

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION
CN 429
TRENTON, NJ 08625-0429

Docket No. IA-96-132

In the Matter of Arbitration Between

CITY OF PLAINFIELD

-Employer-

and

**PLAINFIELD FIREMEN'S MUTUAL
BENEVOLENT ASSOCIATION, LOCAL
NO. 7**

-Union-

OPINION

AND

AWARD

ARBITRATOR:

Robert E. Light, mutually chosen by the parties pursuant to the rules and regulations of the New Jersey State Public Employment Relations Commission.

MEDIATION SESSIONS:
HEARINGS:

September 25, 1996; November 14, 1996
April 23, 1997; May 14, 1997; May 15, 1997. Both counsel thereafter filed briefs, reply briefs and supplemental material.

APPEARANCES:

For the City

Brian N. Flynn, Esq.
Kathryn V. Hatfield, Esq.
Karen D. Dabney, Personnel Director
Thomas Morrison, Director of Finance

For the Union

David I. Fox, Esq., FOX & FOX
Stacey Rosenberg, FOX & FOX
Rickey Williams, President

Broderick J. Fleming, Vice President (Negotiation Chair)
Ronnie Belin, Firefighter (Negotiation Representative)
Hilton Whitaker III, Firefighter
Kenneth Childress, Firefighter
Charles S. Mills Jr., firefighter

PROCEDURAL BACKGROUND

Pursuant to Chapter 85, Public Law of 1977, the act providing for compulsory interest arbitration of labor disputes in police and fire departments and, in accordance with NJAC 19:16-5.6 (b), the undersigned was duly chosen as Interest Arbitrator in the above matter. This designation was communicated to the parties and the Interest Arbitrator by Timothy Hundley, Director of Arbitration, New Jersey Public Employment Relations Commission.

Mediation sessions were held on September 25, 1996 and November 14, 1996. Attempts at a resolution of this interest arbitration were unsuccessful and, as a result, formal hearings were held on April 23, May 14, and May 15, 1997. Thereafter, briefs, reply briefs and supplemental material were filed with the Interest Arbitrator.

By virtue of the statutory revision to NJSA 34:13(a)1, et seq., by the passage of the Police and Fire Interest Arbitration Reform Act (A-3296, C. 425 L1995) as well as by agreement of the parties themselves, conventional authority is vested in the Arbitrator to decide the issues in dispute.

The revised statute cited above imposes upon the Interest Arbitrator the following:

The arbitrator or panel of arbitrators shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why 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. , c. (C.)(now pending before the Legislature as this bill); provided, however, that each party shall

have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

[(b) in comparable private employment.

(c) in public and private employment in general.]

3. The overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.
4. Stipulations of the parties.
5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
6. The financial impact on the governing unit, its residents and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator or panel of arbitrators shall take into account, to the extent that evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of

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

STIPULATIONS

Although not treated as stipulations per se, the parties nevertheless agreed that the term of this contract should run from January 1, 1996 to December 31, 1998. The FMBA also offered no opposition to the City's proposal to include a "Fully Bargained Provision" in the contract.

FINAL OFFERS

CITY OF PLAINFIELD

1. ARTICLE III - GRIEVANCE PROCEDURE

3-3

(City Proposal #5):

Step Two: Fire Chief

Modify last line to state: "The Fire Chief shall attempt to find a mutually satisfactory solution to the grievance and shall provide a written answer to the grievance within ten (10) business days."

(City Proposal #6):

Step Three: Director

Modify first line to state: "If the grievance is not satisfactorily resolved at Step Two, the grievant shall file the original written grievance with the Director of Public Affairs and Safety...."

(City Proposal #7):

Step Three: Director

Modify last line to state: "The Director of Public Affairs and Safety shall attempt to find a mutually satisfactory solution to the grievance and shall provide a written answer to the grievance within ten (10) business days."

(City Proposal #8):

Step Four: City Administrator

Modify last line to state: "The City Administrator will attempt to find a mutually satisfactory solution to the grievance and shall provide a written answer to the grievance within ten (10) business days."

3-5

(City Proposal #10) - Delete Section in its entirety.

2. ARTICLE IX - CITY'S RIGHT AND PRIVILEGES

9-1

(City Proposal #21)

Add the following language after last paragraph: "The City shall have the right to take unilateral action pursuant to federal and/or state statutory mandates, e.g., Commercial Motor Vehicle Safety Act, Drug Free Workplace Act, etc. Otherwise, no change.

3. ARTICLE X - SALARIES

10-1

(City Proposal #22)

Effective January 1, 1996	3.5% of 1995 base salary;
Effective January 1, 1997	2.0% of 1996 base salary;
Effective July 1, 1997	2.0% of 1/1/97 base salary;
Effective January 1, 1998	2.0% of 1997 base salary;
Effective July 1, 1998	2.0% of 1/1/98 base salary.

10-4 (a) & (b) (City Proposal #23) - Delete in their entirety.

4. ARTICLE XI - SICK LEAVE AND OTHER LEAVES OF ABSENCE

11-2

(City Proposal #24)

Add new paragraph to end of this section as follows: "Effective January 1, 1997, payment of accumulated sick leave under the provisions of this Article shall be capped in the amount of \$15,000, regardless of the number of such days accumulated. The six (6) months leave of absence set forth in section shall be excluded from the cap herein."

