

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Arbitration Between

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TOWNSHIP OF WEST ORANGE	:	
ESSEX COUNTY, NEW JERSEY	:	
	:	
"Township"	:	
	:	
AND	:	INTEREST
	:	ARBITRATION
	:	AWARD
FIREMEN'S MUTUAL BENEVOLENT	:	
ASSOCIATION, LOCAL 28	:	
	:	
"FMBA"	:	
	:	
PERC DOCKET NO. IA-99-113	:	
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The Township lies within Essex County. It maintains a paid professional Fire Department. The Association represents all paid employees of the Fire Department of the Township with the rank of Uniformed Fire Fighter ("firefighter").

The Township and Association have been parties to a series of Collective Bargaining Agreements. The most recent expired on December 31, 1997.

The undersigned was appointed as interest arbitrator through the procedures of the New Jersey Public Employment Relations Commission. Although informal mediation sessions did not lead to a new Contract, they did result in narrowing the issues in dispute. Most notably, the parties agreed that the new Contract would cover the period from January 1, 1998 to December 31, 2001 and that raises for the bargaining unit during that period would be as follows:

January 1, 1998	3.0% across the board
January 1, 1999	3.0% across the board
January 1, 2000	3.25% across the board
January 1, 2001	3.0% across the board
July 1, 2001	0.50% across the board

A formal hearing was conducted on the matters which remained in dispute and an extensive record, consisting of more than one hundred exhibits, was developed. Both parties subsequently filed post-hearing briefs.

Throughout the proceedings, the Association was represented by Nancy I. Oxfeld, Esquire. Desmond Massey, Esquire, with Beth A. Hinsdale, Esquire on the brief, represented the Township.

This proceeding has been governed by the Police and Fire Interest Arbitration Reform Act, P.L. 1995 c. 425. As the parties have not agreed to the contrary, the terminal procedure in this case is conventional arbitration.

#### STATUTORY CRITERIA

The statute requires the arbitrator to:

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

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

(3) The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other benefits received.

(4) Stipulations of the parties.

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

(6) The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body

to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public moneys have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public moneys have been designated by the governing body in a proposed local budget.

(7) The cost of living.

(8) The continuity and stability of employment including seniority rights and 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. (N.J.S.A. 34:13A-16g)

#### FINAL OFFER OF THE ASSOCIATION

1. EMS: For each year of the Agreement, each member of the bargaining unit who was certified for any type of emergency medical service (first responder and/or EMT) will receive an additional 1.25 percent in salary, which will be added to base salary.
2. Acting Pay: Members of the bargaining unit will receive time and a half for all time spent in an acting capacity.
3. Call-In Pay: Any firefighter required to report to work when he is off duty shall be guaranteed a minimum of four hours pay at time and a half, regardless of the actual amount of work required.
4. Vacation Picks: Firefighters will pick vacations independently from superior officers. On any given tour, firefighters will be able to maintain three picks for

vacation picking by seniority pursuant to the current practice.

5. Other Time Off: On any given tour, firefighters shall be entitled to three picks for time off, with the following priority as to time off:
  - 1 (a) Vacation Picks
  - 1 (b) Vacation Days (new firefighters)
  2. Personal Days
  3. Seniority Days
  4. King Day
  5. Time Owed
6. Orders Book: Each individual firefighter will receive a complete Orders Book, which will be updated on a regular basis by the Department. All policies of the Department will be reduced to writing.
7. Carry Over of Personal Days: Firefighters who are unable to utilize personal days for any given calendar year during that calendar year will be entitled to utilize them (pursuant to current practice) in January, February and March of the following calendar year.
8. Change of Time: Change of time policy to begin at: three (3) hours and one (1) minute through 24 hours equivalent to one (1) change of time charged to the requester. Limit of 12 with additional days in groups of six (6), approved by the Director.

9. Accounting for Sick Days: Accounting for sick days will be consistent with the current practice of accounting for personal and seniority days. One (1) 24-hour work period equals a ten (10) and fourteen (14) hour work period.

FINAL OFFER OF THE TOWNSHIP

1. Effective January 1, 2000, EMT's shall be compensated by a \$1200.00 per year stipend not to be included in base salary. It will be payable in November. The EMT will be responsible for maintaining their certification. The Township will offer enough CEUs each three year period "in house" for recertification. Any member will be allowed to sign up for training to take the test to become an EMT through a program most efficient and cost effective to the Township.

2. VACATIONS

The following is applicable to Firefighters only:

- A. All firefighters will receive eight (8) 24 hour work shifts per year for vacations.
- B. Vacation selections are to be determined by seniority among the Firefighters
- C. The maximum number of Firefighters that may be on vacation at any one time is two (2) provided, however, that this may be increased at the discretion of the Director of the Department, which discretion shall not be

unreasonably withheld.

- D. Vacation selections are to be forwarded to the Director of the Department by January 1.
- E. Firefighters shall choose vacations within their own rank without affect from/or/to subordinate other ranks.
- F. Vacation time shall be taken in increments of one to four (at the discretion of the employee) consecutive 24 hour shifts, per vacation selection, subject to being in higher increments with the consent of the Director of the Department, which consent shall not be unreasonably withheld.
- G. There is an option of carrying over vacation time to the following year.
- H. Except as aforesaid, vacation use and selections shall be in accordance with prior practice.

#### POSITION OF THE ASSOCIATION

As the parties have agreed on the increases in salary, the only outstanding economic issue between them is whether firefighters should receive compensation for emergency medical services. The evidence establishes that FMBA members are entitled to 1.25% per year added to base for such services.

On December 31, 1996, the Fire Department issued a new policy

concerning the providing of emergency medical aide services not previously done by the Fire Department ("assistance policy"). That policy, effective the first day of January, 1997, did not replace any prior policy. Rather, the policy instituted a major addition to the services provided by firefighters. The policy provides that when designated medical emergencies occur, an engine company is always to be dispatched, with fire rescue when the first aide squad is not available, and without fire rescue when the first aide squad is available. This requirement for the provision of emergency medical services by firefighters remains unchanged to this date.

The workload of firefighters has immediately and dramatically increased as a result of the aide policy. Runs have increased by over 40% per year due to the addition of these emergency services. Moreover, the aide policy has increased the knowledge and experience areas in which firefighters are required to be trained. This is not a situation where the volume of calls responded to by firefighters has gradually increased, with a gradual change in the nature and type of calls to which firefighters respond.

It is undisputed that the FMBA did not let this change occur and years later request compensation. Rather, the FMBA immediately requested negotiations on compensation. When the Township refused to discuss compensation, the FMBA filed an unfair labor practice charge concerning a refusal to negotiate with the Public Employment Relations Commission. That charge was ultimately settled with the understanding that the issue of whether increased compensation was appropriate, and if so, in what amount, would be submitted to the



interest Arbitrator. Thus, although for most issues the first Contract year before the Arbitrator is 1998, the Arbitrator must also address whether compensation is appropriate, and if so, in what amount, for the calendar year 1997, the year EMS was instituted.

