal shall not be awarded.

Article XI, Section 2, of the Agreement provides that Fire Officers shall be granted one (1) working day off with pay in case of the death of a non-immediate family member or a person with whom the Officer had an unusually close relationship. (Association Exhibit No. 21 at pg. 13) Article XI, Section 3, of the Agreement provides Fire Officers with a reasonable amount of time off with pay to travel to out-of-state funerals. (Association Exhibit No. 21 at pg. 14)

The Township has proposed that Article XI, Section 2, be changed from "one working day off to one-half working day [off]." (Township Brief at pg. 15) It also has proposed the deletion of Article XI, Section 3. There is no persuasive evidence in the record that either of these provisions have been abused or that they have caused a problem for the Township. The hypothetical problems raised by the Township are insufficient to justify awarding these bereavement leave proposals. Therefore, they shall not be awarded.

The Township has proposed that it be given the authority to change a Fire Officer's work schedule upon thirty (30) days advance notice to the Association. Although this proposal could generate cost savings for the Township, it is not supported by evidence of comparability or any other evidence relating to the statutory criteria. There is insufficient evidence to form a basis for

granting this proposal. Therefore, the Township's work schedule proposal shall not be awarded.

Article VI, Section 3, of the Agreement provides that the Township will pay Fire Officers time and one-half "for all off-duty court appearances required as a result of the Employee's occupation as a Fire Officer and for reasonable travel time to and from court, except in civil action." (Association Exhibit No. 21 at pg. 7) The Township has proposed that this provision be amended "to eliminate payment of overtime for off-duty court appearances when an action is brought against a firefighter by the Township or by a firefighter against the Township." (Township Brief at pg. 16)

The Township's brief demonstrates that this proposal is only intended to affect Fire Officers who sue the Township or who are sued by the Township. It is not intended to affect Fire Officers who are required to testify in lawsuits between the Township and its rank and file firefighters. Clearly, there is no reason why the Township should have to pay overtime to a Fire Officer for a court appearance in a lawsuit between the Township and that Fire Officer. To that extent, the Township's proposal is reasonable and shall be awarded.

Article X of the Agreement provides that under certain circumstances, the Township will provide insurance and legal representation for members of the Association. The Township has proposed limiting certain of its obligations under this Article "to the extent required by law" and by providing "that in no event will the reimbursement exceed the prevailing rate the Township pays

the Township Attorney." There is no persuasive evidence in the record that the Township's obligations under Article X should be limited to those required by law. However, there also is no legitimate reason why the Township should reimburse Fire Officer attorneys at rates in excess of what the Township pays its own attorneys. Therefore, the Township's proposals regarding Article X shall be awarded only to the extent that it has proposed limiting reimbursement for Association member legal fees.

Article XIII, Section 2, of the Agreement provides that the Township will not require Fire Officers "to work in other communities whose firefighters are engaged in a job action." (Association Exhibit No. 21 at pg. 15) The Township has proposed deleting this provision because it violates N.J.S.A. 40A:14-26, which "mandates mutual aid with every contiguous municipality." (Township brief at pg. 17) Clearly, New Jersey law does not require firefighters to provide aid to non-contiguous communities. Therefore, this proposal shall be awarded only to the extent required to comply with N.J.S.A. 40A:14-26.

Article XIV, Section 3, of the Agreement provides that Fire Officers designated by the Association to participate in collective bargaining "will be excused from their work assignments during hours of negotiation." (Association Exhibit No. 21 at pg. 15) The Township has proposed limiting "the number of employees to two who are qualified to be excused from their work assignments during hours of negotiation." (Township Brief at pg. 17)

There is no persuasive evidence in the record that this

provision has been abused by the Association or that it has caused a problem for the Township. Hypothetical problems are insufficient to justify awarding this proposal. Therefore, it shall not be awarded.