5. ARTICLE XII - OVERTIME

12-3

(City Proposal #25)

Modify language to state: "All Firefighters shall be entitled to a minimum of two (2) hours pay if called back to work after completion of the regular tour of duty."

6. ARTICLE XIII - INSURANCE PROTECTION

13-5

(City Proposal #27)

Delete this section in its entirety and renumber remaining sections.

13-8

(City Proposal #29)

Add new section entitled "Change of Insurance Carriers" and add the following new language: "The City reserves the right to change its health insurance plan at any time provided that benefits are substantially similar to those then in effect. The City shall give 30 days prior notice to the Union of any such change."

7. ARTICLE XIV - VACATIONS AND HOLIDAYS

14-1

(City Proposal #30)

Modify the Fifth paragraph to state: "It is understood that a good faith estimate of funds will be appropriated in the Fire Division's overtime account to guarantee adherence to vacation schedules."

14-1

(City Proposal #31)

Modify the Sixth paragraph, second sentence, to state "If the Employee complement does not permit a two (2) man buffer in a particular Platoon, the maximum number of Employees simultaneously on vacation shall be limited and up to no more than four (4)."

14-3
(City Proposal #32)

Delete section in its entirety.

8. ARTICLE XV - MISCELLANEOUS

15-7
(City Proposal #33)

Modify Second sentence to state: "This may be implemented whenever the total Officer complement of any Platoon falls below five (5) Officers except for short notice emergency illness, in which case an officer may be required to work overtime."

9. ARTICLE XVII - DRUG POLICY

17:3-1 (A)
(City Proposal #38)

Delete "Abuscreen RIA..." and insert "Abuscreen (on-line) immunoassay procedure."

17:3-1 (h)
(City Proposal #39)

In Second sentence, delete "thirty (30) days" and insert "five (5) days."

17:6-1 (a)
(City Proposal #40)

Delete "Abuscreen RIA" and insert "Abruscreen (on-line) immunoassay procedure."

17:7-2 (g)
(City Proposal #41)

Modify to state: "The Fire Officer/Firefighter shall void the urine sample in the presence of the Official Monitor in a recognized restroom in Fire Headquarters or at the testing contractor's place of business."

17:7-7 (c)
(City Proposal #42)

Delete section in its entirety. (Note: Fire Division does not have storage capabilities; the contractor holds the second sample in a frozen state for up to one year after a positive test.)

17:9-1 (b)
(City Proposal #43)

Modify first sentence to state: "The Employee shall accompany or provide an agent acting on their behalf to accompany a member of the Staff Services Bureau to the testing firm contracted by the Plainfield Fire Division."

10. ARTICLE XVIII - DURATION OF AGREEMENT

18-1
(City Proposal #43)

Duration: January 1, 1996 to December 31, 1998)

11. ARTICLE XIX - FULLY BARGAINED AGREEMENT (NEW)

Add new article as follows: (City Proposal #44 and #45)

19-1

This Agreement represents and incorporates the complete and final understanding and settlement by the parties of all bargainable issues which were or could have been the subject of negotiation. During the term of this Agreement, neither party will be required to negotiate with respect to any such matter, whether or not covered by this Agreement, and whether or not within the knowledge or contemplation of either or both at the time they negotiated or signed this Agreement.

19-2

If, during the term of this Agreement, the State of New Jersey, the Federal Government or any agency thereof mandates minimum benefits in any area, the parties agree to reopen negotiations to bargain over the effect and impact of such mandated benefits on the parties' Agreement.

FMBA'S FINAL ECONOMIC PROPOSAL:

1. Term of Contract - 3-year contract beginning January 1, 1996 through December 31, 1998.
2. Salary -
 - a. *Salary Step Freeze.* Freeze Steps 1 and 2 of the firefighter salary guide after the contract is executed for all new hires.
 - b. *Salary Percentage Increase.* With the exception of the freezing of Steps 1 and 2 on the firefighter salary guide for new hires, all other Steps on the firefighter salary guide be increased as follows:
 - 4.0% across-the-board effective January 1, 1996
 - 4.5% across-the-board effective January 1, 1997
 - 4.0% across-the-board effective January 1, 1998
3. Calculation of a Day - Increase of time off from 8.4 hours to 14 hours sick leave, vacations and holidays.
4. Holiday Benefits - Increase number of paid holidays from 13 to 14.
5. Longevity Benefits - Longevity should be changed to : 2%, 5 to 9 years; 4%, 10 to 14 years; 6%, 15 to 19 years; 8%, 20 to 24 years; and 10%, 25 years and thereafter and shall be applicable to all employees.

FMBA NON-ECONOMIC PROPOSALS

1. The grievance procedure (Article III) shall be modified to a three step procedure so that Step 3 will be eliminated and the City Administrator will be the new Step 3.
2. In accordance with the Civil Service rules and regulations, the contract shall provide that there shall be no suspensions without pay unless there is a preliminary hearing which establishes, in accordance with these rules, the absolute necessity for a suspension without pay pending a hearing.