While the Township apparently believes that it could increase the workload through the aide policy because firefighters were sitting around most of the time doing nothing, the Township has offered no testimony to support this allegation. Even if it were true, the fact remains that the workload of the firefighters has increased, the number of runs per year nearly doubled, and the areas increased in which firefighters are required to be knowledgeable and have training.

While the Township argues that firefighters who are EMTs are entitled to some type of additional compensation, but first responders (EMS) are not, there are two reasons why this approach must be rejected. First, the Township has presented no breakdown of figures which show that there is any difference in the amount or type of work done by EMTs and first responders. The Township policies concerning firefighters providing emergency medical aide make no distinction between the obligations of first responders and EMTs. Second, the Township provided no testimony or other evidence to contradict or overcome the testimony offered by the FMBA to support its claim that the work done by EMTs and first responders is essentially the same. Thomas Lyons, Chair of the State FMBA EMS Committee since 1996, testified without contradiction that both

first responders and EMTs provide essentially the same level of service, the sole difference being that EMTs are licensed by the State Department of Health while first responders are licensed by the American Red Cross, and that EMTs are authorized to travel on a basic life support ambulance with transport capacity. Given that there is little difference between the functions which can be performed by an EMT and those which can be performed by a first responder, and given that the Township in no way differentiates between first responders and EMTs in terms of utilization, there is no reason to award additional compensation solely to EMTs.

Any argument that no additional money should be provided for EMS services, as the provision of the EMS services is a part of the Civil Service Job Description for Firefighter, is without merit. It may be true that the job description incorporates EMS training. However, until 1997, the services were not a part of the regular job duties for a firefighter in West Orange. Further, as testified to by Deputy Chief Lyons, the provision of EMS services by fire departments in the State of New Jersey, while growing, is still the exception rather than the rule. To his knowledge only about 30 paid fire departments throughout the entire State of New Jersey provide EMS services. Significantly, of the 18 Locals who responded to a survey only one, West Orange, provided no stipend of any sort for EMS services. On cross examination Lyons testified that he was aware of only two paid departments in Essex County besides West Orange which provided the EMS services: Maplewood and Belleville. Maplewood and Belleville both provide stipends for EMS

services. Thus, when EMS services are provided, firefighters who provide them receive a stipend.

Information provided by the Township concerning firefighter compensation in other communities for emergency medical services is valueless for several reasons. First, there has not been any testimony introduced to indicate who compiled the information or, assuming the information provided is correct, the basis for the various pay differentials. The information also raises more questions than it provides answers. By way of example, it is indicated that there are 65 EMTs in Belleville and 65 first responders. It thus would appear that each EMT is also a first responder, and failure to provide additional payment to first responders is irrelevant if each is also an EMT.

It is also important to note that the total difference between the package proposed by the FMBA and the package proposed by the Township, including incorporating the EMS stipend into base pay, is minimal. Even according to the Township's own calculations, which assume all firefighters maintain EMS and/or first responder certification for the entire time, the difference between the two proposals is only \$136,633. This number, however, assumes all firefighters are at the maximum step of the guide. In reality, in 1998 31 were at maximum and 26 were not at maximum.

West Orange is in an excellent position to afford approximately \$136,000 per year to have 24 hour/7 day per week emergency medical services. The financial analysis for West Orange prepared for the FMBA shows that West Orange is showing economic

strength. Of most importance is the fact that West Orange's tax base is increasing. The Township is generating additional income from high tax collection and new construction, as well as a large number of nursing, assisted living and senior housing facilities. Moreover, just the savings from a decrease in the total number of firefighters is more than sufficient to fund the difference.

The approximate \$136,000 per year cost of the FMBA's proposal for EMS represents .02% for the total budgeted amount for salary and wages for the entire Fire Department for 1998 as well as that proposed for 1999. A .02% increase in the total Fire Department budget in order to provide 24 hour/7 day per week emergency medical services is not even noticeable.

Furthermore, the maximum firefighter salary in West Orange, including the 1.25% added to base each year, will be below average for the State of New Jersey. Statistics demonstrate that the average salary in 1998 for firefighters in the State of New Jersey was \$56,128.80 or \$2,223.80 over the value at maximum step of the FMBA's final offer for 1998.

While the Township has submitted numerous documents to show that the firefighters over the years have received raise increase percents which are greater than the C.P.I., this is irrelevant for two reasons. First, neither applicable statute nor regulation provide for information to be considered for years prior to the Contracts at issue. Second, there is no showing by the Township as to how increases in salaries of other groups over the same period of time have fared in comparison to the C.P.I. Thus, while the

FMBA salaries have gone up compared to the C.P.I., they very likely have not gone up in any greater percentage than any of the comparison groups.

A review of the current Agreement between the Township and PBA shows that police officers receive maximum salaries greater than those which the Township contends would be received under the FMBA's final offer. In 2000, the maximum police officer's salary is \$1,540 greater than the Township contends the FMBA's final salary offer is, and in 2001 the Township's own figures show the FMBA's final offer to be \$834 below the maximum salary for police officers.

In summary, the Township can well afford the additional cost of the FMBA proposal that firefighters receive an additional 1.25% per year, figured into the base, for EMS services. The total cost of the proposal does not equal the cost of firefighters lost through attrition. Further, the Township has increased tax revenues, an excellent tax collection rate and budgeted money each year which goes unspent. Even with the FMBA proposal, the maximum firefighter salary in West Orange would not equal the maximum police officer's salary in West Orange, and the average hourly straight time rate would be less than the average statewide hourly rate for firefighters. Most important, for the time period at issue, the number of runs performed by firefighters has increased by over 40% per year due to the addition of emergency medical services not previously provided.

Turning to the other demands of the Association, FMBA members

are entitled to \$8.00 per hour in addition to their hourly rate for time spent working in an acting capacity. The Township has saved a considerable amount of money by utilizing firefighters as acting captains, at a minimal cost of \$2.12 per hour. The actual difference between the hourly rate for firefighters and for captains is between \$7 and \$8 per hour, depending upon length of service. In 1997, a total of 7,508 hours were spent by firefighters acting as captains. Given that firefighters work 2,184 hours per year, this is the equivalent of 3-1/2 full time employees serving as captains at virtually no cost to the Township. The Township has therefore essentially been able to avoid promoting a number of firefighters to the position of captain by having firefighters serve as acting captains for essentially no increase in pay. This is contrary to not only any notions of fundamental fairness, but contrary to common practice in the labor relations' community, including in the fire departments for which the Township submitted sample agreements. Firefighters are entitled to compensation for the job performed. For these reasons, firefighters are entitled to an increase in pay when serving in an acting capacity.

