

STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

CITY OF ATLANTIC CITY

-and-

Docket No. IA-2015-010

I.A.F.F. LOCAL 198

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the City:

Cleary, Giacobbe, Alfieri and Jacobs, attorneys
(Matthew Giacobbe, of counsel and on the brief)
(Gregory Franklin, of counsel)

For the IAFF:

O'Brien, Belland, and Bushinsky, attorneys
(Mark Belland, of counsel and on the brief)
(David Watkins, of counsel and on the brief)

Witnesses:

Edward M. Sasdelli, Atlantic City State Monitor
Joseph Petrucelli, Local 198 Financial Expert
Christopher Michael Emmell, Local 198 President
Henry Amoroso, City Financial Consultant
Robert Benecke, City Financial Consultant
William DeLorenzo, Local 198 Secretary

INTEREST ARBITRATION AWARD

PROCEDURAL BACKGROUND

On February 20, 2015, the City of Atlantic City ("City") filed a Petition with the Public Employment Relations Commission to initiate interest arbitration over successor collective negotiations agreements with the International Association of Fire Fighters Local 198 ("IAFF"). The previous

agreement expired on December 31, 2014.

The same date, the City also filed a Petition for Scope of Negotiations Determination, Docket No. SN-2015-051, with the Commission asking to have several contractual provisions declared non-negotiable. The Commission handled the Petition through its Pilot Program for expeditious rulings and on April 8, it issued a decision finding that some of the issues are negotiable and others are not. City of Atlantic City, P.E.R.C. No. 2015-63, 41 NJPER 439 (¶137 2015). These findings will be discussed below as they pertain to each of the relevant final offers.

On September 8, 2014, the City also filed a Petition for Unit Clarification, Docket No. CU-2015-004, with the Commission seeking to remove the fire superiors, including fire captains, battalion chiefs, and deputy chiefs from the Local 198's bargaining unit. That petition is pending a Commission determination.

On February 24, 2015, I was appointed to serve as interest arbitrator by a random selection procedure pursuant to N.J.S.A. 34:13A-16(e)(1). This statutory provision requires that an award be issued within 90 days of my appointment. By letter of February 24, I scheduled interest arbitration hearings for April 16 and 21. Pursuant to the statutory requirements of N.J.S.A. 34:13A-16(3)(b)(1), I conducted a preliminary mediation session with the parties on March 26, but the parties were

unable to reach agreement.

On March 24, the IAFF filed an application in Superior Court for a stay of the arbitration proceedings, arguing that the City Council had not approved the filing of the Interest Arbitration Petition as the Union argues would be necessary under the Falkner Act, N.J.S.A. 40:69A-1 et seq. The Court denied the request for a stay, finding that the IAFF could raise its arguments before PERC. However, on April 15, the Appellate Division issued a temporary restraining order against proceeding with the interest arbitration hearing. On April 23, the TRO was vacated and arbitration hearings were then rescheduled for May 8 and 18.¹

On March 23, both parties submitted Final Offers pursuant to N.J.S.A. 34:13A-16(f)(1) and N.J.A.C. 19:16-5.7(g). The IAFF filed an amended Final Offer on April 14 which deleted the provisions found to be non-negotiable in the Commission's Scope decision. By letter of April 1, I requested the parties file pre-hearing briefs addressing whether two issues contained in the final offers are within my jurisdiction: the City's proposal to modify the recognition clause to remove superior officers; and the Union's proposal that the terms of an earlier grievance arbitration award be implemented immediately. By conference call with the parties on April 28, I ruled that neither of these

¹ The award due date was advanced by eight days because of the restraining order.

issues is within my jurisdiction. These rulings will be discussed in detail below.

On March 20, the City submitted a list of bargaining unit employees for 2014, together with their dates of hire, dates of entry or exit from the bargaining unit, either by retirement or termination of service, and their total base pay paid for the base year, 2014. The parties stipulated that base paid consists of the employee's contractual salary (pro-rated as necessary for employees that did not work a full year), the employee's educational incentive pay, and longevity pay.² At the first day of hearing on May 8, the IAFF advised that it disagreed with the City's salary information and calculations of the total base pay paid. However, by May 19, the parties were able to virtually agree upon an employee list and the calculations therein.³ The revised, agreed-upon list was submitted May 19 (J-1).

On May 8 and May 18, I conducted interest arbitration hearings at City Hall in Atlantic City. The City and the IAFF each submitted documentary evidence and testimony. The IAFF submitted the written report and testimony of its financial analyst, Joseph Petrucelli, and a calculation of the financial

² The parties agree that, for those employees paid longevity as a percentage of base pay, this calculation is based upon a combination of contractual salary and educational stipend.

³ The parties have minor disagreements on the total base pay paid which total \$20,738.23. In the context of this particular case, I consider that disagreement, which is less than .1%, insignificant. Therefore, the City agreed to use the Union's calculation of Total Base Pay Paid of \$21,390.182.

impact of its economic proposal as well as the City's. The City submitted testimony and written reports of its two financial analysts, Henry Amoroso and Robert Benecke, and testimony of the State Monitor assigned to Atlantic City, Edward Sasdelli. It also submitted calculations of its proposals. Post-hearing briefs filed by May 23, 2015.

FINAL OFFERS OF THE CITY⁴

ARTICLE 35 - DURATION

Modify first sentence of this article to read:

This Agreement shall be effective as of the first day of January 2015 and shall remain in full force and effect through December 31, 2018.

ARTICLE 20 - PAY SCALE

Modify Section A.1., second sentence, as follows:

However, once the test is passed, the firefighter's salary rate change will not become effective until the employee's next anniversary date. (No movement to the next appropriate step for that firefighter's class).

Eliminate Section 2 in its entirety. (Apprenticeship Test Committee)

Section D, paragraphs 1 through 4 will be deleted in their entirety and replaced by the following:

Effective January 1, 2015, the salaries for all bargaining unit members, regardless of date of hire, inclusive of holiday pay, shall be as follows:

<u>Title</u>	<u>Salary Range</u>
Apprentice I through Sr. Journeyman	\$40,000-\$70,000*

⁴ Underlined material denotes language to be added; bracketed material denotes language to be deleted.

*The salary guide and incremental increases for all Firefighters shall be structured in accordance with the City's ability to pay, as demonstrated by documented evidence.

Delete all titles above Sr. Journeyman, which will be removed from this Agreement through Unit Clarification Petition Docket No. CU-2015-004.

Delete Sections E and F in their entirety.

ARTICLE 2 - INTERPRETATION

Modify Section B as follows:

The City recognizes the International Association of Fire Fighters, Local 198, as the exclusive negotiating agent and representative for all Apprentice and Journeyman Firefighters, excluding Fire Captain, Fire Inspector, Maintenance Repairer, Custodian, Air Mask Technician, Battalion Chief, Asst. Chief Fire Inspector, Deputy Chief, and all other employees employed by the City.

Modify Section C as follows:

The City agrees that the Union has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions, safety [of personnel and equipment], procedures for adjustment of disputes and grievances.

Add new Section D as follows:

The parties acknowledge that rulings, orders or settlement agreements issued by the Public Employment Relations Commission, pursuant to the Clarification of Unit Petition under Docket No. CU-2015-004, and all items considered as non-negotiable pursuant to the Scope of Negotiations Petition under Docket No. SN-2015-051, shall be incorporated and removed from the Agreement as necessary to ensure compliance with such actions.

ARTICLE 4 - DUES CHECK-OFF

Remove Section C.2., as follows:

[Payroll deductions, with respect to any insurance plan approved by the City, shall be at no cost to either the employee or the Union.]

ARTICLE 5 - EMPLOYEE REPRESENTATION

Modify second sentence as follows:

No more than one steward and alternate is to be [designed] designated for each facility.

Modify third sentence as follows:

I.A.F.F. representatives not employed by the City will not be permitted to visit [with employees during work hours] work stations for the purpose of discussing I.A.F.F. representation matters, without [notifying the head of the department] written permission in advance from the Chief of the Department or his designee.

ARTICLE 7 - MANAGEMENT RIGHTS

Modify Article as follows:

It is the right of the City to determine the standards of service to be offered by its agencies; determine the standards for hiring, promotion, and assignments, and to determine when and if such actions will be taken; to assign and direct its employees; to take disciplinary action; relieve its employees from duty for any legitimate reason; maintain the efficiency of its operations; determine the methods, means and personnel by which its operation will be conducted; determine the content of job classifications; schedule the hours of work; take all necessary actions to carry out its mission in daily activities and in emergencies; and, exercise complete control and discretion over its organization and the technology of performing its work.

Remove the following sentences:

[The practical impacts of the decisions on the above matters are subject to the grievance procedure. Nothing in this Article shall alter or relieve the City of its obligations undertaken in this Agreement.]

ARTICLE 8 - DUTIES OF OFFICERS

Remove Article in its entirety. This Section relates to titles which are to be removed from this Agreement through Unit Clarification Petition Docket No. CU-2015-004.

ARTICLE 12 - UNION RELEASE TIME

Delete entire Article as written and replace language as follows:

Section A. Convention Leave. The parties agree that Title 11A:6-10 shall govern the number of representatives eligible to attend those state conventions as set forth in said statute. Those members requesting permission to attend must submit requests for written permission to attend such conventions to the Chief or his designee fourteen (14) days in advance of said convention.

Eliminate all references to contract negotiations as leave time to negotiate contracts is covered in Article 16, Section A. Eliminate grievance negotiations as leave time to settle disputes and grievances is covered in Article 3, Section C of the Grievance Procedure.

ARTICLE 13 - WORK SCHEDULE

Delete Section B in its entirety and replace with the following language:

B. Staff Personnel.

1. Staff personnel shall work a five (5) day schedule, covering Monday through Sunday,

working eight (8) hours per day, including holidays.

ARTICLE 14 - OVERTIME PAY

Modify Section B.1 as follows:

Eliminate the educational component from the overtime calculation.

Modify Section B.2. as follows:

All overtime payable in monies will be paid within 30 days after said overtime is earned.

Modify Section C. as follows:

Rotation of overtime assignments shall be at the discretion of the Chief of the Department. The Union may request overtime records for represented employees on a quarterly basis.

Modify Section D as follows:

When a firefighter is called back to duty, he/she shall receive a minimum of two (2) hours overtime pay...

Eliminate Section G, which obligates the City to send a report detailing the use of overtime for the entire Department to the Union on a quarterly basis.

Add New Section H as follows:

Sick leave, vacation time or compensatory time shall not count for overtime purposes.

ARTICLE 15 - CLOTHING ALLOWANCE

Modify Section A as follows:

The City shall issue to all new personnel all required uniforms and wet goods, only in the first year. [in lieu of Eight Hundred Fifty Dollars (\$850.00)]

Eliminate Section B in its entirety.

ARTICLE 16 - LEAVES

Modify Section A., Union Business, as follows:

Leave from duty with full appropriate pay shall be granted to two (2) members of the Local's Negotiating Committee..

Modify Section B., Sick Leave, as follows:

1. Employees shall be entitled to seventy (70) working hours of sick leave per year, which will accumulate to a maximum of \$15,000, or the amount of sick leave accumulated at retirement, whichever is less, payable upon retirement after 25 years of service with the City."

2. Eliminate this paragraph in its entirety.

Modify Section C., Illness and Injury, as follows:

1. In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she may be compensated at full pay for a period not to exceed six (6) months, unless it is determined that said employee is fit to return to work.

Eliminate the balance of paragraph 1, relating to the Medical Review Board.

Eliminate paragraph 2 in its entirety.

Eliminate paragraph 3 in its entirety.

Modify Section D as follows:

Eliminate the last sentence:

[The City may process as a grievance any situation wherein an employee persistently abuses sick time.]
(Disciplinary action is the primary remedy, not the grievance process).

Eliminate Section E., Terminal Leave, in its entirety.

Eliminate Section F., Terminal Leave Options, in its entirety.

Modify Section G as follows:

In the event of the death of an employee represented by this bargaining unit, the City shall pay a maximum of \$15,000, or the amount of sick leave accumulated at retirement, whichever is less, to said employee's estate.

Modify Section I as follows:

1. Up to five (5) work days shall be granted in the event of the death...

Modify last sentence of paragraph 1:

These days are to be taken from the date of death unless written permission is granted from the Chief of the Department.

Eliminate Section I, paragraph 4 in its entirety, relating to entitlement for travel time of two (2) work days for employees who must travel more than 250 miles to attend a funeral.

ARTICLE 17 - VACATIONS

Delete Section A in its entirety, and replace with the following language:

A. The following vacation schedule shall apply to all firefighters, regardless of date of hire:

<u>Years</u>	Vacation Days
Up to one (1) year of service	One (1) working day for each month of service
After one (1) year and up to ten days (10) years of continuous service	12 working

After ten (10) years and up to 15 working days
 twenty (20) years of continuous service

After twenty (20) years of continuous 20 working days
 service

All employees shall receive one (1) personal day per
 year, regardless of rank or date of hire.

Delete Section B in its entirety. This Section relates to
 titles which will be removed from this Agreement through Unit
 Clarification Petition Docket No. CU-2015-004.

Eliminate Section D. in its entirety.

Eliminate Section E. in its entirety.

Eliminate Section G. in its entirety.

ARTICLE 18 - ACTING OUT OF TITLE

Replace Section A.1., Class A, with the following:

Appointment to acting assignments shall be made
 at the sole discretion of the City, and may be
 commenced and terminated as necessary to meet
 the City's needs. If appointed, firefighting
 personnel shall serve at the higher title until
 they are notified by the City of the termination
 of their appointment. During acting
 assignments, the employee will be paid at the
 rate for the position or rank while so acting.
 In order to become eligible for payment, an
 employee must perform acting duties on a full-
 time basis for 30 consecutive work days.

Eliminate Section A.2., Regulations for Class A, in its
 entirety.

Eliminate Section B.1., Class B, in its entirety.

Eliminate Section B.2., Regulations for Class B, in its
 entirety.

ARTICLE 22 - LONGEVITY

Delete Article 22 in its entirety.

ARTICLE 23 - TRANSFERS AND ASSIGNMENTS

Delete Article 23 in its entirety and replace with the following language:

Transfers and assignments shall be made at the sole discretion of the City, and may be commenced and terminated as necessary to meet the City's needs.

ARTICLE 24 - HEALTH AND SAFETY

Delete Article 24 in its entirety.

ARTICLE 25 - EDUCATION

Delete Article 25 in its entirety.

ARTICLE 27 - PERSONNEL COMMITTEE

Delete Article 27 in its entirety.

ARTICLE 29 - EXCHANGING TIME

Modify Article as follows:

A firefighter has the option to exchange time of shifts with a fellow firefighter no more than [216 hours] forty-eight (48) hours in any single calendar year, taken in [four hour] ten (10) hour minimums, with prior approval of the Chief of the Department or his designee. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.

ARTICLE 31 - SUSPENSIONS AND FINES

Modify Section B as follows by deleting the following language:

[If a member is suspended, he/she shall give a hearing before the Mayor or his/her designate.]

ARTICLE 32 - HEALTH BENEFITS

Remove Section A in its entirety, and replace with Section D as it exists in the current Agreement.

Add the following language to Section B:

Dental Benefits - Effective upon ratification of the successor Agreement, active employees shall pay a \$50.00 deductible for covered services.