POSITION OF THE CITY

In argument and post-hearing memoranda, counsel for the City argued the following points in reference to the statutory criteria and in support of the adoption of its final offer in the present interest arbitration:

Comparability

Counsel rejects comparisons with towns sharing no more than common borders or geographical propinquity with Plainfield. Rather, counsel urges comparisons with similar urban municipalities including Elizabeth, Linden, Rahway, Jersey City, Trenton, Irvington, New Brunswick, Woodbridge, and Hoboken, the first three of which are from Union County. While the balance share similar demographic traits or, in the case of Hoboken and Woodbridge (more affluent municipalities), a more suburban than urban setting. Citing Exhibits C-4 through C-12, counsel asserts that these allow the Arbitrator to look at true comparables to decide whether the FMBA's members are, and will continue to be under Plainfield's final offer, comparably well paid.

Counsel points to Exhibits C-13 through 20 which it contends establish that, as of 1995, the FMBA's members were well compensated -- ranking among the highest in starting salaries -- a status which the present offer will help to maintain. When fringe benefits are considered, this favorable ranking among true comparable communities continues. From its provisions allowing twelve sick days, six months paid leave at retirement, non-contributory health insurance to longevity, bereavement and vacation benefits, it is clear that the FMBA's favorable standing among comparables is sustained.

Turning to a comparison of the firefighters' salaries with other Plainfield employees as mandated by the statute, it is noteworthy that the FOA who supervise the FMBA members on the job entered into an agreement on wages identical to the City's final offer, thus establishing a pattern which, it is argued based on much arbitral thought, creates a significant presumption supporting the City's final offer. Counsel dismisses the FMBA argument that its unit traditionally sets the salary increase pattern within the Fire Department which is then followed by the FOA. The fact exists that the same percentage increases were provided to the City's unrepresented bargaining units through 1996. Thus, it is doubly important to award the City's offer and honor the pattern as it will serve as a benchmark for further negotiations with these unrepresented units in the near future.

Concluding a review of comparability within Plainfield, counsel argues that the Zausner Award in the PBA and SOA arbitration which provided 4% - 4% - and 4.5% increases for 1996, 1997 and 1998 respectively should not be viewed as pattern setting since Arbitrator Zausner herself noted the Police and Fire Departments' respective work schedules varied. More importantly, the City's economic condition has worsened significantly since that Award was issued, in which Arbitrator Zausner found a modest tax increase could be sustained to fund her Award. The current projected tax increase falls within the 7% to 11% range – far from the modest tax increase she envisioned and relied on.

In surveying the private sector, counsel relies on Exhibits C-51 and C-52 which are overviews showing an average 3% wage increase in 1996 and 1997. When the City offer is

stacked along side the FMBA offer, it is claimed to be the more reasonable and well within the general parameters of comparable private settlements and wage increases in the area.

Lawful Authority -- Financial Impact and Interest and Welfare of the Public

Counsel asserts the City's offer is the maximum Award it can fund. Counsel discusses numerous exhibits to sustain its claim that Plainfield is not a wealthy community. Highlighted is the fact that the tax base is stagnant, no room exists for growth, 18% of the property is tax exempt, ratables are down -- all of which factors, counsel argues, put Plainfield in a precarious financial position with higher tax increases inevitable. Compounding the dismal revenue projections is the recent history of in-CAP appropriations growing over 17% during the '95 to '97 budget years which forced subsequent layoffs and job freezes. This scenario, it is claimed, is repeating itself in 1998 due to the loss of sewer utility income. On this subject, counsel rejects any suggestion that Plainfield's lawsuit settlement of \$6.1 million dollars from neighboring municipalities fund the FMBA's requested increases as that settlement has been suggested as a funding source by the FMBA. Counsel notes the money has been placed in a Dedicated Trust earmarked for infrastructure and redevelopment.

Given these facts, counsel argues the adoption of the FMBA offer would be fiscally irresponsible and unreasonable.

Cost of Plainfield's Proposal. Exhibits C-39 to C-44 tracks, among other costs, the fact that as constructed even without longevity, health costs and wage increases the FMBA's salaries increased nearly 9% from 1995 to 1996. Adding the City's proposed 3.5% wage increase, the

FMBA would enjoy increases approaching 12.49% in 1996. Counsel discounts the FMBA argument that its proposal would save the City money. To the contrary, counsel's extrapolation of the final offer's increases shows the FMBA's final offer costing out just shy of \$22,000 more than Plainfield's. Based on that conclusion and cost analysis, counsel argues that by however a small measure, the FMBA offer must be viewed as the less reasonable of the two. A ten-year review of the cost of living is next cited by counsel to show that over that period, the FMBA's members averaged annual wage increases very close to 1.75% above the cost of living increases for that period. The additional increases in health insurance borne solely by the City further increases this differential.

The City argues that its proposal provides well deserved salary increases which help to maintain the continuity and stability of employment which, were it required to fund the FMBA offer, would be jeopardized by layoffs or cuts in service.

In summary, counsel reiterates the fiscal problems burdening Plainfield which, by themselves, argue conclusively against any claim that the FMBA offer is the more reasonable of the two proposals before the Arbitrator.