The Township has proposed that "effective January 1, 1996 sick time for the Chief Inspector and Training Officer ... be reduced from 15 sick days to 8, and for fire officials, from 7 sick days to 1. Sick time shall also be cumulative through 1995. The Township also proposes that a one year sick leave shall exhaust all sick time, personal days, and vacation time." (Township Brief at pg. 17) Although awarding these proposals would generate cost savings for the Township, there is no persuasive evidence that the Township requires these cost savings. In addition, these proposals are not persuasively supported by any other evidence concerning the statutory criteria. Therefore, they shall not be awarded.

Article XV, Section 9, of the Agreement provides that "[a]ny member of the Department who reports in for duty and subsequently reports off duty due to illness [shall] not be charged sick time for that tour of duty." (Association Exhibit No. 21 at pg. 19) The Township has proposed that Fire Officers be required to work "at least 13 hours (or more than half a shift) to qualify for nonchargeability for a sick day." (Township Brief at pg. 18) The record demonstrates that analogous requirements are part of the Township's agreements with its other unformed employees. (Association Exhibit No. 43 at pg. 23) Therefore, Fire Officers who leave duty before the end of their shift due to illness, shall

be required to have worked at least one-half (½) of their shift in order not to be charged with a sick day.

Article XX, Section 1, of the Agreement reads as follows:

Any Employee whose services are terminated, and who is in good standing, and who is called to testify or assist in any proceeding, including but not limited to criminal and civil cases, administrative hearings, disciplinary hearing and so forth, that he investigated or was involved in prior to the termination of his services, shall be compensated for such appearances by a day's pay at the present prevailing rate at the same compensation as paid to the Employees in the rank he held immediately prior to his termination, exclusive of overtime.

(Association Exhibit No. 21 at pg. 22)

The Township had proposed deleting this provision. There is no persuasive evidence in the record concerning the statutory criteria which supports this proposal. Therefore, it shall not be awarded.

The Township has proposed that the number of personal days for Chief Inspectors and Training Officers be reduced from ten (10) personal days to two (2) personal days and that the number of personal days for all other Fire Officers be reduced from three (3) personal days to one (1) personal day. Although awarding these proposals would generate cost savings for the Township, there is no persuasive evidence that the Township requires these cost savings. In addition, these proposals are not persuasively supported by any other evidence concerning the statutory criteria. Therefore, they shall not be awarded.

The Township has proposed eliminating all of the Agreement's educational benefits except for those concerning Emergency Medical Technician training. There is no persuasive evidence in the record

concerning the statutory criteria which supports this proposal. Therefore, it shall not be awarded.

The Township has proposed that prescription drug benefits for Fire Officers be changed from a two dollar (\$2.00) co-payment to a five dollar (\$5.00) co-payment for generic drugs, and from a two dollar (\$2.00) co-payment to a ten dollar (\$10.00) co-payment for brand name drugs. There is no persuasive evidence in the record regarding comparability or any other statutory criterion which supports this proposal. Also, the record evidence does not show that this proposal exists in the other uniformed contracts. Therefore, it shall not be awarded.

Article XXVII, Section 3, of the Agreement provides that "[a] wage differential of twelve and one-half percent will be provided for Superior Officers of the Department, with the exception of the job title Chief Inspector." (Association Exhibit No. 21 at pg. 31) Article XXVII, Section 4, of the Agreement provides that Fire Officers shall receive hazardous duty pay of three hundred dollars (\$300) per year. (Association Exhibit No. 21 at pg. 31) The Township has proposed eliminating this wage differential, as well as hazardous duty pay. It also has proposed eliminating shift differential as a housekeeping detail.

Although awarding these proposals would generate cost savings for the Township, there is no persuasive evidence that the Township requires these cost savings. In addition, these proposals are not persuasively supported by any other evidence concerning the statutory criteria. Therefore, they shall not be awarded.