Add the following language to Section C:

Retiree Health Services: Retirees shall receive medical health coverage upon completion of twenty-five (25) years of service with the City, and such service shall be in good standing with the Police and Fire Retirement System.

Prescription - Effective upon ratification of the successor Agreement, active employees, and those who retire on or after the date of ratification, shall pay the following co-pays for prescription drugs:

\$20.00 for generic drugs
\$50.00 for brand-name drugs

ARTICLE 34 - FIREHOUSE EQUIPMENT

Delete the following sentence from this Article:

[The specifications are to be mutually agreed upon by the Chief of the Fire Department and the Local 198 Health and Safety Committee.]

IAFF FINAL OFFERS**ARTICLE 35 - DURATION**

Local 198 proposes a three-year Collective Negotiations Agreement with a term commencing January 1, 2015 through and including December 31, 2017.

ARTICLE 20 - PAY SCALE

Modify the section to reflect the maximum increase allowed by law, as follows:

Effective January 1, 2015, an annual wage increase of two percent (2%) will be provided to all members of the bargaining unit, and the salary guides for each year of the contract shall be increased accordingly. Effective January 1, 2016 and January 1, 2017, annual wage increases of two percent (2%) will be provided each year to all members of the bargaining unit, and the salary guide shall be increased accordingly. The increases shall be applied to the titles and ranks of Apprentice I, Apprentice II, Apprentice III, Journeyman I, Journeyman II, Journeyman III, Senior Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Assistant Chief Fire Inspector, Deputy Chief, Chief Fire Prevention.

Delete the pay scale in Article 20, D.2 for the following titles: Sr. Journeyman, Fire Captain, Fire inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Asst. Chief Fire Inspector, Deputy Chief, and Chief Fire Prevention.

Modify Article 20, D.2 as follows:

Bargaining unit members in the following titles shall be paid according to the salary guide in paragraph D.1 regardless of date of hire: Sr. Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Asst. Chief Fire Inspector, Deputy Chief, and Chief Fire Prevention.

ARTICLE 3- GRIEVANCE PROCEDURE.

STEP 2- Review by Union Grievance Committee. The Union Grievances Committee shall screen and study all grievances within [~~Fifteen (15)~~] thirty (30) days or by the next meeting of the Union Executive Board, whichever is sooner, to determine whether same has or lacks merit. Such processing of grievances shall take place without discrimination and irrespective of

membership or affiliation with the Union. Upon finding merit, the Union Grievance Committee shall present written confirmation of such determination to the Chief of the Department, with the request that the Chief of the Department investigate and resolve same.

Add Paragraph D.

D. If the City fails to comply with an arbitration award and the Union is forced to seek enforcement of the award, the City shall be responsible for all costs, including attorneys' fees, incurred by the Union in enforcing the award.

ARTICLE 12- UNION RELEASE TIME.

Modify Section A as follows:

A. The President, Vice-President, Secretary/State Delegate, Treasurer, Sergeant At Arms and officers of the State Association and members of the State Association Committees, shall receive relief from duty with full pay to conduct contract and grievance negotiations, attend regular monthly meetings, attend conventions of the I.A.F.F., attend conventions of the State Association of Firefighters and AFL-CIO, and seminars involving Union business. Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the event triggering the union release time.

Replace paragraph F in its entirety with the following:

F. Effective January 1, 2015 the following hours of release time from duty work shall apply:

The Local President shall be granted forty-two (42) hours of release time from duty per week with pay in which to conduct Union Business.

1. The Local Vice President shall be granted fifteen (15) hours of release time from duty per week with pay in which to conduct Union Business.

2. The Local Vice President shall be granted fifteen (15) hours of release time from duty per week with pay in which to conduct Union Business.

3. The Secretary and Treasurer shall be granted one (1) day of release time from duty per week with pay in which to conduct Union Business.

G. The Local President and the Local Vice President shall both be supplied with new radios, new batteries, extra batteries, and charger by the City.

ARTICLE 13-WORK SCHEDULE.

Add new paragraph C as follows:

C. Light duty shall be scheduled in four (4) ten (10) hour shifts from Monday to Friday.

ARTICLE 15- CLOTHING ALLOWANCE

Modify Section A as follows:

A. The City shall, upon hire, issue to all new personnel, all required uniforms and wet goods, in lieu of Eight Hundred Fifty Dollars (\$850.00) [only in the first year] per year for all personnel.

Delete paragraph B in its entirety and replace Section C as follows:

C. The City shall be responsible for issuing all uniforms, including Class A, Class B, and wet goods and changes in uniforms and wet goods, and for replacing all wet goods damaged, destroyed or contaminated in the line of duty. Employees shall be responsible for all other items. The City shall provide said uniforms and wet goods within thirty (30) days after a class has graduated from the academy.

ARTICLE 16- LEAVES

Modify Section A as follows:

A. Union Business:

Leave from duty with full appropriate pay shall be granted to members of the Local's

Negotiating Committee who attend meeting between the City and the Union for the purpose of negotiating the terms of the contract, provided the employee is scheduled for duty at the time of the meeting.

Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the meeting.

B. Sick Leave:

Add the following new paragraph:

3. "Sick leave" is hereby defined to mean an absence from the post of duty by a bargaining unit member, due to illness, accident, injury, disability, and/or exposure to contagious disease or the necessity to attend to and care for a seriously ill member of his or her immediate family. The term "immediate family" for the purpose of this Article shall include the following: a) spouse; b) parent; c) step-parent; d) child; e) step-child; f) foster child; g) parent of child; and h) any other relative residing in the bargaining unit member's household.

C. Illness and Injury:

Modify this section as follows:

1. In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she shall be compensated at full pay for a period not to exceed one (1) year per occurrence of said illness or injury. A Medical Review Board shall be created for the purpose of examining all matters pertaining to sick and/or injured members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.

I. Funeral Leave:

Modify this section as follows:

1. Five (5) work days shall be granted in the event of the death of a member of the immediate family or domestic or civil union partner of a firefighter. Immediate family shall include a spouse, parent of child, mother, father, sister, brother, child, mother-in-law, father-in-law, grandparent, grandchild, step-mother, step-father, step-sibling and step-children, and any other related member of the household. These days are to be taken from either the date of death on or from the date of the funeral back.

ARTICLE 17- VACATIONS

The following shall apply to all firefighters:

(Delete: hired prior to January 1, 2012]

YEARS	VACATION DAYS	PERSONAL DAYS
1	12	0
2	12	0
3	12	0
4	16	0
5	20	0
6	24	0
7 through retirement	24	4

The Union proposes deleting the following paragraphs of Article 17 in their entirety: A.2., B.1.b, B.2.b, and B.3.b.

ARTICLE 22- LONGEVITY

Add the following steps to paragraph A.2:

7.5 years additional \$550

12.5 years additional \$550

17.5 years additional \$550

ARTICLE 23- TRANSFERS AND ASSIGNMENTS

The Union proposes to delete the following:

[A. Transfers and assignment shall provide the highest degree of efficiency in every unit of the Fire Department by assigning a combination of experienced and less experienced personnel. Whenever possible, each unit shall consist of the following balance:

One (1) Company Officer One
 One (1) Senior Firefighter
 One (1) Journeymen Firefighter
 Two (2) Apprentice Firefighters]

J. Posting Procedure and Selection Criteria

Modify Section J as follows:

1. When a vacancy or new position occurs within the bargaining unit, it shall be filled temporarily by the Chief of the Department. The City shall immediately post notices on the bulletin boards in all fire stations and via electronic mail to all bargaining unit members setting forth the classification, job duties and requirements, hours and days of work, starting time and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the Secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees are not at work during the entire posting period and who have sufficient qualifications and seniority shall be considered as filing an application for the job.

Delete paragraph J.2:

[2. In filling vacancies by promotion or transfer, where ability and other qualifications are equal, seniority within the Fire Department shall control. The term "ability and other qualifications" used herein shall include observing the rules and regulations of the Fire Department. [delete the following: The Chief of the Department shall define and determine the standard of "ability and other qualifications," which cannot be arbitrarily or selectively established.] All vacancies shall be reviewed by the Transfer Committee. The

Transfer Committee shall consist of Chief of the Department, or his/her designee, the Union President or his/her designee, and the Shift Commander or his/her designee. The Transfer Committee shall define and determine the standard of "ability and other qualifications," which cannot be arbitrarily or selectively established.]

ARTICLE 24- HEALTH AND SAFETY

The Union proposes to delete the following:

[F. The City pledges to do whatever is feasible for the Safety of the bargaining unit and City residents regarding increased staffing levels to ensure continued safe fire protection of its citizens and a continued safe working environment for members of the bargaining unit. The City shall adhere to all N.F.P.A. standards.]

ARTICLE 25- EDUCATION

Modify paragraph C.7. as follows:

(e) One (1) water course related to fire services

Modify Section D as follows:

D. Applications for training or educational incentives shall be made to the designated personnel officer, and review and final approval shall be with the consent of the Education Committee in February and July of the calendar year. Percentage increments become effective February 1st and July 1st of the year the submissions are filed, regardless of the date/s of approval. Payments will be made within thirty (30) days of the date/s of approval.

ARTICLE 26- SECONDARY JOBS

The Union proposes deleting Article 26 in its entirety.

ARTICLE 29- EXCHANGING TIME

Modify Section A as follows:

A. firefighter has the option to exchange time of shifts with a fellow firefighter no more than [two hundred sixteen (216)] three hundred sixteen (316) hours in any single calendar year, taken in [four (4)] one (1) hour minimums, with prior approval of his/her superior officers. Additional hours may be approved by the City's discretion. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.

ARTICLE 31- SUSPENSIONS AND FINES

Modify Section C as follows:

C. All members must be granted a hearing before a mutually agreed upon neutral/impartial hearing officer on any charge that costs the member in suspension or fine.

ARTICLE 32 HEALTH BENEFITS

The following paragraph was included in the prior agreement which was not executed. Local 198 wants to ensure that it is also included in a successor contract with the following modifications.

D. The City agrees to continue to provide health benefits under the New Jersey State Health Benefits Plan at the City's expense less premium contributions by employees in accordance with Chapter 78, P.L. 2011. The City agrees that the health benefits provider may only be changed if the benefits remain equal to or better than the existing coverage and the City provides ninety (90) days advance written notice to the Union. The City shall also provide the Union with any information requested relating to the City's proposed changes. Any dispute arising from this paragraph can be immediately progressed to STEP 5-Arbitration pursuant to Article 3 paragraph B of this agreement.

ARTICLE 33- PHYSICAL FITNESS EQUIPMENT

Modify this article as follows:

The City will make physical fitness equipment available to the firefighters, with equipment being located in all firehouses and with all unit members

having reasonable access to the equipment.

ARTICLE 34- FIREHOUSE EQUIPMENT

Modify this article as follows:

All firehouses will be equipped with a commercial quality stove; a commercial quality refrigerator; a commercial quality sink; a commercial quality dishwasher; furniture for the stations; and, first aid kits. The City shall not only purchase, but also install (or, in the alternative, arrange for installation of) all the above items. The specifications are to be mutually agreed upon by the Chief of the Fire Department and the Local 198 Health and Safety Committee.

NEW ARTICLE 37- GRANT COMMITTEE

Add new Article as follows:

In light of the financial situation in the City, a Grant Committee shall be established to consider all grant opportunities. The Grant Committee shall consist of the Mayor or his/her designee, the Union President or his/her designee, and the Fire Chief or his/her designee.

Any grant approved by the Grant Committee shall be submitted to City Council.

BACKGROUND FACTS

Demographics

Atlantic City, located in Atlantic County, is less than eleven square miles and is home to fewer than forty thousand (40,000) residents. Yet, there are more than 28,000,000 visitors each year to the City and there are 12 high rise casino buildings. The City is a seaside resort community bordering the Atlantic Ocean. In addition to being a resort destination, Atlantic City has become the second largest casino destination

behind only Las Vegas after gambling in the City was legalized by constitutional referendum in 1976.

The New Jersey Transportation Authority reported that there were 28,452,042 trips to Atlantic City in 2011. Furthermore, approximately 20,000 individuals commute to work in the City on a daily basis.

Atlantic City is home to eight world-renowned, high-rise casino resorts, which may increase to ten with the Revel Casino and Showboat purchases. Last year, casinos generated \$3.051 billion in revenues. Additionally, the casinos employed 34,726 employees in 2014. Atlantic City is also home to non-casino luxury hotels such as The Water Club, which is a signature hotel by Borgata Casino, the Chelsea, and Courtyard by Marriot. Atlantic City features a large outlet shopping district and numerous restaurants.

Notably, the casino industry provides a significant tax benefit to the State, and, in particular, Atlantic City. In 2014, the casino industry generated \$207,565,000 in total gaming taxes and \$220,654,000 in total revenues for the casino revenue fund. In 2014 the casino hotels' occupancy rate increased 2.8 percentage points to 80.2%. Casinos reported total revenue of \$3.8 billion and \$265.7 million in third party business sales for the year ended December 2014.

Median Household Income

The U.S. Census Bureau indicates that Atlantic City 2010 median household income was \$30,237 and median family income was \$35,488. The per capita income for the City was \$20,069. About 23.1% of families and 25.3% of the population were below the poverty line. (C-89)

Unemployment Rate

According to the most recent American Community Survey, nearly three quarters of the City's workforce is made up of commuters. Assuming that the ratio is roughly equivalent in the casino industry itself, those now out-of-work residents of Margate, Egg Harbor, Galloway, Absecon, and dozens of other municipalities across the region will have to search for work, reduce their spending, and struggle to make their mortgage payments. Moreover, many of the region's businesses rely on both the casinos themselves and the people they bring to Atlantic City as sustaining their customer bases. Thus, the loss of casino industry jobs, as well as of the casinos themselves as customers, will, undoubtedly, have a significant ripple effect in Atlantic County and beyond, as evidenced by comparative unemployment data as shown in the chart below: (C-87)

Municipal Unemployment Rate (February 2015)					
Atlantic City	Camden	Paterson	Egg Harbor	Galloway	N/A
18.3%	13.2%	12.7%	11.5%	11.4%	N/A
Newark	Vineland	Trenton	Toms River	Edison	Princeton
10.6%	10.6%	9.7%	7.2%	4.8%	3.6%

Atlantic City leads all measured New Jersey municipalities for its February 2015 unemployment rate. The unemployment rates of surrounding municipalities, such as Egg Harbor and Galloway, are lower than would be expected given the socioeconomic profile of those communities. On a larger scale, of the 372 metropolitan statistical areas surveyed by the United States Bureau of Labor Statistics, the Atlantic City-Hammonton metropolitan area's August 2014 unemployment rate ranked 354th in the nation at 9.3%. By September 2014, Atlantic City-Hammonton metropolitan area had fallen to third from last place with an unemployment rate of 10.8 percent -- a 1.5% increase. (C-87)

The Fire Department

IAFF President Christopher Emmell, and IAFF Secretary, Captain William DiLorenzo, testified as to the operations of the fire department. According to the City Fire Department's Table of Organization, the authorized strength of the department is 272 uniformed members. Of the current 235 head count, the City only pays for 185 firefighters. The balance of the force, 50 firefighters, is paid for by the federal government's SAFER grant program, which reimburses the City for those firefighters' wages and benefits.