Remaining Economic Proposals

Other economic proposals offered by the City seek to achieve consistency between the bargaining units. *Sick Leave* accumulation is capped at \$15,000 as is provided for in all other bargaining units regardless of the days accumulated as is provided for in all other bargaining units.

The FOA agreed to limit its overtime call back pay to a guaranteed two hours minimum, and the City seeks the same from the FMBA because -- it is claimed -- it would cut the overtime cost by as much as a half. Counsel dismisses the FMBA's attempt to retain the 4-hour minimum as "avariciousness" and asks that its 2-hour proposal be awarded. As to *Insurance Protection*, the City seeks to eliminate the \$100 paid to each member in lieu of a prescription plan since the existing medical coverage provides up to 90% reimbursement for drug expenses in any event and \$7,000 will be saved annually if this proposal is awarded. The section Plainfield also seeks to add captioned "*Change of Insurance Carriers*" would provide the City with the opportunity to act expeditiously to switch carriers and purchase coverage "substantially similar to those then in effect." Finally, the City seeks flexibility as to *Vacations and Holidays*. Initially it seeks to have the language requiring funding of all vacation requests modified to only require a "good faith" effort to fund this obligation. Similarly, it asks to cap the members on vacation at any given time to a mere two firefighters, thus further saving the City overtime costs. Finally, the City seeks to change language to eliminate the mandatory requirement that it designate and pay for an acting lieutenant when less than five officers are working.

In conclusion to the argument on economic issues, counsel notes that the FMBA failed to present any evidence in opposition to the City's economic offer. Consequently, counsel argues Plainfield's offer should be awarded.

Non-Economic Items

Among its non-economic proposals, the City seeks to extend the response time in the grievance procedure which proposal the City argues the Association failed to contest. It also seeks to delete the prior agreement that General Orders be held in abeyance until disputes are resolved in the event the Association challenges them in the grievance procedure. Again, the City argues that the Association failed to contradict the City's testimony that adherence to this provision has created administrative problems for the City.

Civil Rights and Privileges

Similar to its desire to allow General Orders to be implemented, the City also seeks the right to allow it to take unilateral action under State or Federal statutory mandates. All remaining bargaining agreements with its uniformed bargaining units have such a provision and, accordingly, the City seeks to have it included in the Arbitrator's Award. The Fully Bargained Agreement provision is sought by the City on similar grounds. The FOA has agreed to the provision which seeks -- in the City's theory -- to protect both sides. It asserts it would "insure that neither party would be required to open up the Agreement and negotiate any term or condition of employment previously agreed to or negotiated." The second provision of the proposal would allow a reopener for the limited purpose of negotiating the effect and impact of benefits that might be mandated by government action.

In conclusion, counsel argues that all of the City's non-economic proposals are reasonable and should be incorporated into the final Award.

Weight of Evidence

Counsel notes that beyond mere unsubstantiated assertions the FMBA makes concerning alleged promises by "the City" in 1996 to pay certain percentage increases, these claims are unsubstantiated on the record. The pending final offer is what the Arbitrator must evaluate as to reasonableness. On the Association's side, the proofs from Dr. Caprio dealt solely with its wage proposals. No support was offered by way of evidence as to its remaining proposals and, hence, they must be rejected in their entirety.

POSITION OF THE FMBA

In counsel's post-hearing brief, the following justifications were offered for each of the economic and non-economic items pending.

Wage Increase

The percentage increases the Association is seeking mirror those awarded by Arbitrator Zausner in the PBA/SOA Award except that the FMBA has offered to freeze starting salaries. Although the FOA settled voluntarily with the City for a lesser wage increase, this should play no part in the determination of the Award in this matter.

Of significance are the reasons offered by Arbitrator Zausner in her Award for breaking the pattern Plainfield claims the FOA agreement established. Briefly Arbitrator Zausner found the Plainfield patrolmen made less in 1995 and will continue to do so under the City's proposal than

comparable communities; the percentage wage increases found in other public safety employees' contracts were "considerably higher" than Plainfield's final offer; the average wage increases for 1996 average close to 4%; and the FOA contract impacts only 26 employees, far fewer than the total employees covered in the FMBA, PBA and SOA units. Arbitrator Zausner further concluded that the City had the ability to pay without any adverse impact on the municipal services or the taxpayers.

Counsel argues that the offer the FMBA made to the City in 1996 to freeze both the entry level salary and Step 2 and to lower the increases at Steps 3 through 6 would have brought the cost of its final offer below Plainfield's. The City's refusal to accept that offer led to interest arbitration and the attendant costs and deprived the City of the savings it would have realized on the salaries of the six new firemen it hired in July 1997 which belies the Business Administrator's claim of "dire" financial straits she attributed to the City.

Moving on to each additional benefit or contract change sought by the Association, counsel offers the following justifications.

Calculation of a Day

The FMBA seeks to change the calculation of time off from 8.4 hours to 14 hours for purposes of sick leave, vacation and holidays. Time off is currently calculated at the 8.4 hour rate, whereas most comparable communities calculate at the 14 hours per day rate, and Plainfield

should follow suit. Since they work either a 10- or a 14-hour day, the higher number should serve as the calculation rate for these limited purposes rather than a lower 8.4-hour rate.