Article XXXVIII of the Agreement provides that "[a]ll benefits, terms and conditions of employment previously enjoyed by Employees hereunder that have not been included in this contract shall be continued in full force and effect." (Association Exhibit No. 21 at pg. 35) The Township has proposed eliminating this past practice provision. There is no persuasive evidence in the record concerning the statutory criteria which supports this proposal. Therefore, it shall not be awarded.

In summary, I have carefully considered all of the relevant statutory criteria, as well as the type of standards normally evaluated in interest arbitrations of this kind, in reaching my findings above. In my view, they balance the rights of the members of the bargaining unit to fair improvements in their terms and conditions of employment with the legitimate needs of the Township to budget its economic resources.

Accordingly, the changes, herein, are awarded to the extent indicated in this Opinion. Any specific proposal not awarded, herein, is explicitly rejected.

AWARD

1. TERM

The Agreement shall have a term of five (5) years, covering the period January 1, 1996 through December 31, 2000.

2. WAGE INCREASES

January 1, 1996	3.9% across-the-board
January 1, 1997	3.9% across-the-board
January 1, 1998	3.9% across-the-board
January 1, 1999	3.9% across-the-board
January 1, 2000	3.9% across-the-board

3. HEALTH INSURANCE

Each employee may voluntarily elect, effective July 1, 1998, to reduce the insurance coverage directly provided by the Township for the employee and/or his family in order to avoid dual coverage by the Township and the employee's spouse's coverage (other than the Township). The employee has the option to reduce or eliminate his/her number of members covered (i.e. family coverage to single coverage or husband/wife coverage or no coverage, if applicable) to a lower coverage status than the maximum provided. If the employee elects to reduce the coverage provided by the Township, the employee shall receive fifty (50%) of the difference between the original coverage premium under COBRA for the period of time the employee receives the reduced coverage, which shall not be less than twelve (12) consecutive months. The employee shall, prior to receipt of such payment, provide certification of spousal insurance coverage. The employee may return to previous coverage status by providing the Township Administrator with written notice at least 90 days prior to the open enrollment period.

4. SICK LEAVE

The Mayor or his designee, at any time, may request a physician designated by the Township to determine whether the employee is entitled to use paid sick time.

All costs for such examination shall be borne by the Township. Proof of illness shall be defined to be a certification signed by a licensed physician setting forth the nature of the illness and a determination as to whether the illness precluded the employee's performance of his duties during the employee's absence.

Employees who are absent from duty for three (3) consecutive workdays, shall upon request by the Township, provide a certification from a licensed physician upon their return to duty certifying that according to his professional opinion, the employee's illness or injury prevented the employee from performing his duties and that the employee is now sufficiently recovered and fit to return to full duty.

The Township shall have the option to implement a disability insurance program which shall supersede Sections 7(a) through (c). The disability insurance program will provide that after seven (7) sick days, an employee shall receive full pay from the insurance company for a period of up to one year under the terms of the policy. The disability payments will be done in a manner so as not to affect the employee's pension contributions.

During the period the employee receives full pay, the employee shall endorse over to the Township any Workers' Compensation benefit check(s) received within 48 hours after the employee's receipt of such check(s). The Chief of Fire, or his designee, shall be entitled to require any employee claiming any Workers' Compensation benefits or compensation under this subsection to provide physicians verification.

Article XV, Section 12 of the Agreement shall be deleted.

5. OVERTIME

In the event an employee designated by the Township as the Ryan White Officer is required by the Township to act in his or her capacity as the Ryan White Officer while off duty, that employee shall be entitled to overtime.

Article VI, Section 6, of the Agreement is amended to read as follows: "In the event that there is an emergency, or a special

detail is necessary where two (2) or more firefighters are called in for overtime, a Lieutenant or a Captain shall also be called in for said emergency or detail in order to provide proper supervision."

6. VACATION BENEFITS

For Fire Officers hired after December 31, 1997 and subsequently promoted, the vacation schedule for Chief Inspector and Training Officer shall be capped at 42 working days and the vacation schedule for Tour Officers shall be capped 16 working days.