FMBA members are also entitled to a minimum of four hours pay at time and one-half when called in while off duty. The current practice in West Orange is that while a firefighter who is called in while off duty will receive overtime, that compensation covers only actual time worked. If the firefighter is needed for only a few hours, the amount earned does not begin to compensate the

firefighter for the disruption to his personal life. For this reason, it is appropriate that firefighters be compensated for a minimum of four hours when called in from off-duty. Moreover, the Township's own exhibits show this to be a common benefit. Most municipalities recognize the essential fairness of providing some extra compensation to employees who are called in from off-duty, in recognition of the disruption to the firefighter's personal life, as well as the total time spent commuting, if the firefighter reports to work for only a minimum amount of time. For these reasons, the Arbitrator should order that employees called in from off-duty receive a minimum of four hours pay at time and one-half, as opposed to the current practice of pay only for time actually worked.

FMBA members should receive three vacation picks per tour, without regard to picks by superiors. Currently, Article 28, Paragraphs B4 and B7 guarantee three firefighters per tour slots for a vacation. However, firefighters have been unable to exercise their guarantee of three picks per tour for vacation because superior officers have had the first selection of vacation regardless of seniority. Thus, the FMBA has proposed that firefighters maintain their current guarantee of three vacation picks per tour, without having it dependent upon the number of superiors who are out.

While the Township has agreed in principle to the request that firefighters pick vacations without regard to the number of superior officers who have already chosen vacations, the Township

seeks to limit the number of firefighters on vacation on any tour to two. There is, however, no downside the Township can refer to in argument against three guaranteed picks. Director Ryan testified that three firefighters per tour having picks at the same time would not create overtime.

The Township's proposal to separate picks by firefighters and captains, but limit the firefighters to two picks per tour, maintains the perpetual disadvantage of the firefighters. More specifically, the Township currently employs 55 firefighters and 22 fire captains. Thus, there are two and one half times as many firefighters as captains, yet each, under the Township's proposal, would be allowed two picks per shift for vacation, clearly disproportionate. If two captains per tour were on vacation, or eight captains, 36% of the captains would be on vacation. If two firefighters per tour, eight firefighters, were on vacation, only 14% would be on vacation. Maintaining the firefighters' right to three picks would allow a maximum of 12 firefighters on vacation at a time, 21% of all firefighters, far less than 36% of captains. Viewed another way, there are 77 firefighters and captains altogether. Captains thus comprise 28% of the total. Under the Township's proposal, captains would nevertheless be taking 50% of available vacations on any tour. While firefighters continue to be at a disadvantage for vacation picks compared to officers based on the FMBA's proposal, it is less of a disadvantage than previously.

For these reasons, firefighters should maintain the right to have three individuals per tour exercise their right to vacation



picks, or other time off, if not chosen as vacation.

Each firefighter should be entitled to a complete Orders Book, updated on a regular basis, and all policies of the Department should be reduced to writing. Employees have the right to know the rules by which they must function, particularly in the public safety field. Requiring that the Township provide written notice to each employee of the performance standards and job requirements is common sense. This demand does not in any way interfere with the Township's right to make policy determinations. This is a purely routine procedural request that the employees have notice of those policies which apply to them. The Township has articulated no logical reason why firefighters should be denied a complete written set of orders, nor have they set forth any legitimate reason as to why the Contract should not require the Township to provide each firefighter with such written orders.

Firefighters should be entitled to carry over personal days into January, February and March of the following year. While Article 19, Paragraph F of the current Collective Bargaining Agreement understandably states that personal and seniority days cannot be utilized if staffing will drop below authorized minimum manning, Michael Tumminello, President of the FMBA, testified that there is often a problem with firefighters being able to utilize personal days. Once vacations are scheduled, if firefighters call in sick, minimum manning may prevent firefighters from utilizing personal days. To assure that all firefighters are able to utilize personal days, it would be appropriate to grant to the firefighters

the right to carry over unused personal days into the first three months of the next year.

The FMBA requests that the accounting method for exchange of tours be incorporated into the Contract, and seeks the change of time policy that the Township proposed in negotiations with superior officers: any exchange from three hours and one minute through 24 hours be equivalent to one change of time.

The FMBA also requests that the Contract clarify that the change of time be charged only to the requestor and not to the person who accommodates that request. An individual firefighter who is willing to exchange time with other firefighters should not be denied the opportunity to exchange time when he needs it because he has agreed to help his fellow officers. For that reason, a change of time should count only against the officer who requested the change, not against the officer who is willing to assist with that request.

Although sick leave is provided for in Article 14 of the current Collective Bargaining Agreement, the practice of accounting for sick leave is not incorporated within that Agreement. The Township, in its proposal to the superior officers, sought the following language:

Accounting for sick days will be consistent with the current practice of accounting for personal and seniority days. One (1) 24-hour work period equals a ten (10) hour and fourteen (14) hour work period.

This language is acceptable to the FMBA and it requests that this language be incorporated into its Collective Bargaining Agreement.

For all these reasons, it is respectfully requested that the

Arbitrator issue an Award granting the requests of the FMBA.

POSITION OF THE TOWNSHIP

The dispute between the parties revolves around essentially one issue - EMT stipends. The Township and Association are not in disagreement over the fundamental objective surrounding this issue. The Township and FMBA are not in disagreement, for example, that an EMT stipend should be provided - indeed, both parties have presented stipend proposals. Nor is the value of the stipend to individual firefighters a major issue - the Township's proposed stipend is \$1,200 for each EMT, the FMBA's proposal is 1.25% of base pay (equating to \$657 in 1998, \$677 in 1999, \$699 in 2000 and \$723 in 2001). Finally, there is no argument regarding who will pay for the CEUs necessary to retain EMT certification or how many firefighters may seek to become EMT certified. Rather, the crux of the EMT stalemate (and the need for the instant hearing) revolves around two aspects of the EMT proposal: who should qualify for the EMT stipend and when should the EMT stipend become effective.

Not only is the FMBA proposal to include compensation for first responders as well as EMTs at odds with every other comparable municipality surveyed, the FMBA neglects to mention that under its proposal each and every member of the unit would be entitled to the stipend. Indeed, the FMBA's proposed stipend is not a stipend at all, it is simply an add-on to base pay. The Township is strenuously opposed to any such add-on for job duties which are inherent in the job of firefighter.

Not only is the FMBA proposal unreasonable in light of comparability to other fire departments, it would severely undermine the Township's ability to maintain the level of EMT qualified firefighters necessary to serve the needs of West Orange. As testified to by Fire Director John Ryan, any Award granting benefits to first responders would serve as a significant disincentive to gain (or maintain) an EMT certification. It would be markedly less burdensome for a firefighter merely to keep his first responder status and collect his stipend. Not only is an EMT certification more difficult to obtain, once EMT certified, a firefighter would be required to perform additional duties not required of first responders. In this regard, Ryan testified that an ambulance must be manned by two EMTs. Only EMT certified firefighters therefore are regularly required to perform ambulance duties. Accordingly, whenever an ambulance call comes in, it is EMTs that are required to act, not the first responders. Under the FMBA's proposal, a first responder could sit back, collect his additional pay, and watch the EMT certified officers do all the additional work.