Holiday Benefits

Again, most comparable communities provide 14 paid holidays – one more than Plainfield provides. The FMBA seeks an additional holiday and the option to have them all as paid holidays rather than the limit of five currently provided.

Longevity

The Association seeks increases as noted based on its claim that it is significantly lower than longevity received by firefighters within and without Union County.

NON-ECONOMIC PROPOSALS

Grievance Procedure

The FMBA seeks to follow the mutual elimination of Step 3 as the PBA and SOA agreed with the City to do.

Suspension

Consistent with Civil Service regulations, the Association seeks a requirement that no suspension shall be imposed prior to a hearing which would establish the necessity for an immediate suspension without pay.

City's Proposals

The FMBA asks that the conclusion reached by Arbitrator Zausner in the PBA/SOA arbitration, viz., that Plainfield failed to establish justification for decreases in filing deadlines sought be also reached and that the proposals should be similarly denied in this arbitration.

It also opposes granting Plainfield the unfettered right to make unilateral changes without notice and negotiations as it appears to seek under its proposal identified as #21.

As to salaries, the Association asserts its proof as to the reasonableness of its offer establishes the unreasonableness of Plainfield's offer.

Although Arbitrator Zausner awarded the City the same accumulated sick leave proposal it seeks here the Association notes it was done as a "tradeoff" which the FMBA is matching with its offer of a two-step salary freeze. Accordingly, it argues that the City's sick leave proposal should not be awarded in this arbitration.

The FMBA also opposes the reduction in overtime callback on the grounds that its proposed salary freeze of certain steps is warranted as a give-back and nothing more. It opposes

this proposal as well as the elimination of the \$100 prescription drug allowance since the City never sought it from the PBA/SOA.

The Association likewise opposes the remainder of the City's proposals on similar grounds as well as on its claim that the City failed to substantiate its need or justification for the requested proposals.

Statutory Criteria

In its post-hearing brief, the FMBA made the following arguments with respect to the specific statutory criteria:

Public Interest and Welfare. In addressing this criteria, counsel relies heavily on the testimony offered by the FMBA expert Dr. Raphael Caprio and his ultimate conclusion reiterated in his testimony and his subsequent reply affidavit that Plainfield "...has more than sufficient financial resources available in the 1997 budget to fund the difference...(between the parties proposals)." Briefly noted is increasing budget surpluses and improving tax collections. Specifically, Caprio argued his analysis identified \$1.9 million in resources available to fund the FMBA proposal.

Comparable Wages, Terms and Conditions of Employment. In this category, it is noted that for 1995, Plainfield's firefighters were almost the lowest paid in the County -- some \$7,000 per year less than the highest paid. Figures are reviewed to show that present differences between Plainfield's firefighters and other Union County communities will increase if the City's offer is awarded. Counsel argues that the same trend holds true, albeit to a somewhat lesser degree,

when total compensation is viewed. Counsel argues that Arbitrator Zausner's lead be followed from the PBA/SOA arbitration wherein she concluded that the poor ranking of the police vis a vis comparable Union County communities such as Linden, Roselle, Union and Elizabeth warranted the awarding of the PBA/SOA final offer.

Stipulation. Counsel notes the three-year length of the contract was stipulated.

Lawful Authority. Counsel notes Dr. Caprio demonstrated there was no Cap Law problem, and the City failed to assert or prove any. Consequently this criterion cannot affect the final Award.

Cost of Living. Culling through all of the CPI statistics introduced, counsel claims that the Plainfield firefighters' increases over the past 23 years averages to less than 1/4% above the cost of living for that period.

Continuity and Stability of Employment. Counsel asserts the awarding of the City's offer would only further lead to higher turnover "or inhibit hiring of firefighters" which would prove detrimental to the City, its residents and firefighters. Counsel reviews the increased numbers of runs and responses and line of duty deaths which warrant better compensation for the firefighters.

ECONOMIC PROPOSALS

To further justify the choice of the Association's final offer, counsel discusses the proposals at length. It is again noted that the City's proposal offered to both the FOA and the FMBA should not be awarded merely because the FOA, comprised of 26 officers of the rank lieutenant and

above, should determine the economic increases of 71 rank and file firefighters. Arbitrator Zausner rejected this argument made by the City that the FOA terms should control the destiny of the PBA and SOA and the FMBA reiterates its argument that no patterns should be deemed to have been established by the FOA's voluntary acceptance of Plainfield's offer. The PBA/SOA award determined what 138 public safety employees (58% of the public safety employees) were paid and is truly what should determine any pattern. In support of this assertion, Arbitrator Paul Kell is quoted from a 1989 Award in which he opined that no reason existed for "fire fighters in Belleville to be treated as second class citizens..." receiving any less than the police. Counsel distinguishes Plainfield's non-uniformed employees as not being comparable based on the key differences of fewer hours worked in nonhazardous occupations.

Ability to Pay. In discussing one of the more significant criterion, counsel relies heavily on its expert witnesses' report in which Dr. Caprio noted a majority of positive factors in the Town's recent economic health-increased revenue, decreased expenditures, stable property taxes, a history of underestimated, non-property tax local revenues, increasing rates of tax collections, all led him to conclude \$1.9 million would be available in budget resources to fund the FMBA proposal.