As Fire Officers hired before December 31, 1992 retire or leave the employee of the Township, the most senior employee hired after January 1, 1993 will be treated for vacation pay purposes so that the number of employees eligible to receive uncapped vacation benefits will remain frozen at the number of Fire Officers employed by the Township on December 23, 1992.

7. CONDUCTING ASSOCIATION BUSINESS

Article II, Section 3, of the Agreement shall be amended by removing the following provision: "In the event that a meeting lasts longer than four (4:00) p.m. and a member of the Negotiating Committee is scheduled for his tour of duty, i.e. six (6:00) p.m. shift, that member or members shall be excused from that night shift."

8. BULLETIN BOARDS

Article III, Section 1, of the Agreement, shall be amended to prohibit Fire Officers from posting indecent material on bulletin

boards and from defacing official notices posted on bulletin boards.

9. PERSONNEL FILES

There shall be two (2) Edison Fire Department employee files: One (1) file shall contain personnel data concerning the employee, such as achievement records, employment data and disciplinary data. A separate file shall be maintained for the employee's medical and disability data pursuant to the American with Disabilities Act.

10. DUES CHECK-OFF

The Association hereby agrees to indemnify, defend and hold harmless the Township from any claim, suit, damages, costs and attorneys' fees or action of any nature whatsoever which may be brought at law or equity, or before any administrative agency with regard to or arising from the provisions of Article XVIII of the Agreement.

11. DRUG TESTING

The parties shall be bound by the Township's Alcohol and Drug Testing Policy. For purposes of the random drug testing provisions of the policy, a Fire Officer shall be deemed to be a safety sensitive position. In the event that a federal or state court of competent jurisdiction deems random testing of Fire Officers or Firefighters to be illegal or unconstitutional, this provision concerning random drug testing only shall be null and void.

12. OFF-DUTY COURT APPEARANCES

Article VI, Section 3, of the Agreement shall be amended to eliminate payment of overtime for off-duty court appearances to a

Fire Officer in a legal proceeding between the Township and that Fire Officer.

13. INSURANCE AND LEGAL REPRESENTATION

Article X, Sections C. 1. and E. 1. of the Agreement shall be amended to provide that reimbursement shall not exceed the rate paid by the Township to its attorneys.

14. MUTUAL AID

Article XIII of the Agreement shall be amended to read as follows: "The Employer shall not require Employees covered by this Agreement to work in other communities whose firefighters are engaged in a job action, except when such work is required by N.J.S.A. 40A:14-26."

15. SICK TIME

Article XV, Section 9, of the Agreement, shall be amended to read as follows: "Any member of the Department who reports in for duty and subsequently reports off duty due to illness not be charged sick time for that tour of duty if the employee has worked for at least one-half (½) of his or her shift."

16. DISCRIMINATION AND COERCION

Article XII, Section 3, of the Agreement, shall be amended to prohibit all forms of discrimination prohibited by Title VII of the Federal Civil Rights Act and the New Jersey Law Against Discrimination.

17. COLLECTIVE BARGAINING PROCEDURE

Article XIV, Section 2, of the Agreement, shall be amended to read as follows: "Collective bargaining meetings shall be held at

times and places mutually convenient."

18. DURATION OF AGREEMENT

Article XVI, Section 2, of the Agreement shall be amended to provide that said negotiations will conform with the requirements of New Jersey's Interest Arbitration Act.

Article XVI, Section 3, of the Agreement shall be deleted.

19. COMPENSATORY TIME

Article XXVI shall be amended to provide that said Article must comply with the Fair Labor Standards Act.

February 10, 1999.



Martin F. Scheinman, Esq.,
Interest Arbitrator

On this 10 day of February 1999, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.



NOTARY PUBLIC
Diane M. Falzon
Registration No. 01FA5073646
County of Nassau
Expires March 3, 1999