The City recently filed a layoff plan with the State Department of Civil Service, announcing its intent to lay off 85 firefighters, which would reduce the force to 150 firefighters. The Union avers that at this staffing level the force would be unsustainable. The Union also notes that even the current level of 235 firefighters is below what FEMA calls an unsafe number. The Union is concerned that the tradition of the force may change from an aggressive fire department to that of a defensive fire department to the detriment of the public. However, the City's exhibit C-38, prepared by Emergency Manager Kevin Larkin as part of a larger report, concludes that the City's fire department is overstaffed in comparison to other cities, such as Las Vegas and New York. I note that while the parties dispute the veracity of these dueling claims, the issue of the appropriate size of the department is not an issue within my jurisdiction.

The fire department covers an area 41% larger than cities with comparable residential populations. The City has 12 of the highest 50 buildings in New Jersey. The City has more fires and emergency calls per capita than New Jersey's largest cities. The City has 28% of the total fires and 28.5% of the total emergency calls in Atlantic County, which has a population of approximately 272,000.

Besides fighting fires, the fire department is responsible for high-angle rescue, trench rescue, ice rescue, swift-water

rescue, collapse, and EMS first responder calls. The department's calls and number of incidents have increased as staffing levels have decreased. The call volume increased from 4,401 in 2012 to 4,913 in 2014. However, the number of structural fires slightly decreased from 252 in 2012 to 249 in 2014.

Firefighters are also responsible for vacant casinos and buildings. Vacant buildings present additional dangers and require more staffing than fires at occupied buildings. Without casino employee staffing, responses to vacant casino buildings require firefighters to spend more time locating a fire or other emergency and ensuring that any unauthorized occupants of the buildings are located, evacuated and out of danger. The numerous vacant houses in the City present a far more dangerous condition than occupied houses. Vacant houses are typically boarded up, requiring more time for firefighters to enter the house and requiring additional personnel to cut through boarded up windows and doors. Firefighters have been injured falling through floors because holes have been cut in vacant houses.

Bargaining History

The parties' last contract was accomplished through an interest arbitration award. That award, issued July 12, 2012, by Arbitrator Michael Pecklars, awarded a salary increase of 1.22% effective January 1, 2012, inclusive of longevity increase costs. The award also imposed a maximum payout cap of \$15,000

on terminal leave payments for employees hired after January 1, 2012. He also imposed a two-tier vacation plan. Further, he imposed a new second-tier pay scale for new hires after January 1, 2012, which provides for a maximum pay for senior journeyman firefighters of \$80,000, a maximum for fire captains of \$95,000, and a maximum for battalion chiefs of \$110,000, and for deputy chiefs, \$125,000.

As to longevity, Pecklars created a second-tier longevity plan for new hires with flat dollar values rather than percentage of base pay, the maximum of which is \$8,000. Pecklars also modified the educational stipend program such that employees receiving the benefit on the date of the award would continue to receive the benefit, including advancements for additional degrees received, while firefighters not yet receiving the benefit would be limited to \$2,500 for an associate degree, an additional \$1,000 for a bachelor's degree, and an additional \$1,000 for a master's degree.

However, on August 16, 2012, City Mayor Langford and the Union signed a Memorandum of Understanding which clarified that the two-tier wage and benefit package in the Pecklar's award would apply only to new hires. The Memorandum also revised the Pecklar's award as it applied to the educational incentive pay to make it applicable to new hires only, instead of firefighters not yet receiving the benefit.

However, the City did not pay educational incentive payments to firefighters who were employed prior to January 1, 2012 but not yet receiving educational incentive pay when educational benchmarks were achieved. The Union initiated a grievance to enforce the MoU, which proceeded to arbitration. At the arbitration hearing on March 24, 2014, the parties entered a second settlement agreement into the record, which in relevant part, committed the City to reinstate the Education Committee, and provided that the City would make education incentive payments back to 2009 within a specific time period after review and recommendations of the committee. On March 10, 2015, Arbitrator Scott Buchheit issued an award finding that the City was in violation of the Settlement Agreement. Thereafter, IAFF filed a Motion in Superior Court for the enforcement of the Buchheit award. That court action is pending. Union President Emmell testified that the Union has calculated that the back pay on this award exceeds \$1,000,000. The Union withdrew the proposal in its Final Offer for award to enforce the Buchheit decision.

STATUTORY CRITERIA

N.J.S.A. 34:13A-16.7(b) provides:

An Arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c.85 which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the

affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate money value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

The statute also provides a definition as to what subjects are included in "base salary" at 16.7(a):

"Base salary" means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.

In addition, I am required to make a reasonable determination of the issues giving due weight to those factors set forth in N.J.S.A. 34:13A-16g(1) through (9) that I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

(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, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by the P.L. 1976 c. 68 (C.40A:4-45 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 on the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b)

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

(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.

(9) Statutory restrictions imposed on 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 section 10 of P.L. 2007, c. 62 (C.40A:4-45.45).

The Arbitrator's award must address all nine statutory criteria, identify the criteria found to be relevant, analyze all of the evidence pertaining to the relevant criteria, and explain why any remaining criteria were deemed irrelevant. Borough of Hillsdale and PBA, 137 N.J. 88 (1994). Any economic offers that are clearly unreasonable in light of the statutory criteria must be rejected.

In arriving at the terms of this award, I conclude that all of the statutory factors are relevant, but not all are entitled to equal weight. It is widely acknowledged that in interest arbitration proceedings, no single factor can be determinative when fashioning the terms of an award. This observation is present here as judgments are required as to

which criteria are more significant and as to how the relevant evidence is to be weighed.

In addition, I note that N.J.S.A. 34:13A-16g(8) requires consideration of those factors ordinarily or traditionally considered in the determination of wages, benefits, and employment conditions. One such consideration is that the party proposing a change in an employment condition bears the burden of justifying the proposed change. Another consideration is that any decision to award or deny any individual proposal, especially those having economic impact, will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. I am also required by statute to determine the total net annual economic cost of the terms required by the Award.

In this matter, the interests and welfare of the public must be given the most weight. It is a criterion that embraces many other factors and recognizes the interrelationships among all of the statutory criteria. Among those factors that interrelate and require the greatest scrutiny in this proceeding are the financial impact of an award on the governing body and taxpayers [N.J.S.A. 34:13A-16g(6)] and the City's statutory budget limitations [N.J.S.A. 34:13A-16g(5); N.J.S.A. 34:13A-16g(9)]. Also important are the criteria concerning the impact upon continuity and stability of the bargaining unit, including employee morale and turnover; the

cost of living; and the evidence on internal comparability and comparability to other jurisdictions [N.J.S.A. 34:13A-16g(2)(c)] as those terms and conditions relate to the existing wages and benefits of members of this bargaining unit [N.J.S.A 34:13a-16g(3)].

EXISTING WAGES, BENEFITS AND WORKING CONDITIONS

Unit members are currently paid from either of two salary guides in the current contract, as follows:

D.1. Effective January 1, 2012 through December 31, 2014, the salaries for all bargaining unit members hired prior to January 1, 2012, inclusive of holiday pay, shall be as follows:

<u>TITLE</u>	<u>SALARY</u>
Apprentice I	57,309
Apprentice II	59,569
Apprentice III	61,834
Journeyman I	68,432
Journeyman II	75,029
Journeyman III	81,627
Sr. Journeyman	92,689
Fire Captain	105,594
Fire Inspector	105,594
Maintenance Repairs	105,594
Custodian	105,594
Air Mask Technician	105,594
Battalion Chief	120,445
Asst. Chief Fire Inspector	120,445
Deputy Chief	137,690
Chief Fire Prevention	137,690

D.2. Salaries for all bargaining unit members hired on or after January 1, 2012, inclusive of holiday pay, is as follows:

<u>TITLE</u>	<u>SALARY</u>
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Apprentice I	45,000
Apprentice II	48,000
Apprentice III	51,000
Apprentice IV	54,000
Apprentice V	57,000
Journeyman I	60,000
Journeyman II	63,000
Journeyman III	66,000
Journeyman IV	69,000
Journeyman V	72,000
Sr. Journeyman	80,000
Fire Captain	95,000
Fire Inspector	95,000
Maintenance Repairs	95,000
Custodian	95,000
Air Mask Technician	95,000
Battalion Chief	110,000
Asst. Chief Fire Inspector	110,000
Deputy Chief	125,000
Chief Fire Prevention	125,000

Currently, there are 184 unit members at the top step on the salary guide and the remaining 1 firefighter funded by the City budget is moving through the step guide. In addition, there are 50 firefighters employed at the City's fire department who are paid through a federally-funded FEMA grant, called the "SAFER" grant. All but one of the SAFER grant firefighters, are still moving through the salary guide and are increment eligible. The total base pay cost of these 50 SAFER grant firefighters is \$2,751,277. It is my understanding that the SAFER grant covers the salaries of these employees, including the costs of increments.

The 2012-14 contract provided a wage increase for 2012 of 1.22% to all members of the bargaining unit and these

increases are reflected in the salary guides above. The award also provides that no wage increase was to be given for 2013 and 2014.

Overtime pay is computed at the rate of one and one-half the times the normal rate and includes educational and longevity increments computed on a 42 hour work week. This pay consists of all hours worked in excess of the average 42 hours of work in any one week, based on the cycle providing 336 for eight weeks. Rotation of overtime assignments is in accordance with existing department orders. Overtime opportunities are limited and in 2014, the total overtime payment for the bargaining unit was \$167,798, or a little more than \$700 per fire fighter.

In addition to regular base pay, unit members have a longevity program as a reward for long service with the City. The contract currently provides for a two-tier longevity program as follows:

1. All employees hired before January 1, 2012 shall be entitled to receive longevity as follows:

<u>YEARS OF SERVICE</u>	<u>PAYMENT</u>
5 Years	2%
10 Years	4%
15 Years	6%
20 Years	10%

2. All employees hired on or after January 1, 2012 shall be entitled to receive longevity as follows:

<u>YEARS OF SERVICE</u>	<u>PAYMENT</u>
5 Years	1,140

10 Years	2,880
15 Years	4,880
20 Years	8,000

There are currently 167 employees getting some form of longevity -- ranging from \$1,666 to \$15,146 annually. Longevity pay and educational incentive pay are included with a firefighter's regular paycheck. These stipends are added to base pay on which overtime and pension credits are calculated.

Officers are also eligible by contract for educational incentive pay for attaining advanced education and college degrees. The current contract provides for a two-tiered educational incentive based on employees' hiring dates.

The first tier is applicable to all firefighters hired before January 1, 2012, and ranges from an increment of 2% of base salary to a maximum of 10% of base salary; and is driven by completed credit hours or degree achieved.

The second tier is applicable to those employees hired after January 1, 2012. The educational incentives for tier two range from a minimum of an additional \$1,000 on top of base salary to a maximum of \$2,500 and are all degree-driven.

Each firefighter platoon works the following schedule: Two days of duty, ten hours each day (8:00 a.m. - 6:00 p.m.), immediately followed by two nights of duty, fourteen hours each night (6:00 p.m. - 8:00 p.m.), immediately followed by four consecutive days off.

Firefighters enjoy the usual array of leave time benefits. Sick leave is allowed up to 140 working hours per year and are cumulative from year to year. For employees hired after January 1, 1996, sick leave can only be accumulated 100 hours per year, from year to year.

Upon retirement, all employees are entitled to one of two options for terminal leave. Under option one, the firefighter is entitled to use his sick leave up to certain maximums by "running his days"; that is, he remains on the payroll but is not required to report for duty. During this period, he receives full pay and benefits such as, salary increases as provided in the contract; paid health benefits; and clothing allowance. Under option 2, the firefighter may cash out his unused sick leave in the form of a lump sum payment.

Paid terminal leave was amended in the previous contract by hiring date and maximum monetary payment as follows:

- Employees hired in 1984 - 16 months
- Employees hired in 1985 - 14 months
- Employees hired between 1/1/86 and 10/15/06 - 12 months
- Employees hired after 10/16/06, but before 1/1/12 - 6 months
- Employees hired after 1/1/12 - maximum payout cap of \$15,000.00

Firefighters are also entitled to vacation and personal days. These days are based on a two-tier schedule, as follows:

1. The following shall apply to all employees hired prior to January 1, 2012:

<u>YEARS</u>	<u>VACATION DAYS</u>	<u>PERSONAL DAYS</u>
1	12	0
2	12	0
3	12	0
4	16	0
5	20	0
6	24	0
7 through retirement	24	4

2. All employees hired on or after January 1, 2012 shall be entitled to vacation and personal days as follows:

<u>YEARS</u>	<u>VACATION DAYS</u>	<u>PERSONAL DAYS</u>
1-3	10	0
4-10	12	0
11-20	16	0
20-retirement	18	2

Vacation time is granted during the calendar year. Selection for vacation periods is based on seniority and rank by shift at station house level. Contractual vacation time for Captains, Fire Inspectors, Air Mask Technicians, Maintenance/Repair personnel, and Custodians is 28 working days paid vacation and four personal days.

In accordance with employee's hire dates, vacation paid time for Captains, Battalion Chiefs, Assistant Chiefs, Fire Inspectors, Deputy Chiefs and Fire officials ranges from a minimum of 20 paid working days to a maximum of 36 working days paid vacation.

Firefighters are provided health and prescription benefits through Blue Cross/Blue Shield U.C.R. Firefighters also receive vision care and dental basic benefits. Retirees also receive health benefits if they retired after January 3, 2003.

Firefighters contribute to the cost of health benefits pursuant to Chapter 78, P.L. 2011, and are in the maximum tier of contribution rates. Employee contributions are based upon salary rates and the coverage selected. The amount of the contributions currently range between 24%-35% of the premium costs for family coverage, and between 34%-35% of the premium costs for employee-only coverage.

Under the current contract, the City issues all required uniforms and wet goods to new hires in lieu of \$850 clothing allowance. This is only done for the first year of employment. Effective January 1, 2000, Apprentice Firefighters with two years through six years of employment, receive a \$450 clothing allowance. Firefighters beginning in their seventh year and thereafter receive a \$250 clothing allowance. Fire captains, fire inspectors, maintenance/repair personnel, custodians and air mask technicians receive a \$100 clothing allowance. Battalion chiefs, assistance chief fire inspector, deputy chiefs and the fire chief receive no clothing allowance.

Internal Comparables

In addition to Local 198's negotiations unit, the City has six bargaining units of represented employees -- two police

groups (rank and file and superior officers), and four units of civilians employees. With the exception of the two police units, all contracts expired at the end of 2014.

PBA Local 24 represents the City's patrolmen, detectives, sergeants and lieutenants. The Superior Officers' Association represents police captains. Both groups have a current contract covering 2013 through 2015. The PBA contract provides for a two-tier pay scale, depending on date of hire. The dollar values for each step of the salary guide were unchanged for the life of the three-year contract. Although the PBA received the full 2% under the arbitration "hard cap", the money was used to pay increments. For officers hired before January 1, 2013, the top pay is as follows:

Step 10 (max)	96,745.17
Sergeants	110,218.04
Lieutenants	120,267.32

For officers hired after that date, the pay scale is:

Step 10 (max)	90,000
Sergeants	100,000
Lieutenants	110,000

Like firefighters, these base pay rates include holiday pay. Like firefighters, police also enjoy a four-hour minimum call-back pay, a two-tier longevity plan beginning in 2013, and educational incentive pay ranging from 2% to 10% of base for those hired before 2013, and a flat-dollar amount ranging

between \$2500 and \$4500 for those hired after that date. The contract provides for a four-tier vacation leave program which will be discussed in detail below. Their clothing allowance is identical to that contained in Local 198's 2012-2014 contract.