It is evident that any decision granting the FMBA's proposal would encourage the depletion of EMTs from the West Orange EMT program. The Township is already seeing this happen. According to Ryan, if the current trend of certification lapsing is continued, West Orange's EMT program will be inoperative by 2002. Indeed, as a result of FMBA pressure not to keep EMT certifications and the resulting increased workload on EMTs maintaining their

certifications, five EMTs since 1998 have lost their certifications and another 12 will lose their certifications in June, 2001. Despite the June, 2001 lapsing date, the Township was forced to cancel its CEUs credits in 2000 due to lack of participation by firefighters. If these 12 firefighters had participated in these classes, their certifications would not be at risk of lapsing. The Township simply cannot be forced to accept a proposal which incorporates such a complete disregard for the safety of its residents.

As to the issue of when the Township should begin to pay its EMT stipend, the Township proposes January 1, 2000, with the first pay-out in November, 2000. Under the Township's proposal, firefighters who were EMT qualified on January 1, 2000 and maintain their EMT certification for the entire year would be eligible for the stipend, paid in one lump sum in November. This start date is consistent with the additional vacation granted to captains in the Fire Department: a benefit which was linked to the stipend by the FMBA during the interest arbitration process. In addition, a January 1, 2000 start date is necessary to send a message to those West Orange firefighters who intentionally let their EMT certifications lapse, that their tactics will not be rewarded. Finally, the retroactive application of the stipend would unnecessarily impact on the West Orange budget, which did not account for such stipends in 1997, 1998 and 1999.

Finally, the FMBA's stipend calculation, which adds 1.25% to base pay each year, is completely unworkable, and would create wage

increases greater than that already agreed to in good faith by the parties. Under the FMBA's stipend proposal, the base rate of a firefighter in West Orange would be \$61,595 at the end of the Contract term, instead of the \$57,886 already agreed to by the parties. This represents an additional 7.26% over the term of the Contract or 1.82% per year more. Such a provision has not been supported and should be rejected.

Consideration of the specific statutory criteria supports the position of the Township. Indeed, when relevant evidence on all statutory criteria is fully considered, it is clear that the Township's position is the only reasonable position.

The Statute requires that the Arbitrator make certain comparisons in wages, hours and conditions of employment. The Statute further requires that the Arbitrator give due weight to the total compensation received by employees generally. To facilitate the interest Arbitrator's obligation to make these comparisons, the Township submitted evidence showing the wages and benefits received by Township firefighters, compared to other Township employees; the wages and benefits of comparable firefighters across the State; the wages and benefits of private and public sector employees in general; and general comparability data. The conclusion to be drawn is manifest: FMBA members receive wages and benefits that meet or exceed those of other Township employees, they are comparable to firefighters across the State and they earn more than private and public sector employees in general.

More specifically, the Contracts put into evidence from each

of the Township's other unionized groups illustrate specifically that FMBA members receive wages and benefits equivalent to other uniformed employees in the Township, and are in excess of those received by non-uniformed Township employees, both supervisory and non-supervisory. While all of the Township's unionized groups receive some benefits, only uniformed officers (police and fire) receive certain other benefits. In addition, only Fire Department employees work the 24 hour shift schedule, allowing them to work other full-time jobs. Uniformed officers are also entitled to better pension benefits pursuant to the New Jersey Police and Firemen's Pension Statute.

In addition, under the negotiated settlements reached with each of the Township's other unionized groups, FMBA members will either keep pace - or advance - in relation to these other groups. With the exception of fire captains, who received an additional vacation day beginning in January, 2000, the settlements reached with the Township's other unionized groups contain no significant additional monetary adjustments. It is further notable that during the hearing the FMBA introduced evidence valuing the additional vacation day to captains at 1% beginning in 2000. The value of the \$1200 offered to EMT certified firefighters is equivalent to approximately 2.3% of current base pay, also beginning in 2000. Thus, the package proposed by the Township is fully in line with internal comparability.

Insofar as comparisons with other firefighters are concerned, West Orange firefighters receive a wage and benefit package which

falls above the average pay to comparable titles in New Jersey. This point is evidenced by reviewing selected municipalities, which include those surrounding communities whose contracts were introduced into evidence, and other comparable municipalities based on factors contained in the Municipal Data Book.

In regards to private sector employment in New Jersey in general, it is also clear that West Orange firefighters earn in excess of non-supervisory, non-professional positions. Indeed, firefighters earn in excess of a significant number of professional occupations requiring advanced degrees. For example, West Orange firefighters make more than the average for teachers, accountants and auditors, assessors, computer specialists and social workers. In addition, these private sector employees do not receive the significant overtime earned by firefighters, they do not receive the level of health benefits enjoyed by West Orange firefighters and they do not have the flexibility inherent with 24 hour schedules.

The Township's EMT proposal is the only reasonable proposal when considering comparisons to similarly situated firefighters in New Jersey. The Township's EMT proposal provides a stipend of \$1,200 to all EMT certified firefighters in West Orange beginning in January, 2000 regardless of whether or how much they are assigned to the ambulance. Consideration of EMT benefit offered in comparable fire departments across the State reveals that if the FMBA's proposal was granted, West Orange would be the only municipal fire department providing a stipend to first responders.



Not only would this set West Orange apart from all municipalities surveyed, it would severely damage if not completely destroy the West Orange EMT program. In addition, considering only those municipalities compensating EMTs similar to the way anticipated by the Township (i.e. providing training on duty and providing the benefit to all certified EMTs, rather than to only those serving as first line EMTs) West Orange's proposed benefit is better than all but four of the municipalities surveyed and is well above the average. The Township could not be more convinced that any stipend given to first responders is wholly unjustified, would damage its EMT program and would not be justified by comparison to any other unit surveyed.

The Statute requires the Interest Arbitrator to consider the cost of living in deciding between the final offers of the parties. The Township introduced compelling evidence providing that the FMBA has significantly outpaced the cost of living over the past 12 years, and will continue to stay ahead in real dollars over the terms of the instant Contract. The significant gain over the C.P.I. does not even consider the impact of the additional EMT stipend to qualifying firefighters.

Specifically, the evidence presented shows that since 1985, base increases of FMBA members have outpaced increases in the C.P.I. index by 47.8% or an average of 3.98% per year. In addition, when considering both the compounding of wage increases, as well as movements on steps and longevity benefits, the salaries of FMBA members outpaced the cost of living by 139% over the period

1985 through 1997.

The FMBA cannot seriously claim that its proposals are necessary to insure the continuity and stability of employment. Indeed, the FMBA has presented no evidence that FMBA members are leaving Township employment currently, or may leave if their proposals are not awarded. No such evidence has been presented because no such evidence exists. There is no need to alter the Township's proposal as a result of this statutory criterion. To the contrary, the continuity and stability of employment may well be eroded if the interest Arbitrator grants the changes requested by the FMBA regarding the EMT stipend. As previously established, if the FMBA's EMT stipend proposal is awarded, there would be no incentive for any West Orange firefighter to become (or remain) an EMT. If the Township were to lose all its EMTs, it could be forced to implement drastic measures to insure the health and safety of its residents. Any drastic action forced on the Township by the FMBA's proposal would undoubtedly result in changes to the Department which could impact on the continuity and stability of employment.