On the very sensitive issue of the \$8.75 million dollar settlement the City received after \$403,469.04 was used for discretionary spending in the 1997 budget, the council voluntarily passed an ordinance to restrict the use of these remaining funds. Counsel argues that the dire financial condition the Business Manager sought to claim afflicted Plainfield could well have been

lessened by council's decision to use part of the "sewer windfall" for that purpose. Counsel seems to imply that no real dire conditions existed or the council would have acted appropriately and used part of these funds to alleviate economic problems it now seeks to rely on to prevail over the FMBA offer.

In conclusion, counsel argues that based on the statutory criteria and applicable case law, the FMBA's contract proposals are the more reasonable and acceptable and should be awarded.

DISCUSSION

Prior to reaching this decision, the Interest Arbitrator has carefully weighed all of the evidence in the case including the testimony of the witnesses at the hearings, the arguments of respective counsel as set forth both at the hearings and in their briefs, the contract itself and the numerous exhibits introduced. Note should also be made that the parties -- with my consent -- submitted reply briefs and rebuttals which were carefully considered. As has been previously noted, although not stipulated per se, the parties are in agreement as to the length of the contract and the introduction of the "Fully Bargaining Agreement" proposed by the City. Treated in this way, these represent the only factors that may be deemed to represent stipulations as that term appears under the statutory criteria.

Cost of Living. Arbitrator Zausner concluded that a cost of living raise was not sufficient in view of high turnover of police and the fact that such an increase would be substantially lower than many other municipalities in the area. This Arbitrator views the outcome of this criterion more closely apparently than did Arbitrator Zausner. The record notes the FMBA has received increases on average at least two percentage points higher than the CPI average over the last ten or so years. The FMBA tracks the numbers over a 23-year period (1973-1995) and asserts the advantage averages less than a quarter of one percent per year. Only the fact that increases in the private and public sector are approaching and exceeding the CPI Index leads to the conclusion that the FMBA offer prevails under this criteria.

Continuity and Stability of Employment

Other than Plainfield's mere assertions of the possible necessity of hiring freezes, failing to replace retired workers or cutting services or personnel, nothing has been demonstrably shown by the City that these occurrences must follow the awarding of the FMBA position.. Conversely, the FMBA's predictions of lowered morale, were the City's position to be awarded, is similarly difficult to prove. One can better surmise the latter rather than the former. The income necessary to fund the difference between the respective offers is sufficiently minimal and the opportunities for comparable savings from many sources in the budget both support a conclusion that favors the adoption of the FMBA offer. To do so would maintain and restore morale, and reward these public

servants whose special talents and job performance are unique among other Township employees.

Lawful Authority of the Employer

No CAP issue was raised by the City in this proceeding. However, the CAP issue serves basically as a threshold issue. From this Arbitrator's interest arbitration experience including urban, financially burdened towns, the CAP issue has never served as the sole determinant in a case. The mere fact that no CAP issue exists in Plainfield theoretically inures to the Association's benefit but, in reality, carries little significant benefit in deciding which of the offers is the more reasonable or where in between the final offers a reasonable award should be struck. In brief, the mere absence of a CAP problem does not support the FMBA position.

Comparability

In relation to other comparable urban towns in both Union and Middlesex counties, in towns specifically such as Elizabeth, Rahway, Linden, Union, Roselle, New Brunswick, Trenton, Irvington and to a lesser degree Jersey City, Woodbridge and Hillside, it is clear that as of 1995, 1996, and 1997, Plainfield's firefighters lag in a comparison of top salaries with these other departments. Although the starting salaries compare as favorably in this mix as the maximum salary compares unfavorably, the FMBA argument to freeze the starting salaries lends balance to its proposal.

Of the towns cited by the City itself, New Brunswick appeared to be the most comparable. Although located in another county, they are approximately a dozen miles apart, are both characterized as being urban centers; are within 10% of each other's population numbers; and have virtually the same population density. Plainfield's citizens enjoy about a 30% higher per capita income, and a comparable percentage of people classified as below the poverty level. Plainfield's homes average 20% higher in value, and it has a 50% higher rate of properties classified as residential. A comparison of the salaries each pays its firefighters is instructive. New Brunswick has its first year step frozen at \$23,000 over the four years included in the exhibits (1995-1998), whereas Plainfield pays its first-year firefighters on a range from \$30,222 to \$33,527 over that same period. On the opposite end of the scale, a New Brunswick firefighter progresses from \$51,283 to \$58,103, while a Plainfield firefighter is paid from \$46,867 to \$51,991 over that comparable time frame. In effect, a firefighter at top step in New Brunswick is earning approximately \$4,400 to \$6,000 more than his Plainfield counterpart. Conversely, New Brunswick's first-year firefighters have earned \$7,000 to \$10,000 less per year over those four years. While the wisdom of each approach is debatable, the fact remains that, given the FMBA's willingness to freeze its first step in return for a modest additional increase over the package offered by the City, the Association's offer seems to be the more reasonable.