Police captains also have a contract covering the period 2013-2015. That agreement provides for salary increases of 2% in 2013, 2% in 2014, and 1.88% in 2015, resulting in a salary of \$137,520 for police captains in 2015. The salary article also provides that officers hired after January 1, 2013 and subsequently promoted shall be frozen at the then existing salary of \$129,741. Captains have the same educational incentive pay and longevity program as PBA members. Like the firefighters, the police captains have a two-tier longevity plan depending upon date of hire. For those hired before January 1, 2013, captains receive a percentage of base pay ranging from 2% to 10%; for those hired after January 1, 2013, longevity compensation is based upon a flat dollar amount, ranging between \$2,595 and \$12,974.

External Comparables

Owing to Atlantic City's uniqueness as a both an urban area, and a shore tourist town driven by the gaming industry, it is difficult to find an appropriate comparison among other paid fire departments. I have considered both other urban departments in New Jersey, and other paid departments in Atlantic County. I have considered both compensation rates and

benefit comparisons. A comparison of top pay among firefighters in Atlantic County reveals the following:

Atlantic County Paid Fire Departments			
Municipality	2014	2015	2016
Atlantic City	92,689		
Brigantine*	87,431	N/A	N/A
Margate	88,115	90,318	N/A
Pleasantville	82,806	84,462	86,151
Ventnor	83,613	85,285	86,991
Average Top Pay	86,931	86,688	86,571

* 2013 Salary

As can be seen by the chart below, Atlantic City firefighters are currently the highest paid among all paid departments in Atlantic County by more than \$4,000. However, it must be noted that Atlantic City is the only paid urban department in the County.

A comparison of Atlantic City's firefighters with those of other urban New Jersey municipalities reveals the following:

New Jersey Urban Fire Departments			
Municipality	2014	2015	2016
Atlantic City	92,689		
Asbury Park	91,206	92,574	94,425
Bayonne	95,045	97,896	100,833
Camden City	N/A	N/A	N/A
East Orange	N/A	N/A	N/A
Edison *	106,967	N/A	N/A
Elizabeth	N/A	N/A	N/A
Hoboken *	97,138	N/A	N/A
Irvington	78,221	79,785	81,381
Jersey City	98,787	101,256	N/A
Linden *	94,981	N/A	N/A
Newark	93,900	95,778	N/A
New Brunswick	92,735	N/A	N/A
North Hudson Regional	87,509	88,931	N/A
Paterson * (Hired before 1/1/99)	87,580	N/A	N/A
Perth Amboy	74,923	N/A	N/A

Plainfield *	86,658	87,957	89,277
Trenton	N/A	N/A	N/A
Average Top Pay	91,204	92,025	91,479

* 2013 Salary

This comparison demonstrates that Atlantic City's firefighters at the top step of the salary guide are just slightly above average pay for urban areas for 2014 salaries.

Atlantic County Fire Captains			
Municipality	2014	2015	2016
Atlantic City	\$105,594		
Brigantine	N/A	N/A	N/A
Margate	\$104,689	\$107,306	N/A
Pleasantville	\$88,697	\$90,471	\$92,280
Ventnor	\$101,173	\$103,196	\$105,260
Average	\$100,038	\$100,324	\$98,770

As can be seen by this chart, in 2014, Atlantic City's fire captains are the highest paid in the County and above average pay by more than \$5,000. However, beginning in 2015, Margate's fire captains will surpass the pay rates for Atlantic City's captains by \$1,800.

New Jersey Urban Cities Fire Captains			
Municipality	2014	2015	2016
Atlantic City	\$105,594		
Asbury Park	\$105,734	\$107,320	\$109,466
Bayonne	N/A	N/A	N/A
Camden City	\$102,038*	N/A	N/A
East Orange	N/A	N/A	N/A

Edison	N/A	N/A	N/A
Elizabeth	N/A	N/A	N/A
Hoboken	N/A	N/A	N/A
Irvington	N/A	N/A	N/A
Jersey City	\$105,344	\$107,714	\$109,815
Linden	N/A	N/A	N/A
Newark	\$95,714	\$97,628	N/A
New Brunswick	\$120,412	N/A	N/A
North Hudson Regional	N/A	N/A	N/A
Paterson	N/A	N/A	N/A
Trenton	N/A	N/A	N/A
Average	\$105,806	\$104,221	\$109,641

* = 2013 rate

As can be seen from the chart above, Atlantic City's fire captains are currently right in line with the average of New Jersey's large urban cities.

Urban Cities - Battalion Chiefs			
Municipality	2014	2015	2016
Atlantic City	\$120,445		
Asbury Park	\$117,869	\$119,637	\$122,030
Camden City	\$106,458*	N/A	N/A
Elizabeth	\$127,208*	N/A	N/A
Jersey City	\$131,256	\$134,209	\$136,826
Newark	\$118,436	\$120,805	N/A
Paterson	N/A	N/A	N/A
Average	\$120,279	\$124,884	\$129,428

Atlantic City's fire battalion chiefs are currently at the average salary for battalion chiefs in New Jersey's urban areas. However, it is noted, that in 2015, they will begin to fall below average. There is insufficient data among Atlantic County's fire departments to make a fair comparison between Atlantic City's deputy chiefs and those in other Atlantic County towns or other urban areas.

DISCUSSION

DURATION OF THE AGREEMENT

The Union proposes a three-year agreement to cover January 1, 2015 through December 31, 2017. The City proposes a four-year agreement to extend through 2018.

The Union argues that the City has not provided any valid reason why a four-year contract is necessary. The City cites to economic uncertainty as grounds for a four-year contract. However, the Union maintains that economic uncertainty favors neither a three nor four-year contract. Locking down employees' pay and benefits rates for an extended period is not advantageous, since the parties may need to readdress those issues in the event of inflation, market conditions, or legislative initiatives that impact on employees' working conditions or on the employer's appropriations or revenue. Moreover, the Union points out that the 2% arbitration cap is due to again sunset in December 2017. Contracts expiring in

December 2017 may not be subject to the 2% cap unless that provision of the statute is amended. Indeed, the Union argues that it makes little sense to have an interest arbitration award that has been rendered obsolete by unforeseen economic changes or legal developments. Moreover, the Union notes that a three-year term also aligns with historical agreements between the parties.

I award a three-year contract. First, the City has not substantiated its proposal for a longer contract. Second, while a contract for a longer period would stabilize terms and conditions of employment for a longer period, and thus provide greater predictability to the budgeting process, here these factors are outweighed by the extreme state of volatility in the City's finances. It may well be that the City's financial picture will change dramatically over the next two years -- hopefully for the better, but possibly for the worse -- and the City will need to negotiate its labor agreements sooner rather than later. Moreover, the extreme measures being imposed by this award will mean that the IAFF should not have to forego the opportunity to renegotiate should the City enjoy the financial turn-around it hopes for. Accordingly, I find it to be in the interests of both parties, as well as the public interest, for a three-year contract. I award a contract period of January 1, 2015 through December 31, 2017.

SALARY ISSUES

The Union seeks the maximum allowable increases for its members as permitted by the 2% hard cap. It also seeks to abolish the Tier 2 wage guide and move those employees to the Tier 1 guide. In addition, while not mentioned in its final offers, presumably, the Union seeks continuation of increments on the existing step guide.

The City seeks to eliminate the provisions of the contract that call for step guides and to replace those guides with a "salary range" for all firefighters of between \$40,000 and \$70,000. What appears to go hand-and-hand with this proposal is the elimination of automatic increments. The City proposes to advance employees in salary dependent upon the City's financial ability to afford any increases. Further, the City seeks to delay automatic increases granted to apprentice firefighters upon satisfactory completion of the relevant apprenticeship tests.

The record in this matter reveals the following facts concerning the City's financial situation, its ability to pay, and the impact upon the taxpayers.

FINDINGS OF FACT

Atlantic City relies on property taxes to meet its financial obligations. In the past, the City had a greater ability to raise property taxes in comparison with those

municipalities that possess similar socio-economic profiles among their residents (e.g., high poverty rates).

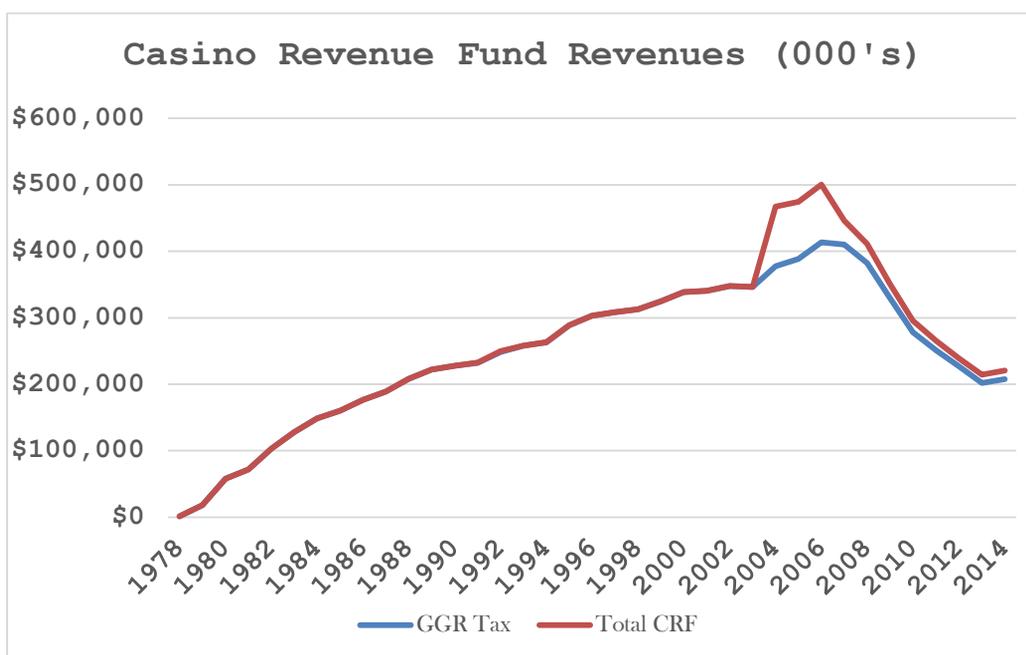
In years past, the assessed value of the casino gaming properties, which correlates closely to the total revenue of the various establishments, allowed the City to raise an enormous amount of property taxes without striking too high a tax rate.

Casino Revenues

The City submitted to State monitoring pursuant to N.J.S.A. 52:27BB in February 2011, in response to tax appeals filed by various casinos (1T-22). Edward M. Sasdelli was appointed and continues to serve as State Monitor. The State Monitor's responsibilities include approvals of Atlantic City hirings, promotions, and involvement in its labor contracts; and, in addition, he is trying to get Atlantic City back on a structural balanced budget. (1T-22)

Sasdelli explained that his role as State Monitor has changed. His original appointment as a State Monitor was for limited supervision because the casinos were due refunds on tax appeals for prior years and the City did not have the resources to pay the refunds. The City requested waivers from the State concerning some of its financial obligations. Sasdelli, a representative of the State Division of Local Government Services (DCA) was assigned to provide limited supervision of the City's legal contracts, professional contracts, bond issues, and tax appeal issues with the casinos. (1T-23)

At its height in 2006, the Casino Revenue Fund Tax on the casinos' gross gaming revenues and other casino-related revenues covered 1.5% of the State's budget appropriation -- or \$500 million, funding health, wellness, and property tax relief programs for seniors and disabled New Jersey residents. In 2014, the tax is likely to bring in approximately \$220 million in revenues, about half of 2006 tax revenues and accounting for just .6% of the State budget. (C-28) The chart below depicts the City's casino revenue fund for the year 1978 through 2014:



Sasdelli stated that the City's visitors are down from 30 million to 25 million; the casinos are down from twelve operating casinos to eight operating casinos. A couple of the eight casinos have already filed bankruptcy, but they are operating. (1T-29) Historical Gross Gaming Revenues (GGR)

represents a 49.9% decrease from 2006 through 2014. The City's 2015 forecast for closed casinos represents a reduction of approximately \$250.8 million in revenue. Gaming revenues in 2006 were approximately \$5.2 million; whereas in 2014, gross gaming revenues were approximately \$2.6 million. (C-23)

Luxury Tax

Pursuant to N.J.S.A. 40:48-8.15 et seq. (the "Luxury Tax Act"), the City of Atlantic City has, by Ordinance No. 18 of 1982, imposed a 3% tax on the sale of alcoholic beverages by the drink in the restaurants, bars, hotels, and other similar establishments; and a 9% tax on cover charges or similar charges made to any patron of such an establishment, the hiring of hotel rooms, and the sale of tickets for admission to theaters, exhibitions and other places of amusement. (U-P-32)

On January 13, 1992, amendments to the Luxury Tax Act were adopted which authorized the New Jersey Sports and Exposition Authority (NJSEA) to undertake the Authority and authorized the State to transfer the proceeds of the Luxury Tax to the NJSEA.

The hotel and luxury tax generated by Atlantic City does not get retained by Atlantic City for municipal operations. Instead, the proceeds are retained by the NJSEA to fund debt, maintenance and operations of the Atlantic City Convention Center Authority and New Jersey Sports Exposition.

Decline in Tax Base

Sasdelli testified that the biggest single challenge in Atlantic City is the evisceration of its tax base. He stated that the City's tax base is a third of what it was five years ago. At that time, the City's structure to deliver City services was based on a \$20.4 billion tax ratable base in 2010 (1T-47). He explained that due to the collapse of the gaming industry and other macro world issues, the City's ratable base plummeted more quickly than anyone anticipated. Today, the ratable base stands at \$7.3 billion -- a 65% drop.

The loss of tax ratables challenges the City to continue to deliver the same level of services; however, Sasdelli pointed out that the City cannot correlate the 65% decline in revenue⁵ with a 65% decline in public safety services (1T-54, 56).

In 2014, the tax ratables were at \$11.3 billion and the City raised its tax rate by 50% in 2013 and 2014 combined to make up for the City's declining tax ratable base and associated revenue (1T-56). With the increased tax rate, the City collected about \$200 million in levy to run the City. Sasdelli testified that applying the same tax rate to the new ratable base of \$7.3 billion would bring in \$128 million. That's a \$70 million loss in revenue before you even consider pension, health benefits, and step increases on the salary guide. (1T-27)

⁵ Per 1T-56, Sasdelli testified that the 65% decline was in the City's tax ratable base resulting in the City having to raise taxes to collect more revenue.

The City had to borrow over \$300 million in tax appeal refunds to casinos. The appeals are the product of improper valuations in prior years. Prior casino tax appeals are already funded by bonding. (U-P-10)

With respect to ongoing appeals, the City has reserved \$900,000 for a revaluation or reassessment. A revaluation would resolve most of the casino, other commercial and residential tax appeal issues in the future. Sasdelli stated that borrowing of funds to pay the casinos' tax rebates drives the City's debt service. Accordingly, Sasdelli explained that there is about \$35 million in debt service that has to be paid.