As to the interest and welfare of the public, both judges and legislatures have spoken with a singular voice: great weight must be accorded the position taken by public employers as to how best spend and prioritize the available public resources. As testified to by Fire Director John Ryan, the Township's proposed EMT stipend protects the residents and taxpayers of West Orange, while treating the firefighters in West Orange fairly. Ryan believes the Township

provided training and a policy not to limit the number of EMTs who may take the training and qualify for this stipend is a significant benefit. He also believes that the \$1,200 stipend (approximately 2.5% of base pay) is significant and will attract firefighters to the program. Most importantly, however, Director Ryan testified that the FMBA's proposal would seriously damage the ability of West Orange to provide adequate EMTs, as it would severely effect the ability of the Fire Department to cover ambulance duty. This result is directly contrary to the interest and welfare of the public.

As to other FMBA demands, one common fact prevails: the burden for establishing the necessity of the changes should rest with the FMBA and on each issue, the FMBA has failed to meet its burden. As a result, each proposal must be denied.

More specifically, under the current manning requirements in the West Orange Fire Department, only three employees can be on vacation (or other paid time off) on any one shift. The current vacation pick practice in the Township provides that fire officers pick their vacation days before FMBA members. Since only three officers can be on paid time off on any one shift, the current practice has resulted in all but the most senior FMBA members being locked out of the most desirable vacation times of the year. The Township agrees with the Association that the current practice is unfair and must be changed. Accordingly, the Township, as well as the FMBA, have presented proposals to the interest Arbitrator altering vacation selection practice. Indeed, both proposals

clearly have as their primary goal the ability of FMBA members to select vacation days independently of fire officers. Unfortunately, the proposals seek to achieve this goal in different ways, and result in vastly different consequences to the Township.

The Township's proposal to the FMBA mirrors the proposal made to and accepted by fire officers, with the exception that it provides two independent picks for FMBA members. This means that whereas in the past firefighters only got those days "left over" by the fire officers, under the Township's proposal they would have access to at least two picks on each shift. The FMBA members would even have access to three picks where no fire officer selected the shift or in the discretion of the Fire Director. Thus, the Township's proposal seeks to give both FMBA members and fire officers a fairer opportunity to select the most desirable vacation time.

The FMBA's proposal, by contrast, demands three independent picks for FMBA members. Although on its face the difference between the proposals does not seem significant, as testified to by Fire Director Ryan, the impact of the difference is dramatic. According to Ryan, if the FMBA's proposed vacation pick proposal was awarded, the overtime cost associated with time off requests would sky rocket out of control. The Township would be required to either reduce the minimum manning requirements in place in the Department or hire additional personnel. Either result is wholly unjustified, particularly considering that the Township is willing to provide a significant improvement in vacation selection to FMBA

members. The Association is simply being greedy.

This greediness is more clearly demonstrated when the Association's other time-off proposal is considered. In this proposal, FMBA members would be allowed three picks independent of fire officers not only when selecting vacation time, but also when selecting personal days, seniority days, King days and time owed days. As testified to by Ryan, this is not a legitimate option and would allow firefighters, regardless of years of service, to pick days off, (regardless of what time of day) before even the most senior captains. The FMBA's proposal in this regard is nonsensical and would negatively impact upon fire officers to an extent wholly unjustified and unreasonable. Indeed, the Association did not even attempt to justify its proposal and presented no evidence contradicting the Fire Director's significant concerns.

While the FMBA has proposed that members of the bargaining unit receive increased compensation when working in an acting capacity, the FMBA failed to present any testimony or documentary evidence demonstrating that this proposal was warranted in West Orange or was based on benefits received in comparable municipalities. In addition, no evidence was presented demonstrating the financial impact this proposal would have on the Township or the unfairness of the current practice of compensating for acting time. Indeed, no evidence was presented by the FMBA even explaining to the Arbitrator what the current practice is. This proposal should be rejected by the Arbitrator.

Insofar as the FMBA call-in pay proposal is concerned, the

current practice provides for payment of time and one-half for all hours worked when recalled to duty. The FMBA has presented no evidence to demonstrate a change in the current practice is justified. In addition, it has provided no insight into the impact of the proposal on the Township or how much such a proposal would cost. The Arbitrator must therefore also reject this proposal.

As to the FMBA's proposal for carry over of personal days, it fails to reference whether such carry over is required only when firefighters are prevented from using the time by the Township, or whether the carry over would be allowed even where the firefighter simply chose for personal reasons not to schedule the days. The proposal also fails to clarify how the days would be picked. Under any scenario, the FMBA failed to present any evidence justifying this proposal, either through testimony or through documentation. The Township, by contrast, presented the testimony of Fire Director Ryan, who stated without contradiction that such a carry over requirement would result in huge overtime costs and would simply be unworkable. It is also notable that, contrary to what the FMBA asserts, there is no current Township practice of carrying over personal days. The Arbitrator must therefore reject this proposal.

The Arbitrator should also reject the FMBA's Orders Book demand. The FMBA has failed to present any evidence demonstrating why this proposal is necessary and the impact of such a proposal on the Township. The Township objects to the proposal that each firefighter receive a complete Orders Book which will be updated on a regular basis because it would result in an inordinate amount of

time in the creation and updating of each individual firefighter's manual. The creation of such a book could also result in the deterioration of communications between the ranks of firefighters. Without some demonstrated need, the proposal should be rejected. In addition, the requirement that all Department policies be reduced to writing is unduly burdensome and unjustified.

Finally, the FMBA has failed to justify its change of time proposal. The FMBA failed to explain the impact of the proposal or how it would change the current practice. The FMBA therefore wholly failed to meet its burden of establishing the need for the requested change.

For all these reasons, the Arbitrator should select the Township's proposals and reject the proposals of the FMBA.

#### ANALYSIS

The parties have already reached agreement on the item which is normally the primary reason for an interest arbitration proceeding, specifically the wage increases for each year of the new Agreement. Nonetheless, several issues remain unresolved. I resolve those issues as follows:

1. Effective in the year 2000, any firefighter possessing the requisite EMT certification as of January 1 shall receive a 2% stipend for that year added to the base salary. Firefighters possessing only EMS certification shall receive no stipend.
2. Firefighters will pick vacations independent from

superior officers. On any given tour, firefighters will have a minimum of two (2) picks for vacation picking by seniority pursuant to the current practice, provided, however, that this number may be increased at the discretion of the Director of the Department, which discretion shall not be unreasonably withheld.

3. Firefighters who are unable to utilize personal days for any given calendar year during that calendar year will be entitled to utilize them in January, February and March of the following calendar year.

4. Change of Time policy to begin at: three (3) hours and one (1) minute through 24 hours equivalent to one (1) change of time charged to the requester. Limit of 12 with additional days in groups of six (6), approved by the Director.

5. Accounting for sick days will be consistent with the current practice of accounting for personal and seniority days. One (1) 24-hour work period equals a ten (10) hour and fourteen (14) hour work period.