The record should reflect that attention was also paid to other comparables cited by the parties and, although each differentiated itself to one degree or another from Plainfield, they supported the reasonableness of the Association's final offer. Contrary to the City's assertion, a

review of other benefits in these comparables does not overcompensate for the relative place the FMBA enjoys in a strict salary comparison. It is fair to conclude that an award of the Association's final wage proposal will not overcompensate them, but more accurately will bring them to a more comparable position. This is not to say that the FMBA offer must be awarded. It merely concludes that when compared with urban cities in Union and Middlesex counties, as well as Trenton, Irvington, Jersey City, Hillside and Hoboken, its proposal would be the more reasonable.

Turning to comparability within the City itself, we are confronted with the distinctions made in virtually every contested interest case. The Association represents skilled employees who work around the clock in a potentially hazardous occupation. Most City employees we are forced to compare them with may or may not be in positions requiring the same level of requisite skill and generally work business hours in comfortable environments. This is not to elevate the firefighters or disparage their co-employees. It is to state the facts that exist which warrant different salary levels. Recognition of this fact is made self evident by the limited coverage the interest arbitration statute itself provides to public safety employees. In reality, the salaries enjoyed by other employees in the City are set by the City and, absent positions affected by marketplace factors, most salaries and increases paid are dictated solely by the City. All things considered, I cannot reach the conclusion suggested by the City that the salary levels and increases paid to these other City employees is sufficient reason to award its final offer to the FMBA.

Comparability in the general public offers even less substantial grounds for comparison. Firefighters working in the private sector, although they exist, are rare. It is best in this category to

look generically at wage increases paid across the board by private employers. The most recent New Jersey Department of Labor statistics shows an average 4% increase paid in major industries from 1995 to 1996. (see: New Jersey Department of Labor study. Average wages in employment covered by unemployment insurance by major industry divisions in New Jersey, 1995 and 1996). The study's results favor the percentage wage increases found in the FMBA's final offer.

In conclusion, it must be noted that as to this limited criterion, the conclusion favors the FMBA's offer. As noted earlier, this conclusion does not dictate the final outcome to this Interest Arbitrator. Rather, it merely indicates the undersigned's conclusion that the FMBA offer prevailed as being the more reasonable within this category.

Overall Compensation

The parties' contract has been reviewed. The FMBA enjoys the typically broad spectrum of benefits found in public employment: medical coverage, pension, vacations, funeral and family illness, absences, sick leaves and longevity. Although these benefits are not the most generous among all of the comparables, they are adequate particularly in these days of private and some public sector employees hiring part-time workers to avoid paying such benefits. The fact remains that the benefits mentioned exist, are adequate and, as discussed below, do not need to be amplified. In assessing this unit, it is fair to conclude that it is well provided with a total compensation package. To that extent, the City prevails under this topic.

Financial Effect on the City, Its Residents and Taxpayers and the Interest and Welfare of the Public

The issue of the Cap Law has previously been discussed. Of major concern is the economic health and welfare of the City. Extensive review has been undertaken of the testimony and exhibits relating to the economic well being of the City. While acknowledging the improvements Dr. Caprio pointed out in his testimony such as growing budget surplus, improving tax collections, increase in delinquent tax collections, it appears these improvements are relative. While it is doubtful that anyone could contend the economic condition is not technically better than in prior years, the improvements, although positive, do not remove Plainfield from the category of those governmental entities requiring conservative stewardship to prevent economic problems in the future. Having said that, I do conclude that the expert's opinions have led me to conclude that the interest and welfare of the City would be best and more reasonably served by the awarding of the Association's wage request. As will be discussed later, the ultimate award of certain demands from each parties' offer and the denial of others will produce the most reasonable total resolution of this dispute.

It must be kept in mind that the interest and welfare of the public is far from being solely determined by paying its public safety officers the least. The morale of public employees inevitably impacts the quality of services rendered. Public safety work is demanding but, most importantly, it requires employees to place themselves in harm's way to protect the safety of its citizens. While being a firefighter in Plainfield is not the same as working in an older, totally urbanized setting, likewise, it is not the same as rendering the same services in a town with the

majority of homes having been built recently with the latest in fire retardant supplies, up-to-date detection devices and electrical services.

Note should be made that the parties themselves in contesting each other's claims about the relative cost of each's final offers and proposals have produced cost analyses. The record should reflect that these have been reviewed and the conclusion rendered that the cost of the FMBA wage demand does not so adversely effect the interest and welfare of the citizen so as to warrant its rejection. To the contrary, my studied reflection of the analyses and all the economic exhibits affirmatively leads me to conclude that the FMBA's wage offer is the more reasonable.

The experts' testimony and reports reflect certainly their optimum view of the economic condition of the final offers depending naturally on whom they represent. In brief, they place objective figures in the best light to sustain those positions. Accepting that appropriate and predictable fact of human nature serves to blur the sharp edges of the doom and gloom message of the Business Administrator's predictions as well as the "everything's coming up roses" approach of Dr. Caprio. Read together they require the Arbitrator to focus in on the analysis and to reach one's own conclusions as to such factors as the probable tax rate consequences, the degree to which the effect, if any, will affect the Town and its residents and taxpayers. In brief, my analysis leads to the conclusion that the Award rendered below will not produce prohibitive financial effects on the City.