At this point, the City has a refund obligation of \$88 million to Borgata and \$54 million to Trump. Sasdelli testified that the City has approached the Local Finance Board to obtain a nonstandard loan that will be spread over ten or twenty years in order to pay back the casinos. The City has borrowed money in the amount of over \$300 million through the sale of bonds.

The City's 2014 budget reflects a structural budget imbalance of \$3,726,500 for deferred charges which are unfunded for capital ordinances (U-44).

Transitional Aid

Shortly after Mayor Don Guardian was elected in 2014, the City applied for the State's Transitional Aid program (1T-24). The City executed a MOU with the State as a condition for the transitional aid (C-20). The MOU contained restrictions for the

City, including State approval or other restrictions on the City's finances (C-20).

Transitional Aid in the amount of \$13 million (\$20 million was requested) was granted to Atlantic City in 2014. The City is required to submit a plan on or before December 31, 2014 detailing its plan to reduce its reliance on transitional aid. In no case shall a Transition Plan provide for a phase out of the aid over a period of more than four years. (U-59; C-89)

Sasdelli testified that there are about twelve cities in the Transitional Aid Program. In the mandated supervision program, there are only two cities -- Newark and Atlantic City. Of the two cities, Atlantic City is distinguished from Newark because the Governor's Executive Order 171 dated January 22, 2015 appointed an Emergency Manager to the City.

Tax Appeals

The record reveals that slightly less than 6,000 tax appeals have been filed this calendar year. Sasdelli believes that the estimated \$7.3 billion in ratables will likely decrease. With the continuing decline in the ratable base, the City will have less revenue to provide needed services. Considering the \$70 million loss of revenue, and the City's debt service, and requirement to refund successful tax appeals, it is expected that the City will experience a \$101 million shortfall in the 2015 budget.

PILOT Program

Pending legislation would implement a PILOT program which would set a flat rate for casino taxes over the next 10-15 years. The Union contends that this program would resolve the casino tax appeals liabilities and provide a set revenue stream to the City totaling hundreds of millions of dollars per year.

State Monitor Sasdelli confirmed that the City wants to conduct a reevaluation but has not begun that process because it is waiting to see if the PILOT legislation could potentially solve the evaluation issues. Sasdelli explained that the PILOT legislation would treat gaming properties differently than they are currently treated from a tax standpoint; in a manner that would help the City with respect to its property tax appeals and property tax revenue issue.

Henry Amoroso is a financial analyst who was hired by the City's Chamber of Commerce to study the financial condition of the City. (2T-7) Amoroso testified that the City could best be defined as one in financial crisis which was precipitated by an unprecedented drop in assessed value in New Jersey. (2T-8) Moreover, because of the unusual level and speed of the decline in ratables, the City's primary reliance on property taxes exacerbates the crisis. (2T-9)

Amoroso stated that the City's 2014 operating budget was \$265 million of which about \$198 million came from the City's local tax levy. (2T-9) The remaining budget portion

comes from State and County grants, which are typically for essential health and human services.

Amoroso stated that if the City used the same tax rate from 2014 and applied it to the new base, it would only generate \$128 million. The City would require something more than \$70 million in order to make up the difference; which could only be made up in their rate per 100. Since the City's casino's assessed value decreased and others did not, the rate increase shifts dramatically to the residential and non-casino commercial properties. (2T-13, 14)

According to Amoroso, in 2014, the tax rate per hundred dollars of assessed value based upon the \$11.5 billion base was \$1.749 per hundred of assessed value to build the ratable base. In 2015, Amoroso testified, it would take \$2.869 per hundred of assessed value to raise the same tax revenues. The result would be that between 2008 and 2015, the City would experience a 211% increase in just the municipal tax rate not including the school or the county impact. From the taxpayer's point of view, their dollar amount will increase so dramatically that it creates a downward spiral on the value of properties, as the City is experiencing presently. (2T-14) Commercial and residential properties could experience property abandonment. More than 30% of the commercial properties in 2015 have filed appeals; close to 45% of the residential properties in 2015 have filed for tax appeals. Amoroso testified that the appeals, to some extent,

will reset lower property values. The majority of Atlantic City's debt involves refunds of \$230 million total -- double its existing debt today. (2T-17)

COMPTRA/Energy Tax Credits

Amoroso testified that there was some element of Transitional Aid in last year's budget, and there is a grant called COMPTRA and energy tax credits. COMPTRA is a historic consolidation of municipal aid that the State gives to various municipalities. COMPTRA aid is the backstop for the debt service on the bond. The limited bond is the \$40 million which received the 'A-' rating. (1T-72) Atlantic City received roughly \$6 million last year in COMPTRA aid. (2T-11)

Amoroso stated that the City's debt today is about \$235 to \$240 million. There is \$185 million in outstanding tax appeals, and 40 million owed to the State. Amoroso testified that \$225 million with interest accruing is owed on those refunds. Roughly 14% of the City's budget is debt service. (2T-18)

Amoroso testified that at least 75% of the City's budget is benefits and wages (2T-27). Amoroso states that Atlantic City cannot afford its current cost of delivery -- labor, healthcare, and debt. Evidence of this is the cash crisis; its inability to access the bond markets; its downward spiraling property values; and its collapsing business model among casinos. (2T-32)

Standard and Poor's Rating Services' "BB" rating on Atlantic City, New Jersey's general obligation debt trains on "credit watch", where it had been placed with negative implications on January 27, 2015. (C-27) The "BB" rating continues to reflect a view of the City's fiscal stress and the State's appointment, by executive order, of an external Emergency Manager within the State's Department of Community Affairs, Division of Local Government Services.

Based on S&P's review of the Emergency Manager's 60-day report (C-28) and its understanding of the City's current course of decision-making framework, it is Standard & Poor's opinion that the City is unlikely to pursue bankruptcy as an immediate course of action. However, it believes that a number of significant risks remain, which could introduce bankruptcy as a potential course of action for Atlantic City. These risks include: (C-27)

- The City's ability to access the market to repay a \$40 million loan from the State of New Jersey and to retire approximately \$12 million in bond anticipation notes (BANs) maturing in August 2015;

- The City's success in negotiating with other key stakeholders to address its near-term financial and liquidity pressures;

- The possibility for bonded debt deferrals -- which, depending on the manner for deferrals, the S&P could consider

a distressed exchange (which S&P rates as 'D').

The CreditWatch reflects the S&P's expectation that within the next ninety days the Emergency Manager will provide an updated plan proposing restructuring options for the City. The S&P understands that a bankruptcy declaration is not currently anticipated as part of the plan, a debt restructuring, inconsistent with the terms of the outstanding obligations, could lead to a downgrade to as low as the 'C' category, barring an actual default. In addition, lack of substantive correction action in the next 60-90 days to address the City's fiscal 2015 budget deficit, given what it considers to be inherent liquidity pressures, could also lead to a downgrade. Conversely, should the plan identify significant implantable structural changes -- outside of debt adjustment -- it could revise the outlook to stable and affirm the current rating, recognizing that any plan will likely require a protracted timeline for implementation during which the City could remain exposed to financial and economic uncertainties. (C-27)

Robert Benecke is a certified municipal finance officer, hired by the City to examine and review the City's current financial situation and to develop an economic proposal for the IAFF contract.

Benecke noted that currently the \$7.3 billion is both the assessed value and the equalized value as property values are

near a 100% ratio of assessed-to-true value or assessed market value.

Benecke testified that the City's financial statements show that the City is insolvent as of December 31, 2014, and it is uncontroverted that it is insolvent. It has a \$9.0 million liquidity position that is negative. The City has approximately \$53 million to \$54 million in cash liabilities and approximately \$43 million or \$45 million of cash on hand, meaning that the City was upside down by a hard \$9.0 million. (2T-82)

Benecke stated that the average Atlantic City residential property bill in 2014 was \$6,400 representing approximately 21% of median household income. He stated that this rate is almost at a breaking point where homeowners cannot afford to pay their property taxes. The Statewide average for median household income as a percentage basis for residential property taxes is just under 12% -- about half of that in Atlantic City. If the tax levy remained the same in 2015 as in 2014, a residential average property value of \$191,000 would jump to \$9,857.90 or 33% of median household income in Atlantic City (2T-87). Benecke testified that this would be catastrophic for the homeowner and the City. (2T-88)

At the City's request Benecke prepared an alternate proposal for stabilizing labor costs for the City's fire department. This plan was not as severe as that proposed in the final offer, in that it does not completely eliminate longevity

and educational incentive payments, but rather, grandfathers certain employees, depending upon length of service. Based upon the introduction of Benecke's report in the record, I invited the City to amend its final offer to conform to the Benecke plan. While the City was willing to so amend the final offer, the Union objected and therefore, the amendment could not be considered.⁶

Joseph Petrucelli, Financial Analyst, provided a financial report dated May 6, 2015 (U-P). The report represents an analysis and findings with respect to the taxpayers and the City's ability to compensate employees represented by the Local 198.

Mayor Guardian has prepared a proposed budget for 2015. However, this budget has not yet been introduced to the City Council or formally presented to the Department of Community Affairs (DCA). (1T-49) Moreover, the City's financial experts agree that event his proposed budget is not sustainable.

It appears that a primary source of data for the Petrucelli report was the 2015 proposed budget. Petrucelli also acknowledged that he did not rely on the Emergency Manager's report dated March 23, 2015. He stated that he was unaware of

⁶ N.J.A.C. 19:16-5.7(g) provides,

The arbitrator may accept a revision of such [final] offer at any time before the arbitrator takes testimony or evidence or, if the parties agree to permit revisions and the arbitrator approves such an agreement, before the close of the hearing.

the ratable base in April of 2015 dropping to \$7.3 billion and did not factor this into his conclusions. (1T-150)

Nevertheless, Petrucelli believes that the 2015 budget shows the City starting to stabilize. He stated that he would not say that the City is financially sound, but that it is certainly able to put together a cap compliant budget and generate surplus.

Surplus Balance

The Union points out that the City has not utilized any fund balance as surplus revenue since 2011. The surplus balance at December 31, 2014 of \$3,003,362 is the highest surplus balance since 2008. It cites that sheet 11 of the 2015 budget indicated that no surplus was used. The December 31, 2014 unaudited financial statement, sheet 21, indicates that the fund balance is pledged against deferred charges in the amount of \$11,976,662. (U-P-21)

Appropriations

General Appropriations for the City for 2014 are as follows: (U-44)

Summary of Appropriations (2014)	
Within CAPS	
Operations including Contingent	162,341,641
Deferred Charges and Statutory Expenditures - Municipal	24,195,600
Excluded from CAPS	
Operations - Total Operations Excluded from CAPS	24,768,695
Capital Improvements	4,373,759
Municipal Debt Service	36,895,825
Deferred Charges – Municipal	3,726,250
Reserve for Uncollected Taxes (include Other Reserves if Any)	5,062,400

Total Appropriations	261,364,170
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The 2014 Adopted Budget also includes a total appropriation reserve balance of \$14,512,072 as of December 31, 2014; miscellaneous revenue not anticipated in the amount of \$993,549; and excess results from operations in the amount of \$745,733 compared to the 2013 Adopted Budget of (\$10,523,372). (U-P-48-50)

The below chart depicts the City's equalized property values and debt analysis for the years 2012 through 2014: (U-P-51)

Equalized Property Values and Debt Analysis				
CY	Equalized Value	Net Debt Outstanding	Net Debt %	Remaining Borrowing Power
12/31/2014	11,260,548,841	371,128,044	2.692%	111,419,390
12/31/2013	15,084,255,627			
12/31/2012	15,016,404,186			
	3-Year Average Equalized Value			13,787,069,551
	X 3.5% of 2013 Average Equalized Value			3.5%
	Statutory Debt Limit		100.00%	482,547,434
	Amount of Statutory Debt Limit Utilized		76.91%	371,128,044
			23.09%	111,419,390
Source: 2014 Annual Debt Statement				

Funded Debt

The chart below depicts the City's Funded Debt Summary as of December 31, 2014: (C-23)

Series	Amount Issued	Maturity Date	Balance as of 12/31/14
2008 General Obligation Bonds	26,500,000	2/15/18	12,000,000

2011 General Obligation Bonds	16,354,000	2/1/22	12,799,000
2013 General Obligation Bonds	13,901,000	12/1/28	13,286,000
2005 Refunding Bonds	29,010,000	8/5/15	2,445,000
2010 Refunding Bonds	10,750,000	12/15/15	2,255,000
2012 Refunding Bonds	15,710,000	8/1/17	9,375,000
2014 Refunding Bonds	7,710,000	1/15/18	7,550,000
2012 Pension Refunding	5,450,000	4/1/21	4,445,000
2010 Tax Appeal Bonds (tax exempt)	1,795,000	12/15/15	380,000
2012 Tax Appeal Bonds (tax exempt)	90,380,000	11/1/32	90,380,000
2013 Tax Appeal Bonds (tax exempt)	48,976,000	12/1/33	48,976,000
2010 Tax Appeal Bonds (taxable)	6,925,000	12/15/15	1,495,000
2011 Tax Appeal Bonds (taxable)	35,285,000	12/15/16	11,350,000
2012 Tax Appeal Bonds (taxable)	<u>2,620,000</u>	11/1/16	<u>1,120,000</u>
	311,366,000		217,856,000
State Loan	40,000,000	3/31/15	40,000,000
Bond Application Note	12,800,000	8/4/15	<u>12,800,000</u>
Total Funded Debt			270,656,000

The interest on the above debt is \$66,558,172. Total debt service cost, to include interest, is \$337,214,172.⁷ (C-23)

Although the budget issues of 2015 are remarkably dire, the City received somewhat of a "break" in that it was able to issue bonds to pay for various forms of debt – namely, tax appeal refunds to casino properties. The addition of such a significant amount of debt would have added millions of dollars of debt service to the budget. Currently, the City has an estimated \$238 million in debt obligations it has yet to pay; \$40 million of this is money the City must pay to the State by

⁷ Total Debt Service cost excludes non-scheduled debt and off balance sheet debt.

June 30. Most of the remainder is tax appeal refunds owed to casinos -- primarily Borgata. Listed below are the City's current casino liabilities: (C-28)

Selection of Estimated Outstanding Obligations	
Repayment Owed To:	Amount Due:
Caesars	\$10,000,000
Taj Mahal	\$5,250,000
Trump Plaza	\$1,200,000
Borgata (2009/10)	\$50,000,000
Borgata (2011/12/13)	\$88,250,000
Borgata (2014)	\$17,250,000
Golden Nugget	\$3,000,000
Non-Casino Properties	\$10,000,000
Total Appeals	\$184,950,000
Bond Anticipation Notes	\$12,800,000
State Loan	\$40,000,000
Total Outstanding	\$237,750,000

These obligations must be paid by the City as soon as possible. In fact, there is already an issue among the various parties owed money by Atlantic City regarding who is to be paid back first. When the Atlantic City Council approved the possibility of issuing bonds to pay back the State's \$40 million, Borgata sued claiming it should be first in line. (C-28)

Pension Costs

Substantially all City employees are covered by PERS and PFRS. PERS and PFRS are cost-sharing, multiple employer, defined benefit pension plans established by State statute. The

Annual cost to the City is approximately \$18.6 million (billed directly by the State). The City has deferred 50% of the 2009 PERS and PFRS payments which are to be repaid beginning 2012 over five years at 8.5% interest. (C-23)

The chart below depicts the City's pension costs from 2012 through 2015 (projected): (C-23)

Pension Costs				
\$ in Millions	2012	2013	2014	2015
PERS	4.0	3.7	3.5	4.0
PFRS	14.8	14.7	14.3	14.7
Lifeguards	0.9	0.9	0.8	1.0
Total	19.7	19.3	18.6	19.7

Note: 2012 - 2014 based on actual; 2015 is projected.