6. All other proposals are rejected in their entirety.

I have reached these conclusions based upon a reasonable application of all of the statutory criteria. I will first explain in general terms the reasoning behind my determinations, then turn to a specific application of each statutory criterion.

Insofar as the first responders (EMS) and/or EMT issue is



concerned, the parties are in general agreement that compensation is appropriate. The disagreements between them over this matter are limited to the following four particulars: (1) who should be eligible for the compensation; (2) the amount of compensation; (3) whether or not the compensation should be added to the base; and, (4) what year of the new Agreement the compensation should become effective.

Concerning my determination that only EMT certified individuals should be eligible for the additional compensation, I recognize that the FMBA has established that runs increased significantly after the program was instituted effective January 1, 1997, and an important part of that increase was handled by EMS certified personnel. The fact remains, however, that EMS services are not outside the scope of the normal job description for firefighters. Moreover, all firefighters with the Township are certified in EMS. The Township therefore accurately contends that the FMBA's demand that EMS certified personnel receive substantial additional compensation added to the base for performing such work is in effect a demand for an additional increase in salary for firefighters in each year of the Contract. The statutory criteria would not be effectuated by granting salary increases well in excess of the established pattern for uniformed as well as non-uniformed services in this Township, and well beyond the cost of living, based upon the performance of work which has been and remains within the normal scope of a firefighter's duties. In addition, while the assistance policy increased the workload of

firefighters, there is no evidence that the performance of such duties, within the context of their other responsibilities, made the working conditions of firefighters unreasonably burdensome.

The Township also argues persuasively that the granting of the additional stipend to EMS as well as EMT certified personnel would be contrary to the interests and welfare of the public and perhaps even have an adverse impact upon the continuity and stability of employment. More specifically, notwithstanding that EMS and EMT certified personnel might frequently perform the same type of work, there is nonetheless certain work which EMT certified personnel are needed to perform which cannot be done by EMS certified personnel. It is also undisputed that the training for EMT certification far exceeds that for EMS certification. If I were to grant additional compensation to first responder certified personnel as requested by the Association, there would be little if any incentive for firefighters to willingly obtain EMT certification. Indeed, it could well be perceived by firefighters that there would be a disincentive against obtaining EMT certification, as it would entail additional training and additional work for no additional money. The granting of substantial additional compensation only to EMT certified personnel will eliminate any such perception. It will also create the opportunity for a "win-win" situation for the Township, its residents, and the taxpayers. As the Township has placed no limit on the number of firefighters who can obtain EMT certification and has assured that it will conduct in-house training so as to enable bargaining unit members to obtain EMT

certification, all bargaining unit members can be assured of qualifying for the additional compensation and the Township and its residents can be assured that the full range of emergency assistance will be available at all times.

Consideration of the comparison criterion further solidifies the conclusion that substantial additional compensation should be provided for EMT certified personnel but not those firefighters possessing only EMS certification. The Association has provided ample evidence that in other Fire Departments in the County and State firefighters with EMS/EMT certifications and/or responsibilities frequently receive additional compensation. The Township has established, however, that there is little if any evidence of firefighters who only possess EMS certification receiving the same additional compensation.

As to the amount of the additional compensation, 2% of base pay, added to base salary, appropriately balances the competing considerations. An examination of EMT benefits in other jurisdictions reveals that although some firefighters/EMTs receive a stipend greater than 2%, others do not. While 2% for the year 2000 is worth slightly less than \$1200 for firefighters at maximum, the amount of dollars generated by this percentage will of course increase as the base pay is increased in future years. Benefits calculated based upon base pay will also be increased accordingly. Moreover, it is fair and appropriate that the amount of compensation be calculated as a percentage of base and added into base, as those firefighters who obtain EMT certification will

perform duties associated with this high level of certification as an inherent part of the job duties for which they receive base pay.

As to my selection of January 1, 2000 as the date the additional EMT compensation becomes effective, there are several reasons for this decision. While the assistance policy became effective January 1, 1997, the Township was not automatically required to grant any increase to the bargaining unit as a result thereof. Rather, as recognized in the PERC settlement, it was required to negotiate over the matter in good faith. Those negotiations, while lengthy and ultimately inconclusive, were not altogether futile. Indeed, they resulted in both sides making offers on this issue. This Award now in effect brings those negotiations to conclusion. It is not uncommon in labor relations for a conclusion to a dispute over a matter such as this to be prospective only. Thus, the fact that I recommend some, but not full, retroactivity is fair and appropriate.

Comparability considerations also mitigate in favor of a finding that the EMT compensation start January 1, 2000. As noted by the Township, settlements involving unionized employees and the Township are, with one exception, limited to salary increases. The one exception involved Fire Captains, whose settlement included one extra day of vacation. That extra vacation day took effect in the year 2000. Thus, to the extent the extra compensation for EMTs "patterns" the extra vacation day for Fire Officers, it is appropriate this added benefit take effect in the same year.

It is also clear that the Association's position concerning

compensation for EMTs was stronger as of January 1, 2000 than in 1997, 1998 and 1999. This is because it was not until 1998 in a case involving the Township of Edison and Edison Fire Fighters Association Local 1197 (IA-96-71) Arbitrator J. J. Pierson issued an Award increasing the amount of a previously existing stipend for the classification of Firefighter/EMT. It was not until 1999 that Arbitrator James Begin issued his Award involving Teaneck and FMBA Local 42 (PERC Docket No. IA-97-45). Insofar as this record reflects, the Teaneck Award was the first time an interest Arbitrator granted a stipend for EMT certification where none had previously existed. Moreover, it was not until October 29, 1999 that PERC affirmed this portion of the Award. Thus, to the extent the Edison and/or Teaneck precedent influenced the position of the Township and my Award, it is not unreasonable to conclude that the Association may have here achieved for its members a benefit starting in 2000 which it could not have earlier accomplished.

Indeed, it is notable that the portion of my Award involving EMS/EMT certification essentially tracks the Teaneck Award. It is clear from the terms of that Award, as clarified by the PERC decision which followed (PERC No. 2000-33), that Arbitrator Begin rejected a proposal by the FMBA for additional compensation for "first responder" EMS certification while at the same time granting 2%, added to the base, for EMT certification. I have done likewise.

Turning to issues other than EMS/EMT stipend, I have denied the Association's demands for acting pay and call-in pay for

similar reasons. Both proposals are rational and not devoid of appeal if considered in a vacuum. No proposal, however, can be considered isolated from a total package of increases in wages and benefits which will take place in a new Collective Bargaining Agreement. Here, those increases include substantial raises and, as previously noted, a new benefit by which each and every member of the bargaining unit will have an opportunity to increase his or her salary by an additional 2%. Were I to in addition grant the acting and/or call-in pay proposal, it would place the new FMBA/Township Contract well outside the established pattern for bargaining units in this jurisdiction. While it is difficult to calculate the cost of the call-in proposal, as there is little if any concrete evidence about how often firefighters are called in to work for less than four hours, it is apparent that the cost associated with the acting pay proposal is substantial. More specifically, in this proposal the Association is seeking for its members between \$7.00 and \$8.00 per hour, depending on length of service, in addition to their hourly rate for time spent in an acting capacity, and in 1997 a total of 7,508 hours was spent by firefighters acting as captains.