For the reasons expressed herein, I hereby issue the following:

AWARD

1. The FMBA's proposal is awarded as to:

Salary -

Salary Step Freeze. Freeze Steps 1 and 2 of the firefighters salary guide after the contract is executed for all new hires. AWARDED

Salary Percentage Increase. With the exception of the freezing of Steps 1 and 2 on the firefighter salary guide for new hires, all other Steps on the firefighter salary guide be increased as follows:

- 4.0% across-the-board effective January 1, 1996
- 4.5% across-the-board effective January 1, 1997
- 4.0% across-the-board effective January 1, 1998

This proposal is AWARDED.

2. Calculation of a Day

In agreement with Arbitrator Zausner, I believe the emphasis of this Award should be in the wage area. Moreover, no sufficient justification has been shown to me to award the PBA request.

This proposal of the FMBA is DENIED.

3. Holiday Benefits

The funds available to the City are not limitless. To the contrary, economic conditions limit expenditures for such a benefit. The wage increase sought requires funding. Funds available should be concentrated on that program. Accordingly, the request for an increase in holidays is DENIED.

4. Longevity Proposals

Again, in agreement with Arbitrator Zausner, I find that the longevity paid primarily because it is not percentage linked is below most comparable jurisdictions, but with the whole subject of longevity being reasonably questioned recently and believing the reasonable concentration of increases should best be targeted at salaries this FMBA proposal is DENIED.

5. Non-Economic

Little, if any, justification has been offered to convince me that demand seeking the elimination of Step 3 of the grievance procedure is reasonable. Accordingly, it is DENIED.

6. The FMBA's proposal to implement language comparable to Civil Service's rules and regulations requiring a preliminary hearing before an employee can be suspended without pay is reasonable provided language is included which makes it clear that the City can remove the officer from duty prior to the preliminary hearing, but he must be paid his salary until the preliminary hearing is concluded. With this requirement this proposal is awarded.

CITY'S PROPOSALS

Grievance Procedure. For essentially the same reasons, those applicable changes sought by the City in the Zausner arbitration which were rejected are similarly rejected here. However, a copy of the Demand for Arbitration shall simultaneously be served on the Administrator.

City's Right and Privileges. This proposal is awarded provided the caveat is added that the City was required by deadlines, extensions for which had been denied, to implement actions pursuant to related state and federal statutory mandates. The FMBA's rights to challenge such in arbitration or before PERC are preserved, and the burden would remain on the City to prove that the actions taken were required by statute, and, if appropriate, time precluded the requirement (if one exists) to negotiate the changes and/or their impact before implementation.

Salaries. Rejected and the FMBA's wage offer is awarded for essentially the reasons offered in the Opinion.

Sick Leave and Other Leaves of Absence. I am unconvinced by the FMBA's argument that the salary freeze it proposed was a sufficient "give-back" for the awarding of the FMBA's wage demand. The Association could have pulled the wage freeze give-back but did not. Again, for the same reasons that Arbitrator Zausner awarded this proposal (City Proposal #24, 11-2), I do also. AWARDED

Overtime. The City failed to convince me that the language as it currently exists is of such a significant economic impact to warrant the proposals being awarded. The parties in the past negotiated a four-hour call-back provision. The right to exercise a call-back of an employee on his own personal time requires reasonable compensation. I have not been convinced any change is warranted. Accordingly, the City's proposal is denied. DENIED

Insurance Protection. (City Proposal #27 and #29). The proposals sought by the City have not been justified. Accordingly, the proposals are denied. DENIED

Vacation and Holidays. (City Proposal #30-31). The City has not justified the changes it is seeking. The purpose and meaning of the proposal is not and was not made sufficiently clear. It seems to be intended as a protection for management's failure to plan. All proposals are DENIED.

(City Proposal #32)

For essentially many of the reasons offered by counsel for the FMBA at Page 14 of her brief, the proposal relating to Paragraph 14.3 (City Proposal #32) is DENIED.

Article XV - Miscellaneous.

15-7 (City Proposal #33). The FMBA did not argue against this proposal. It seems reasonable on its face and is therefore AWARDED.

Article XVII - Drug Policy Proposals (City Proposal #38-43).

The proposals advanced by the City under this Article are far ranging. As such, the changes proposed are rejected with the same directive issued by

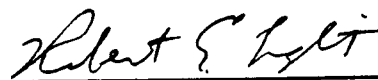
Arbitrator Zausner, viz. that the proposals should be the subject of further negotiations. NO CHANGE

Article XVIII - Duration of Agreement (City Proposal #43)

The parties have stipulated to this issue. STIPULATED

Article XIX - Fully Bargained Agreement (City Proposal #44 and #46)

The FMBA does not oppose this proposal. The City has offered justification for the language, and therefore it is AWARDED.



ROBERT E. LIGHT, Interest Arbitrator

Dated: August 17, 1998

STATE OF NEW JERSEY:

:SS

COUNTY OF MIDDLESEX:

On this 17th day of August, 1998 before me personally came and appeared ROBERT E. LIGHT to be known to me to be the individual described here and who executed the foregoing instrument and he duly acknowledged to me that he executed the same.



ELLEN ORLANDINI
Notary Public of NJ