The Atlantic City firefighters now contribute 10.0% of their pensionable base salaries. (C-23)

Healthcare Cost

The City healthcare costs include medical, dental, vision, prescriptions and other benefits (collectively, with the State Health Benefits Program (SHBP), defined as other post-employment benefits). The City contributes to the SHBP, a cost-sharing, multiple-employer, defined benefit post-employment healthcare plan administered by the State. Annual retiree healthcare costs are approximately \$10.2 million for FY15, an increase of 18.7% from 2012.

The chart below provides the City's healthcare costs for 2012 through 2015:

Healthcare Costs				
\$ in Millions	2012	2013	2014	2015
Actives	18.7	22.2	23.7	24.9
Retirees	6.1	7.5	8.2	10.2
	24.8	29.7	31.9	35.1

Note: 2012 - 2014 based on actual;
2015 is projected.
2015 Proposed Budget/Revenue
Preparation Worksheet

The rising cost attributable to health care requires the City to seek more competitive bids and put in place better monitoring systems for potential prescription and medical coverage abuses. The City has no levy cap limitation related to the increase in health care costs. The increased contribution rate is estimated to result in 2015 health care contributions by employees of approximately \$1,190,112 based on IAFF Local 198 member's proposed 2015 base salaries. (U-P-59)

Ratables

Approaching the problems stemming from the maintenance of the tax levy and the decline of the tax base obscures an important component that has a toxic impact on Atlantic City residents and businesses, casino and non-casino alike. While the tax base itself is expressed as an aggregation of values for the purposes of calculating the tax rate, it is made up of

thousands of individual properties within the classes of property as shown below: (C-28)

Catalog of Lots by Property Classification (2010-2015)						
	1 (Vacant Land)	2 (Residential)	4A (Com' l)	4B (Industrial)	4C (Apts)	Total
2015	2,221	10,916	1,581	9	166	14,893
2014	2,220	10,952	1,626	9	168	14,975
2013	2,305	10,973	1,656	9	175	15,118
2012	2,204	11,055	1,661	9	176	15,105
2011	No data	No data	No data	No data	No data	No data
2010	2,286	11,089	1,714	9	178	15,276

In the chart above, one can see that the total number of assessed taxable properties has hovered around 15,000 and has declined steadily since 2010. As a whole, what this causes is a slight increase in the property tax burden to the remaining lots; as there are fewer properties making property tax payments and the total assessed value depletes year by year. (C-28)

	1 (Vacant Land)	2 (Residential)	4A (Commercial)	4B (Industrial)	4C (Apartment)	Total
2015	463,386,600	1,910,222,855	4,792,899,500	4,069,800	\$172,916,700	7,343,495,455
2014	773,314,400	2,100,213,815	8,204,323,900	4,069,800	\$184,257,200	11,266,179,115
2013	990,057,400	2,276,786,145	10,931,800,500	4,434,800	\$191,826,300	14,394,905,145
2012	1,047,061,800	2,529,214,300	14,273,972,200	4,484,800	\$223,515,900	18,078,249,000
2011	No Data	No Data	No Data	No Data	No Data	19,448,465,500
2010	1,181,823,900	2,799,361,800	16,222,646,800	4,848,500	\$262,355,900	20,471,036,900
Agg. Decline	(718,437,300)	(889,138,945)	(11,429,747,300)	(778,700)	(\$89,439,200)	(13,127,541,445)
Agg. % Decline	-61%	-32%	-70%	-16%	-34%	-64%

The table below shows the decline that has taken place in the average assessed value of all classifications of property:

Average Property Value by Class (2010-2015)
--

	1 (Vacant Land)	2 (Residential)	4A (Commercial)	4B (Industrial)	4C (Apartment)
2015	\$208,639	\$174,993	\$3,031,562	\$452,200	\$1,041,667
2014	\$348,340	\$191,765	\$5,045,710	\$452,200	\$1,096,769
2013	\$429,526	\$207,490	\$6,601,329	\$492,756	\$1,096,150
2012	\$475,073	\$228,785	\$8,593,602	\$498,311	\$1,269,977
2011	No data	No data	No data	No data	No data
2010	\$516,983	\$252,445	\$9,464,788	\$53,833	\$1,473,910

What becomes apparent is the extent to which the decline in the assessed value of commercial property comprises the aggregate decline. However, much of the decline in the valuation of commercial property can be accounted for by the decline in the assessed value of casino property; the change to other Atlantic City businesses has been far more minimal. (C-28)

Below, the chart lists several types of Atlantic City businesses who are representative of the changes to the City's ratables in the past several years. This chart illustrates what the changing burden means to ordinary homeowners and business people: (C-28)

Variance in Assessed Value Among Select Properties (2012-2015)					
Business	2015	2014	2013	2012	Agg. Decline
Restaurant 1	362,700	362,700	485,800	485,800	-25%
Restaurant 2	270,600	270,600	270,600	270,600	0%
Day Care	575,000	575,000	575,000	700,000	-18%
Non-Casino Hotel	600,000	600,000	1,000,000	1,000,000	-40%
Average Home	174,993	191,765	207,490	228,785	-24%
All Casino Property	3,913,602,015	6,275,252,200	9,780,678,100	10,550,094,000	-63%

As depicted in the above chart, casino property has seen the most significant decline by a fairly wide margin.

Comparison of Annual Municipal Property Tax Payments Among Select Properties (2012-2015)									
	2015	(% V. Prior Year)	2014	(% V. Prior Year)	2013	(% V. Prior Year)	2012	Agg. Tax Incr.	Agg. Tax Incr. (\$)
Restaurant 1	10,406	64%	6,344	-3%	\$6,553	23%	\$5,334	95%	\$5,072
Restaurant 2	7,764	64%	4,733	30%	\$3,650	23%	\$2,971	161%	\$4,792
Day Care	16,497	64%	10,057	30%	\$7,757	1%	\$7,686	115%	\$8,811
Non-Casino Hotel	17,214	64%	10,494	-22%	\$13,490	23%	\$10,980	57%	\$6,234
Avg. Home	5,021	50%	3,354	20%	\$2,799	11%	\$2,512	100%	\$2,509
Casino Indus	112,281,742	2%	109,754,161	-17%	\$131,941,348	14%	\$115,840,032	-3%	(\$3,558,290)

Agg. = Aggregate

What has not changed is the amount required to be raised by property taxes for the support of Atlantic City's municipal budget. Although not true for individual casino properties, the casino industry as a whole is paying less than it did in 2012 and only 2% over its payment in 2014. Even with the drastically increased rate, the depression of the value of casino property has kept their payments, as an industry, relatively stable. (C-28)

This is not true for nearly every other type of property in Atlantic City. In just three years, the average homeowner's property tax bill could increase by 100 percent, with 50 percent just between 2014 and 2015.

The chart below illustrates the City's reported surpluses and deficits for the past five years, and the total related refunds of property tax appeals in the years to which they relate, and as added together, a documented deficit for each year (C-23):

Annual Surplus / (Deficit) and Related Tax Reassessments					
	2010(A)	2011(A)	2012(A)	2013(A)	2014(A)
Total Revenues	400,387,372	424,954,921	431,480,685	468,364,114	411,970,906
Total Expenditures	400,212,469	424,719,430	433,825,430	478,887,486	441,392,766
Reported Annual Surplus/(Deficit) (A)	174,903	235,491	-2,344,745	-10,523,372	-29,421,860
Tax Refunds per Related Tax Year (B)	42,629,279	73,146,949	85,629,915	34,396,795	22,766,400
Total Proforma Deficit (A-B)	-42,454,376	-72,911,458	-87,974,660	-44,920,167	-52,188,260

Source: Audited Financial Statements; 2014 Unaudited Financial Statement; City Assessor information. Note: 2012 deficit includes deferred charges of \$3.5 million.

The next chart provides the historical tax rates for comparable Atlantic County municipalities:

Tax Rates Atlantic County Municipalities			
Municipality	2010	2014	% Change
Egg Harbor City	2.60	3.93	1.33
Pleasantville City	2.34	3.68	1.34
Atlantic City	1.84	3.18	1.34
Linwood City	2.26	3.08	0.82
Northfield City	2.32	3.06	0.74
Buena Boro	2.29	3.04	0.75
Galloway Twp	1.91	2.79	0.88
Absecon City	2.06	2.75	0.69
Somers Point City	1.94	2.72	0.78
Egg Harbor Twp	2.02	2.71	0.69
Hamilton Twp	2.05	2.61	0.56

Mullica Twp	1.80	2.48	0.68
Hammonton Town	1.91	2.45	0.54
Buena Vista Twp	1.85	2.37	0.52
Weymouth Twp	1.74	2.22	0.48
Port Republic City	1.63	2.17	0.54
Estell Manor city	1.61	2.16	0.55
Ventnor City	1.64	2.15	0.51
Folsom Boro	1.41	1.79	0.38
Corbin City	1.86	1.70	-0.16
Brigantine City	1.17	1.66	0.49
Margate City	1.08	1.33	0.25
Longport Boro	0.60	0.83	0.23

Atlantic City's tax rate is the third highest rate in Atlantic County; only Egg Harbor City and Pleasantville City have higher tax rates. In 2010, Atlantic City ranked fourteenth out of twenty-three Atlantic County municipalities.

Emergency Manager Appointment

The Emergency Manager Mandate, signed by Governor Christie, became effective on January 22, 2015 and provides,

To analyze and assess the financial condition of Atlantic City and prepare and recommend, within 60 days of appointment, a plan to place the finances of Atlantic City in stable condition on a long-term basis by any and all lawful means, including the restructuring of municipal operations and the adjustment of the debts of Atlantic City pursuant to law.

Kevin Lavin was appointed as the Emergency Manager. Ernst & Young, was hired as the financial advisor for the Emergency Manager's 60-Day Report (C-23). Lavin states that he has maintained ongoing coordination and discussions with the following: the Mayor and his staff; City Council President and

members of City Council; State and County personnel; State Monitor for the City and Monitor for the Atlantic City School District; and other key stakeholders (e.g., unions, casinos). The Union avers that the findings of that report should not be considered by the Arbitrator as they do not comply with accepted accounting standards (1T-169-172).

The Emergency Manager's 60-Day Report (C-23) includes a disclaimer which states:

This report will be regularly reexamined by the Emergency Manager and the applicable State authorities and may be modified from time to time. Without limiting the foregoing, if the Emergency Manager modifies his assumptions, future reports will conform to the revised assumptions.

This report is based on numerous projections and assumptions concerning future uncertain events. Those projections and assumptions include, among others, estimates of tax and other revenues and future business and economic conditions in the City, all of which are beyond the control of the City. This report likewise is premised on the favorable outcome of certain restructuring initiatives and negotiations, some of which may be subject to legal challenges, the outcome of which is uncertain. This report also requires the City to obtain access to certain proceeds of financings and other grants and third party assistance. There can be no assurance that the projected outcomes will occur. For all of these reasons, the assumptions in this report may need to be modified from the terms presented herein, and such differences could be material.

Because of the disclaimer, I accord the 60-day report with only limited weight.

SAFER Grants

In response to concerns over the adequacy of firefighting staffing, the Staffing for Adequate Fire and Emergency Response Act, known as the SAFER Act was enacted in 2004. The SAFER Act authorizes grants to career, volunteer, and combination fire departments for the purpose of increasing the number of firefighters to help communities meet industry-minimum standards and attain 24-hour staffing to provide adequate protection from fire and fire-related hazards.

SAFER is administered by the Federal Emergency Management Agency (FEMA) of the Department of Homeland Security (DHS). The City has regularly applied for and received SAFER grants for several years. In 2014, the SAFER grant covered approximately \$2,751,276 of the firefighters' direct base salaries. In 2015, the City applied for a renewal of its SAFER grant but only on the contingency that it would be exempted from SAFER grant rules preventing layoffs. That application is pending.

Fire Department Budget

The Union states that the City's Fire Department received grants and other revenue for fire salaries and wages in 2014: a SAFER grant of \$8,661,585; FEMA assistance to the firefighters of \$489,060, assistance to firefighters' local share of \$54,340 and Uniform Fire Safety Act (other revenue) of \$247,662, for a total of \$9,652,647 in aid. (U-P-10)

According to the Union, the 2014 fire salaries and wages consists of a modified budget of \$21,567,914 plus outside the CAP, fire salaries and wages of \$9,204,985 (\$8,661,585 SAFER grant, plus \$489,060 FEMA firefighters assistance; plus \$54,340 firefighters assistance-local share) totaling \$30,772,899 of both inside and outside the CAP spending. Furthermore, it states that 29.91% (\$9,204,985 divided by \$30,772,899) of the firefighter salaries and wages are funded by grants and revenue from other sources. (U-P-10)

The following chart depicts fire salaries and wages and other expense budget line items for the years 2009 to 2014:

Fire Salaries & Wages & Other Expenses					
Fire-Salaries & Wages	Budgeted	Modified by Transfers	Amount Paid	Cancelled	Reserved
2014	22,807,914	21,567,914	20,414,487	-	1,153,427
2013	22,511,229	22,511,229	21,496,418	-	1,014,811
2012	21,521,534	21,520,534	19,843,164	-	1,677,370
2011	21,919,396	21,904,396	20,354,232	-	1,550,164
2010	23,841,419	23,091,419	22,932,153	-	159,266
2009	24,394,463	23,894,463	23,595,047	<u>198,416</u>	<u>101,000</u>
				198,416	5,656,038
Fire - Other Expense					
2014	169,016	169,016	139,162	-	29,854
2013	163,892	163,892	129,454	-	34,438
2012	151,242	151,242	149,229	-	2,013
2011	176,042	176,042	175,239	-	803
2010	190,921	190,921	131,342	50,000	9,579
2009	190,926	190,926	168,143	<u>10,000</u>	<u>12,783</u>
				60,000	89,470

Levy CAPs

The Tax levy CAP calculation for Atlantic City's 2015

budget is as follows: (U-P-3, 58)

Atlantic City's 2015 "Proposed" Budget Tax levy CAP Calculation		
Prior Year Amount to be Raised by Taxation Municipal Purposes		202,155,401
Allowable Adjustments:		
Less:		
Prior Year Deferred Charges to Future Tax Unfund	3,276,250	
Adjustments		-3,726,250
Net Prior Year Tax levy for Municipal Purposes for CAP Calculation		198,429,151
Plus 2% CAP Increase		3,968,583
Adjusted Tax Levy		202,397,734
Adjusted Tax Levy Prior to Exclusions		202,397,734
Exclusions		
Allowable Health Insurance Cost Increase	1,409,716	
Allowable Pension Obligations Increase	431,430	
		1,841,146
Adjusted Tax Levy After Exclusions		204,238,880
Additions		
New Ratables - Increase in Valuations (New Construction & Additions)	3,595,100	
Per Year's Local Municipal Purpose Tax Rate (per \$100)	1.793%	
New Ratable Adjustment to Levy		64,467
Maximum Allowable Amount to be Raised by Taxation		204,303,347
Amount to be Raised by Taxation for Municipal Purposes		-202,252,161
Amount to be Raised by Taxation for Municipal Purposes Under/Over		2,051,186

The Union states that the City had an additional \$2,051,186 of available levy CAP which it could have chosen to raise through taxation in 2015. (U-P-3) In 2014, the 2% levy CAP calculation allowed the City to increase the tax levy to a

maximum \$224,217,041. The City was permitted to utilize \$224,217,041 which exceeded the Tax Levy CAP by \$29,827,910 (\$224,217,041 less \$194,389,132).