As to the Association's "Accounting for Sick Days" and "Change of Time" proposals, I have granted both of these demands for similar reasons. Neither proposal is unreasonable on its face. Moreover, the Association has established that the Township found both of these items to be acceptable during negotiations with the Fire Officers. As I have already made clear, I place significant

weight on internal pattern within a bargaining unit, particularly as it concerns uniformed services. The Township has presented insufficient reason why it was willing to make these changes in the new contract of the Fire Officers but not that of the firefighters. In the absence of reason to distinguish the two units, I have concluded that the proposals should be granted to the firefighters.

I deny the Association's "other time off" proposal. There is no evidence of record to support the granting of this demand. In addition, the Township argues convincingly that the granting of this proposal could have significant impact upon scheduling and manpower needs.

I have denied the Association's Orders Book demand because there is insufficient evidence of difficulties with the status quo which would justify the granting of this proposal. Moreover, while on the surface this demand might seem innocuous, in practice it could cause significant difficulties in the parties' relationship. For example, requiring all policies to be reduced to writing could lead to conflict about exactly what the unwritten policies are and how they operate. In the absence of the necessary proof concerning current difficulties in these areas, I will not risk creating such disruption in the parties' relationship.

I have granted the Association's proposal for carry over of personal days because it applies only to firefighters who are "unable" to utilize personal days in any given calendar year. Thus, this carry over provision can be invoked only by firefighters who make reasonable attempts to use their personal days within a

calendar year, but for circumstances beyond their control they cannot reasonably do so. This provision therefore will not, as the Township fears, enable firefighters to choose to carry over personal days into the beginning of the following calendar year due to personal preference.

When the carry over proposal is viewed in this fashion, it appropriately meets the needs of both parties. It protects firefighters from the inequitable result of losing personal days for reasons outside their reasonable control. It also protects the Township from being subjected to the scheduling and manpower disruptions that could occur if firefighters were allowed to choose to carry over personal days even if they could be reasonably scheduled during a calendar year. While the evidence is inconclusive concerning how much money and disruption will result to the Township from the granting of this proposal, I conclude that on balance the cost is justified so as to avoid the inequitable result of firefighters losing personal days, a benefit to which they are entitled by Contract, through no fault of their own.

Concerning vacation picks, I have granted the Association's proposal, with the important modification that on any given tour firefighters will be able to maintain two, rather than three, picks for vacation picking by seniority pursuant to the current practice. While this reduction from three to two is one less guaranteed pick than the firefighters desired, I am persuaded by the Township that allowing the firefighters to have more than two guaranteed picks independent from superior officers could create manpower



difficulties. While the Association correctly notes that a significantly greater percentage of the Superior Officers will be able to select vacations on a tour than will firefighters, it has not been demonstrated that there is anything inherently irrational about such a level of disproportion when staffing a fire department. Moreover, I have added a proviso which was contained in the Township's final offer on this issue, namely that the number of firefighters on vacation during a tour may be increased beyond two at the discretion of the Director of the Department, which discretion shall not be unreasonably withheld. Thus, while firefighters have here achieved a guarantee of vacation picks separate from Fire Officers limited to two, the possibility exists that this number will be increased on certain tours. Finally, I have not incorporated into my determination on this issue any of the language contained in the Township's proposal except insofar as noted above because the record does not adequately establish the need or justification for such language to be incorporated into the parties' new Contract.

Having addressed each of the remaining open issues, I now turn to further consideration of each of the statutory criterion.

#### INTEREST AND WELFARE OF THE PUBLIC

The interest and welfare of the public are well served by this Award. When my determinations are viewed within the context of the wage increases already agreed upon by the parties, the result is a fair and reasonable increase in compensation and benefits while

giving due regard to the legitimate economic and managerial concerns of the Township. As detailed elsewhere in this analysis, the firefighters have arguably achieved the best new Contract of any bargaining unit involving Township employees. There is no contention, however, that the Township will have difficulty funding this Award within its CAP. In addition, the Award carefully accounts for legitimate staffing and service concerns of the Township.

#### COMPARISONS

In making comparisons, it must be kept in mind that the level of wage increases is not a matter of dispute. In addition, on a number of other disputed items there is little cost impact involved.

Comparisons involving private employment demonstrate that FMBA members are well situated. While there is no evidence of private sector jobs which may be comparable to that of firefighter, the Township has demonstrated that Association members earn in excess of many non-supervisory, non-professional positions and even in excess of a significant number of professions requiring an advance degree. In addition, private sector employees generally do not have the benefit of 24 hour schedules such as that achieved by the Association in the 1995-1997 Contract. Nor is there reason to believe that private sector employees have health and pension benefits in excess of those received by FMBA members.

Comparisons involving public sector employment in general is

neutral. There is little reason to believe that firefighters represented by the FMBA are either excessively advantaged or disadvantaged in this regard.

Comparisons involving other Township employees mostly, although not completely, favor the position of the Township. Uniformed employees generally receive wages and benefits in excess of those received by non-uniformed Township employees. Among uniformed employees, however, the Association correctly notes that a PBA member at maximum receives base pay higher than a FMBA member at maximum.

This disparity, however, should be at least partly offset by the new FMBA Contract. More specifically, FMBA members will receive wage increases at least equal to all other unionized employees in the Township, including PBA members. Unlike PBA members, however, FMBA members have gained a new benefit which potentially could result in each and every member of the bargaining unit receiving an additional 2% in base pay. While the Association has presented good justification for achieving this elevated status, its reality cannot be forgotten.

Comparisons with firefighters in other public jurisdictions is neutral. While the parties dispute whether the maximum salary for firefighters in West Orange is higher or lower than the average for firefighters throughout New Jersey, consideration of the record evidence leads to the conclusion that FMBA members are compensated in a manner which is generally in line with acceptable firefighter compensation in New Jersey.

Comparison with other firefighters concerning the issues of call-in pay and acting pay favor the position of the Association. It has established that many other firefighters have such benefits. Nonetheless, I have concluded that this consideration, while valid, is outweighed by another statutory consideration, namely the pattern of settlements within the Township. While as previously noted the new FMBA Contract will exceed that pattern to some extent, the granting of these benefits at this particular time will deviate from the pattern to an unacceptable extent.

Comparisons with other firefighters on the issue of EMS/EMT compensation supports the Award I have fashioned. Even the FMBA's own data supports the conclusion that it is normally firefighters who have EMT certification, in addition to EMS certification, that receive additional compensation. Furthermore, while there is a broad range concerning the amount of compensation EMT certified firefighters receive, 2% added to base is certainly within that range.

#### OVERALL COMPENSATION

An examination of the most recent Association/Township Collective Bargaining Agreement reveals that Association members enjoy many benefits. These include longevity, scholastic credit compensation, sick leave, injury and illness leave, bereavement leave and benefits, insurance, personal and seniority days, uniform allowance, vacations and other matters. There is little evidence that this package of compensation is not equivalent to that of

other fire units or other employees within the Township.