The Union contends that since the City did not put forth a referendum as set forth in Local Finance Notice (LFN) 2014-3 in order to exceed the levy CAP, which would indicate that the City's budget was not restricted by the Tax Levy CAP. (U-P-56)

The City's 2014 Spending CAP calculation utilized in the 2014 budget resulted in the City's maximum spending CAP levy to \$213,135,174 with the utilization of the CAP Bank of \$23,740,367 and the full 3.5% COLA rate ordinance. However, the Union contends that the City elected to utilize only \$199,479,271 for municipal purpose within CAP spending in the 2014 budget, foregoing \$13,655,903 (\$213,135,174 less \$199,479,271) of available spending. (U-P-56)

STIPULATIONS OF THE PARTIES

The parties entered the following stipulations into the record:

1. "Total Base Pay" includes contractual salary, longevity pay, and educational incentive pay. It does not include acting pay or clothing maintenance allowance.
2. For those employees entitled to longevity as a percentage of pay, the calculation is based upon the employee's contractual base pay plus his/her educational incentive pay.

3. Advancement on the step guide and increases to longevity are both implemented on the pay period following the employee's anniversary.

4. Firefighters have not advanced on the salary step guide in 2015.

5. Longevity pay has not increased as unit employees reach benchmarks in service for 2015.

6. The salaries listed on pp 37-38 of the expired contract continue in effect.

ARGUMENTS OF THE PARTIES

City's Arguments

The City argues that this case presents a unique scenario involving Atlantic City ("Atlantic City" or "City"), which has suffered the worst fiscal downturn in the history of New Jersey, creating exigent circumstances for the City's financial survival. The City has sought and received Transitional Aid from the New Jersey Department of Community Affairs, Division of Local Government Services. The State has appointed a State Monitor in accordance with N.J.S.A. 52:27BB-54 et seq. The Governor has appointed an Emergency Manager through an Executive Order on January 22, 2015.

The City argues that the evidence presented at the hearing unequivocally demonstrates that the City cannot afford to pay the current collective bargaining agreement for the firefighters. The goal is to create a collective bargaining

agreement that is sustainable for the present and future, which reflects the new financial reality for the City, with a ratable base that has had the most precipitous fall in the history of the State. Specifically, the tax ratable base has fallen by over sixty-five percent (65%) over the past eight (8) years alone. Over the past five years, from 2010 to 2015, the ratable tax base has been eviscerated by a staggering 35%. Atlantic City relies on property taxes to meet its financial obligations. In years past, the assessed value of the casino gaming properties, which correlates closely to the total revenue of the various establishments, allowed the City to raise an enormous amount of property taxes without striking too high a tax rate.

The City argues that the tax base has declined by epic proportions since 2007. In fact, for the period of 2007 through 2015 the City had a decline of \$14,878,009,926 in property value; this is a 67% loss of the Atlantic City tax base. This staggering reduction in property value directly results in a loss of tax revenue to the City. Overall, the City lost \$203,531,176 in tax revenue. Within the lost tax revenue is \$102,807,049 in municipal tax revenue which directly benefited the City.

Sasdelli explained that his assignment under Section 52:27BB occurred when the City hit certain specific criteria having to do with unsound fiscal conditions which placed it into mandatory supervision.

The City points out that its financial expert Amoroso testified that the City cannot afford its current cost of delivery -- labor, healthcare, debt, it cannot afford it where it is today. Amoroso discussed the City's \$70 million shortfall for 2015 and projected that the budget needed to be reduced to approximately \$162 million which, with the current assessed value, is still a tax increase. In order to have no tax increase based upon last year's numbers, last year's rate and the current assessed value, we would have to drop the levy from \$198 million to \$128 million, \$70 million, which he believes is undoable.

The City points out that its other financial expert, Robert Benecke, largely agreed with Amoroso. Benecke focused his study by going back to the high point, which was 2007, when the total market value or true value of the City was \$22.2 billion and compared that with the current aggregate tax ratables of \$7.3 billion. Both Benecke and Amoroso concluded that the impact of this drop on the City is deleterious. They both noted that the City has lost about 67% of property value and we are now close to being outside of the top 10 municipalities in terms of assessed value.

Further, the City maintains that its financial statements show that the City is insolvent as of 12/31/2014, and it is uncontroverted that it is insolvent. It has a \$9 million negative liquidity position. It has approximately \$53 million

to \$54 million in cash liabilities and approximately \$43 million or \$45 million of cash on hand, meaning that they were upside down by a hard \$9 million.

The City argues that it is not possible to maintain the 2014 levels of tax revenues of \$197 million. In addition, it points out that, according to Amoroso, State funding and other outside revenues are not yet secure for 2015.

The City avers that according to the Amoroso report, applying the 2014 budget to 2015 would result in a jump to \$5.14 per \$100 assessed valuation - the highest rate in the State of New Jersey. In Amoroso's opinion, such an increase would crater the residential property taxes in the City of Atlantic City.

The City maintains that Benecke concluded that the 2015 budget should be approximately \$192 million to \$193 million. After factoring in State Aid and other revenue, this would leave a tax levy for 2015 of approximately of \$160 million.

The City cites to Lavin's 60-day Report in which he states:

The City cannot stand on its own. Thus, one thing is clear - there is no reasonable likelihood that that these headwinds will abate at any point in the near future. Absent an urgent, material realignment of revenues and expenses, this crisis will rapidly deepen and will threaten the City's ability to deliver and maintain essential government services impacting the health, safety and welfare of its residents.

Further, the City notes that in the January 29, 2015 issue of Credit Outlook, published by Moody's Investors Service, Moody's downgraded the City's credit rating as a result of the

Governor's appointment of the Emergency Manager and special consultant with municipal expertise to oversee the finances of Atlantic City. The City's credit rating is now Caal negative. Moody's interpreted the Governor's action to signal a limit to the State's willingness to provide the financial support necessary to prevent a municipality from defaulting or declaring bankruptcy.

Based on the foregoing, the City argues that its Final Offer is more reasonable because a reduction in salaries, the elimination of terminal leave, longevity and education incentive pay, along with the City's other proposals, reflects the reality that the City cannot and will not be able to afford the extravagant benefits currently provided in the collective negotiations agreement with IAFF Local 198. To present a Final Offer which maintains the status quo, allowing the current agreement to remain unchanged, would be deleterious to the taxpayers of Atlantic City and fails to reflect the new economic reality that the City faces.

With regard to the City's specific salary proposal, it maintains that the proposal is appropriate and allows more firefighters to keep their jobs as the City navigates through a calamitous financial period. The City proposes to place all employees on the salary guide which was established for those employees who were hired on or after January 1, 2012 in the last interest arbitration proceeding in 2012. While this will mean a

reduction in salary for some, it will inure to the benefit of all employees in IAFF Local 198. The City continues that salaries must be reduced in order for the City to continue without financial collapse. Benecke testified that the City would realize a savings of approximately \$4,474,680 by implementing this salary proposal. By taking this action, it would enable the City to move forward with an overall economic plan and reduce spending in the most expensive area, salaries and benefits. Conversely, the Union's proposal costs the City an additional \$1,309,249 over the three-year period.

Union's Arguments

The Union argues that the City is requesting cuts that will insignificantly benefit taxpayers while creating drastic irreversible harm to the fire department, the City's residents and its visitors. The City has made its purported inability to pay the central argument to support the "first final" proposals seeking 30-40% in salary cuts. While the City offered the testimony and reports of various witnesses claiming that the City in a sense cannot pay any of its obligations, it has now committed to pay \$18,266,283 per year for IAFF salaries.

The Union notes that the City's final offer would require \$8 million a year in cuts to the IAFF bargaining unit. However, in reviewing the alternate proposal put forth by the City's Consultant, Robert Benecke, the Union argues that this proposal would trim between \$2 million and \$3 million per year.

Thus, the Union argues that the City's position on the necessity of cuts lacks credibility.

The Union notes that the City called three financial witnesses to testify at the hearings: State Monitor Edward Sasdelli, Henry Amoroso, and Robert Benecke. Amoroso and Benecke submitted written reports. However, the Union argues that the City's failure to call any members of the administration to testify to the City's finances, including City CFO Michael Stinson, Business Administrator Arch Liston, or even Mayor Don Guardian, creates a negative inference against the City. The IAFF called Petrucelli to testify to the City's finances and submitted his report.

The Union argues that the City is in transition but is being subject to a political and not a financial crisis. The political actions of the State and the City do not interfere with the City's ability to pay the current IAFF contract. Indeed, when the testimony and reports are closely examined, it is clear that politics, and not the IAFF's contract or other financial obligations are the cause of any perceived financial problems.

The Union argues that the Emergency Manager's 60-day report should not be considered as it does not comply with accepted accounting standards and the report includes a disclaimer that the report is preliminary and subject to substantial additional data and material changes in progress.

The Union avers that under the New Jersey's CAP Law, the tax levy in the City's 2015 budget could be increased to a maximum \$204,303,347. However, the City elected to utilize only \$202,252,161 thereby foregoing \$2,051,186 (\$204,303,347 less \$202,252,161) in taxation. This would indicate that the City budget was not restricted by the tax levy CAP. Further, the Union argues that the fact that the City generated a 2014 surplus and significant ability to cap bank \$27 million in unspent expenditures, and significant reserves, is further evidence that the IAFF proposal has no impact on the City taxpayer.

The Union argues that the City's tax appeals are the product of improper valuations in 2008. Prior casino tax appeals are already funded by bonding. With respect to ongoing appeals, the City has reserved \$900,000 for a revaluation or reassessment. A revaluation would resolve most of the casino, other commercial and residential tax appeals issues.

The Union points to pending legislation pending that would implement a PILOT program which would set a flat rate for casino taxes over the next 10-15 years. This would resolve the casino tax appeals liabilities and provide a set revenue stream to the City totaling hundreds of millions of dollars per year. The Union argues that instead of committing to this legislation, Governor Christie, in a purely political decision, decided to appoint an emergency manager.

The Union notes that Sasdelli expressed the belief that the City believes that a revaluation needs to happen but the City does not wish to commit to that process until the PILOT legislation is resolved. The Union argues that this proves conclusively that City and State political decisions, and not economic factors or the IAFF's contract, are causing perceived financial difficulties.

The Union claims that the City's argument that it can no longer issue debt to cover tax appeals or other obligations is purely political and not economic. In response to the appointment of the emergency manager, the ratings agencies slashed the City's bond rating. The Union notes that the City has recently issued a \$40 million bond, now rated A minus by Standard & Poor's, under the Qualified Bond Act. Sasdelli also confirmed that the City intends to apply for other bonds under this Act. Thus, the City has shown that it has the ability to access the bond markets. Political decisions, not economic issues or the IAFF contract, were responsible for the City's inability to access the bond market earlier this year.

The Union argues that the decline in ratables has nothing to do with the impact the IAFF has on the budget as the proposed 2015 fire budget is over \$1 million less than the 2014 budget and currently at 2007 spending levels. The \$27 million "Cap Bank" supports the argument that the IAFF and others have enabled the City to develop that Cap bank by doing more with

fewer personnel and pay. The City's financial reports are therefore flawed in that they claim that a decline in ratables prevents the City from funding the IAFF contract.

Further, the Union contends that the Benecke report contains critical defects and does not support the conclusion that the City does not have the ability to pay either the IAFF contract or any of its other obligations. Initially, the report does not analyze the City's ability to pay in accordance with the statutory requirements with respect to the IAFF proposal. It simply concludes that the City does not have the ability to pay its obligations. The conclusion that ratables will continue to decline is inaccurate. Moreover, the Benecke report omits the 2008 real estate speculative bubble, the 2008 financial crisis, Super Storm Sandy and a host of other economic factors that drove the ratables down.

The Union contends that had Benecke considered property values from 2004 instead of 2007, it would show that the City ratable value increased \$11,574,556,894 (\$22,220,876,281) or 108% ($\$11,574,556,894 / \$22,220,876,281$). This shows that the residential value increased by 108% before declining by 26%. The Benecke report offers no projections into 2016 or 2017 despite capital investments by Harrah's in a convention center, the Tropicana investing \$50 million in improvements, the sale of Revel, and other projects.

Moreover, the Union asserts that the City's argument that it cannot raise property taxes to support the proposed 2015 budget is flawed and poorly analyzed. The Benecke report calculates a 5.14 tax rate based on the highly speculative ratable value of \$7,342,866,355 and gives no consideration to the fact that construction fee budgeted revenue was \$1,903,154 or \$403,154 more revenue than budgeted. This reflects a 26% ($\$403,154/\$1,500,000$) increase in construction revenues, which signifies that there is ongoing and either new or renovating construction taking place. This was not mentioned in the reports of either expert offered by the City. The Benecke report is further misleading as it conveniently uses the average home value of \$191,788 to generate an incorrect average tax of \$9,857.90, even HJA Strategies Report states that the 2015 average will be \$174,993. Using the same formula used in the Benecke report but substituting the HPA strategies average of \$174,993 divided by 100 and multiplied by the 5.14 rate you reach an average of \$8,994.64, which is \$863.26 or 8.7% lower than the Benecke report's tax average. This analysis confirms that both experts relied upon by the City to arrive at different 2015 average tax rates, and continues to show that there is no tangible support for the ratable conclusions being presented as justification for not being able to fund the IAFF proposal.

The Union contends that the HJA report identifies that a 64% effective tax increase is necessary to fund the 2015

proposed budget. This number is not analyzed in a historical perspective which would show that the City's residents enjoyed some of the lowest property taxes in the State. Even with recent increases, the City's property taxes are not the highest in the State or even Atlantic County.

The Union summarizes that both the Benecke report and the HJA report have critical flaws and fail to accurately identify any reason why the City does not have the ability to pay its obligations, including the IAFF contract, the IAFF's proposals must be awarded.

The IAFF notes that in Mayor Guardian's "State of the City Address" in February 2015, the Mayor contradicted many of the positions now taken by the City. With respect to the City's efforts to reduce spending, the Mayor proclaimed that the City "accomplished everything we wanted; only quicker and faster than we expected; we will save over \$16 million in 2016." He notes that through aggressive attrition, the City has 150 fewer employees. The Mayor identifies certain financial issues prior to touting that his proposed 2015 budget is \$30 million less than 2014. The Union notes that the unaudited Annual Financial Statement, as of December 31, 2014, shows that the City had \$14,511,390 in surplus available for future spending.