STIPULATION OF THE PARTIES

The parties have stipulated to the length of Contract running from January 1, 1998 through December 31, 2001. The parties have also stipulated to the following wage increases during this period for all employees in the bargaining unit:

Wages:	January 1, 1998	3.0% across the board
	January 1, 1999	3.0% across the board
	January 1, 2000	3.25% across the board
	January 1, 2001	3.0% across the board
	July 1, 2001	0.50% across the board

These stipulations concerning length of the Contract and wage increases pattern settlements with other uniform bargaining units within the Township. They are also fair and equitable when viewed more broadly under the statutory criteria. These are important considerations and I have given them due weight in fashioning my Award.

AUTHORITY OF THE TOWNSHIP

The Award I have granted will not require the Township to exceed its lawful authority. There is no evidence that the Township does not have room under its cap to fund this Award.

### FINANCIAL IMPACT ON THE GOVERNING UNIT

The Award I have fashioned, when viewed within the context of the stipulation between the parties concerning wage increases, will not have undue financial impact on the governing unit, its residents and taxpayers. Calculation of the total net annual economic changes for each year of the Agreement supports this conclusion.

Under the most recent Collective Bargaining Agreement, effective January 1, 1997, firefighters at minimum receive \$30,512, those at step one \$34,620, those at step two \$38,728, those at step three \$42,835, those at step four \$46,943 and those at maximum \$51,051. According to a document agreed upon between the parties, there were approximately 54 people in the bargaining unit as of January 1, 1997. This included five individuals at minimum, six at Step 2, eight at Step 3, and 35 at maximum. The base for the overall bargaining unit was therefore \$2,481,537.00. Effective January 1, 1998, there will be an increase of 3%. This will bring the base salary for this unit to \$2,555,983. As this increase will be in effect for the full twelve months of 1998, the cost of this increase will be \$74,446. Effective January 1, 1999, there will be an additional increase of 3%. This will bring the base salary of the unit to \$2,632,662. As this increase will be in effect for the full twelve months of 1999, the cost of the increase will be \$76,679. Effective January 1, 2000, there will be an additional increase of 3.25%. This will bring the base salary for the unit to \$2,718,223. As this increase will be in effect for the full twelve

months of 2000, the cost will be \$85,561. Effective January 1, 2001, there will be an additional increase of 3%. This will bring the base salary for the unit to \$2,799,769. As this increase will be in effect for the full twelve months of 2001, the cost of this increase will be \$81,546. Finally, effective July 1, 2001, there will be an increase of 0.5%. This will bring the base salary for the unit to \$2,813,767. If this rate of increase were in effect for the full twelve months of 2001, the cost would be \$13,998. As it will be in effect for only six months, however, the actual cost in 2001 will be \$6,999. There will, of course, be a rollover cost of \$6,999 for the first year of the successor Collective Bargaining Agreement to begin in the year 2002. While these figures are exclusive of increment and longevity and the base salary increases obviously result in some additional costs for items calculated on base pay, increases in such costs will not have major financial impact on the governing unit.

In addition to the economic changes resulting from wage increases, there will be some economic change resulting from the EMT stipend. Record evidence indicates that in the year 2000 approximately 15 firefighters were eligible to receive this benefit. Two percent of the \$55,920 maximum base salary for that year would be \$1,118. Thus, the total cost for the Township for 2000 would be approximately \$16,776 if all EMT certified personnel were at maximum. As in reality some are not, the total cost will be somewhat less. In 2001, the maximum base salary is \$57,886. Two percent of this base will be \$1,157.72. Thus, the total cost

to the township would be approximately \$17,365 if all EMT certified personnel were at maximum. As they are not, the actual cost will be somewhat less. While I recognize that all money is important to the Township, 2% added to base is calculated by the Township to be slightly less than the \$1200 flat amount set forth by the Township in its own proposal. While this deviation in amount results in large part from the fact that the stipend is, as the Association desired and the Township did not, in the form of a percentage added to the base, the amount of money at issue should not be of great concern to the Township.

Other items I have granted are not subject to precise calculation in terms of their cost impact, if any. While the Township fears added cost from my granting the proposal concerning carry over of personal days, the actual amount, if any, is speculative.

#### COST OF LIVING

The package of wage increases and benefits that FMBA members will receive during the life of this Contract will exceed the cost of living during comparable years. The evidence submitted at the arbitration hearing revealed that in the New York - Northern New Jersey - Long Island, New York - New Jersey - Connecticut area there was a 1.4% increase in 1998 and a 1.9% increase in 1999. While there is no conclusive evidence concerning CPI increases in the years 2000 and 2001, it appears reasonable to conclude that the cost of living will be significantly lower over the course of this



Contract than the increases the FMBA members will receive. Nonetheless, consideration of the totality of statutory criteria supports this result.

#### STABILITY OF EMPLOYMENT

The Award I have fashioned is compatible with this criterion. The Township reasonably asserts that there is no evidence of a need to grant the EMS stipend sought by the Association, or any other benefit, in order to maintain continuity of employment. The members of this bargaining unit have extensive seniority and the staff is stable. While an unfair and unreasonable Award might have a detrimental impact on stability of employment, the agreements of the parties coupled with the Award I have made is eminently fair and reasonable as defined by the statutory criteria.

#### CONCLUSION

The Award I have fashioned takes into account all statutory considerations. I have assigned weight to the statutory criteria as appropriate, placing particular emphasis on internal pattern and comparability. This leads to a fair and equitable result to all concerned. It is therefore the Award I grant.

AWARD

1. Effective in the year 2000, any firefighter possessing the requisite EMT certification as of January 1 shall receive a 2% stipend for that year added to the base salary. Firefighters possessing only EMS certification shall receive no stipend.

2. Firefighters will pick vacations independent from superior officers. On any given tour, firefighters will have a minimum of two (2) picks for vacation picking by seniority pursuant to the current practice, provided, however, that this number may be increased at the discretion of the Director of the Department, which discretion shall not be unreasonably withheld.

3. Firefighters who are unable to utilize personal days for any given calendar year during that calendar year will be entitled to utilize them in January, February and March of the following calendar year.

4. Change of Time policy to begin at: three (3) hours and one (1) minute through 24 hours equivalent to one (1) change of time charged to the requester. Limit of 12 with additional days in groups of six (6), approved by the Director.

5. Accounting for sick days will be consistent with the current practice of accounting for personal and seniority days. One (1) 24-hour work period equals a ten (10) hour and fourteen (14) hour work period.

6. All other proposals are rejected in their entirety.

Signed this *10th* day of April, 2001.

*Scott E. Buchheit*  
SCOTT E. BUCHHEIT, ARBITRATOR

*State of New Jersey*  
*Nathan R. Hughes*

NOTARIAL PUBLIC  
STATE OF NEW JERSEY  
My Commission Expires, *2004*