The Union contends that, as to the fire department, the Mayor claimed that he wanted to reduce budgeted staffing, (firefighters not paid for by the SAFER grant), from 210 to 183

by March 2015. This was achieved as the current budgeted (City funded) staffing is at this level. Nevertheless, the Union observes that the City's layoff plan calls for the layoff of an additional 35 budgeted firefighters.

The IAFF observes that the Mayor revealed three options for additional revenue: (1) the PILOT program and other legislation; (2) equal footing with other cities for State Aid; and, (3) income from room tax, luxury tax and parking fees. These are areas identified by both the IAFF and Petrucelli in his report for the City to receive additional revenues. These options demonstrate that any financial problem facing the City is the result of political decisions and not economic issues. The PILOT bill and other legislation would relieve the City of its casino tax appeal issues and reallocate the casino investment tax to the City to pay debt services on municipal bonds issued. The City receives only 7% State Aid as a percentage of its appropriations as compared with Camden 66%; Trenton 38%; Paterson 22%; and, Newark 18%.

In summary, the Union claims that the Mayor's State of the City address provides a more accurate assessment of the City than the one painted by the City during this proceeding. This again demonstrates that political, and not economic, issues are driving any financial issues facing the City.

According to the Union, the Benecke proposal would commit to pay \$18,266,283 per year for IAFF salaries. The \$2 to \$3

million per year cuts, now at issue, represent .09%-1.48% of the 2015 proposed budget. Based on the foregoing, the IAFF argues that its final proposal should be awarded and the City's proposals must be denied. It argues that the overwhelming evidence in this matter establishes that while Atlantic City is undergoing an economic transition, much of the complained of problems with Atlantic City have been motivated by the political action of State government. This includes the failure to provide State aid necessary to ameliorate the negative consequences of the City's transformation, as well as the political appointment of an emergency manager which has caused dislocations in the City's ability to obtain market financing at a time when it is clearly necessary. The Union concludes that, not only do the City's proposals have a dramatically deleterious impact on the men and women who risk their lives for City residents, the City's actions also bespeak of a "multifaceted" anti-union attack. Therefore, the Union maintains that its proposal should be awarded in its entirety.

Salary Analysis

As to salaries, the City's proposal consists of a trifecta of concessions. It seeks to eliminate the existing salary guide and instead to pay bargaining unit employees on a salary range of between \$40,000 and \$70,000. It also asks that the longevity plan be eliminated and that the educational incentive pay plan be abolished. The effects these collective proposals on

firefighters would be dramatic. For example, a senior journeyman firefighter with a bachelor's degree and ten years of service currently earns \$92,689 in base pay, plus educational incentive pay of 9% of salary, plus longevity pay of 4%, for a total of \$105,072. As all of this pay is included in base pay, and therefore, pensionable salary, the City's proposal would reduce the firefighter's pay to \$70,000 (the top end of the City's proposed range) -- in effect a pay cut of more than \$35,000. I conclude that this proposal is not realistic, even when giving the City all due consideration for the financial crisis in which it finds itself.

On the other hand, the IAFF's proposal would increase unit employees' salaries across the board by 2% in each year of the contract. For those employees hired before 2012, an increase in base pay results in a concomitant increase in longevity and educational incentive pay because those benefits are based upon a percentage of base pay. Thus, the base pay of the senior firefighter earning \$92,589 today would go to \$98,362 by 2017. For the average firefighter with a bachelor's degree and ten years' service, his total salary after longevity and educational stipend is added in would go to \$111,503. Given the current economic climate of the City, this proposal is also unreasonable and cannot be awarded.

I have carefully considered the parties' respective positions and arguments in this matter. I have also weighed all

of the facts as detailed above, particularly concerning the City's fiscal plight. I am persuaded by the record evidence that the City cannot presently afford any increases to the costs associated with its salary and benefits package for the firefighters.

I have considered the firefighters' existing salary and benefits package, as well as comparable salaries in other paid fire departments, both in Atlantic County and in other New Jersey urban areas. Fortunately for the circumstances here, Atlantic City's firefighters are in line with or above average pay for comparable jurisdictions. More specifically, Atlantic City's firefighters are currently the highest paid among all paid departments in Atlantic County by more than \$4,000. Atlantic City's firefighters at the top step of the salary guide are just slightly above average pay for urban areas for 2014 salaries. In 2014, Atlantic City's fire captains are the highest paid in the County and above average pay by more than \$5,000. However, I note that beginning in 2015, Margate's fire captains will surpass the pay rates for Atlantic City's captains by \$1,800. Further, Atlantic City's fire captains are currently right in line with the average of New Jersey's large urban cities. It should be noted that salaries for this bargaining unit include holiday pay, while it is possible that comparable fire districts do not.

However, arguably the most relevant comparison of the City's firefighters is to the City's other uniformed services. Salaries for the City's top paid police officers in tier 1 is about \$4,000 higher than a firefighter, and top pay for police in tier 2 is \$10,000 higher than that of a firefighter at tier 2. Also noteworthy is the fact that police officers (up through lieutenant) had their salary guide frozen for the length of the 2013-2015 contract while increments were paid to those still in steps. Police captains received an increase of 2%, 2%, and 1.88% over the length of the 2013-2015 contract.

Further, I have considered the history of negotiations/ interest arbitration awards for this bargaining unit. The unit has had a salary freeze for the past two years. Extending a wage freeze for an additional three years would depress employee morale, would tend to impact on unit continuity as employees seek employment elsewhere, and would give no recognition to cost of living increases or salary levels in other comparable fire departments.

However, the overriding factor here is the impact of the award on the City and its taxpayers. The City's overall 2014 appropriations budget was \$261 million, while the budgeted for the fire department was 22,807,914. However, the fire department actually spent only \$20,414,487, leaving \$1,153,427 in reserves. This amount is slightly less than 10% of total appropriations. To reach sustainability, the City's goal is to reduce its 2015

budget appropriations to \$192 million, which, even at that level would require tax increases. But the Fire Department has already reduced expenses. From 2013 to 2014, expenses were reduced by \$1 million. This was accomplished largely through attrition. In 2014, 27 firefighters retired and their pro-rated 2014 salaries were included in the 2014 total base. In 2015, the savings to the fire department by not carrying these 27 employees will be an additional \$1,567,728. Thus, at 10% of the City's budget, the fire department has already conceded its share of the City's goal in reducing spending.

Having considered all of the foregoing, I award the following:

- Increment payments will be made to eligible employees on their anniversary date for the life of this contract.
- The two-tiered salary guides as set forth in the 2012-2014 contract will continue for 2015.
- On July 1, 2016, unit employees in the senior journeyman title and above will receive a salary increase of \$1,000. The salary guide will be adjusted accordingly.
- In 2017, the salary guide for all unit employees unchanged and there shall be no increases except the payment of increments.

The only cost impact to the City for the payment of increments is \$11,062, as all firefighters who are increment eligible, except one, are paid through the federal SAFER grant.

The cost of the \$1,000 increase for the 184 firefighters at top pay is \$92,000 in July, 2016 and an additional \$92,000 in 2017.

This very modest increase is not at risk of violating the arbitration cap, the tax levy cap, or the appropriations cap. By delaying in increase until mid-2016, this will provide the City with sufficient opportunity to stabilize its finances.

Non-Salary Economic Items

In addition to the reductions in salary sought by the City, it also seeks to eliminate the three major benefits long enjoyed by members of Local 198: longevity pay, educational incentive pay, and terminal leave pay.

Both longevity pay and educational incentive pay are built into employees' base pay, both for the purpose of calculating overtime pay and presumably therefore, for purposes of calculating both the pension contribution and the firefighters' pension benefit which is based upon base salary.

In the award leading to the 2012-2014 contract, the interest arbitrator not only created a new, lower pay scale for new hires, but also significantly ratcheted back all three of these benefits for new hires after January 1, 2012. Arbitrator Pecklars created a second, lower tier of longevity pay, based upon dollar values rather percentages of base pay⁸; a second,

⁸ For employees in the grandfathered tier of longevity payments, longevity is based upon a composite of contractual base salary plus educational incentive pay.

lower tier of educational incentive pay for unit employees not yet receiving the benefit⁹; and capped terminal leave pay for new hires after January 1, 2012 at \$15,000.

Educational Incentive Pay

The City seeks to eliminate educational incentive pay in its entirety. In 2014, 166 unit employees (all funded by the City, not the SAFER grant) were receiving some form of educational incentive pay. Pursuant to the expired contract, there are two tiers of this benefit, depending upon date of hire. The first tier is applicable to all firefighters hired before January 1, 2012, and ranges from an increment of 2% of base salary to a maximum of 10% of base salary; and is driven by completed credit hours or degree achieved.

The second tier is applicable to those employees hired after January 1, 2012. The educational incentive for tier two ranges from a minimum of \$1,000 on top of base salary to a maximum of \$2,500 and are all degree-driven.

Among firefighters who receive the benefit, the average incentive pay is \$7,276 (\$1,207,791/166 firefighters receiving the benefit). All employees currently receiving the benefit are in tier 1, the top tier. The total cost to the City to provide the unit with this benefit in 2014 was \$1,207,791. Thus, the

⁹ Later in 2014, the parties executed a memorandum of understanding which effectively negated the part of the Pecklars' award concerning educational incentive pay. Specifically, the parties agreed that the lower tier would only apply to new hires after January 1, 2012.

savings to the City in eliminating this benefit is obvious and immediate.

The Union argues that it has enjoyed education benefits since 1977. Removing these long standing benefits would be devastating to a workforce with already low morale.

The problem with eliminating this benefit entirely is the severe impact on employees' salaries in the short run and the likely consequences to the employees' pensions once they retire. First, eliminating the benefit would have the effect of reducing firefighters pay by several thousand dollars -- in fact, there are 16 firefighters with an Educational Incentive Pay of more than \$10,000 annually.

The second problem has more far-reaching and severe impacts: the impact on the firefighters' pension benefits. I take administrative notice of N.J.S.A. 43:16A-1(15) and (28a). These sections provide that for the retirement benefit for PFRS members enrolled before May 21, 2010 (referred to "tier 1 members"), the calculation of the firefighter's benefit is based upon his/her "final compensation." PFRS defines "final compensation" for tier 1 members as "...the salary upon which pension contributions were based in the last 12 months of creditable service preceding retirement." (emphasis mine).

The import of this provision is that if base pay upon which the pension contribution was made is reduced by the elimination of the educational incentive pay, the final year of compensation

would immediately start to reduce. This in turn would significantly affect unit continuity and employee morale, as there who are retirement-eligible would likely leave immediately rather than suffer a reduction in their pension benefits. There are at least 39 employees with 20 or more years of service with the department who would potentially be impacted by this proposed change. Such a mass exodus might favor the City's plan to trim down its workforce, but may not be in the public interest to cut the department of its most experienced personnel so dramatically.

Instead, I award a freeze on the current value of employees' educational incentive pay for the life of this contract. Those employees who currently have such benefit in the form of a percentage of pay will be frozen at their current dollar amount for this benefit. That is, for example, if a firefighter currently earns 9% of base pay for his current degree, that amount will not increase, even if base pay increases or additional degrees are earned. Additionally, employees who have educational incentive pay in dollar amounts will also have their educational incentive pay frozen at the current collar amount even if additional degrees are earned.

Longevity

Article 20, Longevity, currently provides,

A. The payment for longevity shall commence on the employee's anniversary date of employment. Actual

payments shall be made in the ensuing pay period following the anniversary date of employment.

1. All employees hired before January 1, 2012 shall be entitled to receive longevity as follows:

<u>Years of Service</u>	<u>Payment</u>
5 Years	2%
10 Years	4%
15 Years	6%
20 Years	10%

2. All employees hired on or after January 1, 2012 shall be entitled to receive longevity as follows:

<u>Years Of Service</u>	<u>Payment</u>
5 Years	1,140
10 Years	2,880
15 Years	4,880
20 Years	8,000

The City proposes to delete Article 22 in its entirety. The Union seeks to modify Article 22 by adding the following steps to paragraph A.2:

7.5 years	additional	\$550
12.5 years	additional	\$550
17.5 years	additional	\$550

The Union asserts the longevity program has been in effect since 1996 and that its elimination would have a profound negative impact upon employee morale.

There are currently 167 employees getting some form of longevity -- ranging from \$1,666 to \$15,146 annually. (J-1)

The cost to the City to provide the longevity benefit in 2014 was \$1,076,811. Thus, it can be assumed that at least this much would be saved annually if the longevity program were eliminated.

The City seeks to eliminate longevity pay in its entirety. The Union seeks to increase longevity at new benchmarks for the Tier 2 employees. Pursuant to the 2012 award of Arbitrator Pecklars, longevity was ratcheted back in the 2012-2014 contract by implementing a second, lower longevity plan for new hires.

I am not inclined to completely dismantle the longevity program as the City demands. Nor am I inclined to enrich the benefit as the IAFF proposes. Like the proposal to eliminate the educational incentive pay, the City's proposal has similar draconian impacts, both on firefighters' compensation today, and their pension benefits in the future. Longevity payments range from \$1,853 (5-year employees) to \$15,000 plus for superiors with long service. Reducing an employee's compensation by that much would have a profound impact on employee morale in the department, and may impact continuity and stability of employment, as firefighters may seek career opportunities elsewhere. In addition, because of the reduction in employees' "last 12 months' of pensionable income" under the PFRS rules, those that are retirement eligible would likely retire immediately. This would result in the department's most

experienced firefighters being lost -- not necessarily in the public interest.

Nevertheless, the City's financial situation demands some relief from the plethora of expensive benefits for firefighters.

I therefore award the following:

1. Freeze employees at their current (12/31/2014 rate) longevity levels for the life of the contract.
2. Abolish tier 2 of longevity benefits in the contract. For employees hired after January 1, 2012, the longevity benefit is eliminated.

Terminal Leave

Article 16, Leaves, provides for terminal leave at Sections E and F as follows:

- E. Terminal Leave: Upon retirement, all employees shall be entitled to terminal leave with full pay and benefits as determined herein:
 1. Salary increases as provided for in the contract.
 2. Blue/Cross/Blue Shield and group life insurance.
 3. Pension paid while on terminal leave.
 4. Dental, eyeglass and prescription plans paid while on terminal leave.
 5. Sick and vacation days cannot be accumulated while on terminal leave.
 6. If an employee works one (1) day in a calendar year, he/she shall receive all vacation and clothing maintenance monies.
- F. Terminal Leave Options: An employee may opt to take sick leave as follows:

1. All employees hired prior to January 1, 2012 shall have the option to take their accumulated time up to one and one-half (1-1/2) years or three thousand, two hundred and seventy-six (3,276) hours on a rate for all accumulated hours up to bi-weekly basis.
2. Subject to the third paragraph of this section, the lump sum payment option shall be based on an individual's last hourly rate for all accumulated hours up to three thousand two hundred and seventy-six (3,276) hours. This payment must be made to the employee by the City no later than ninety (90) calendar days of application for the lump sum payment.
3. Terminal leave shall be amended to provide for a maximum monetary payment as follows:
 - (a) Employees hired in 1984 will receive a maximum of sixteen (16) months;
 - (b) Employees hired in 1985 will receive a maximum of fourteen (14) months;
 - (c) Employees hired between January 1, 1986 and October 15, 2006 will receive a maximum of twelve (12) months;
 - (d) Employees hired after October 16, 2006, but before January 1, 2012, shall have maximum accumulation time of six (6) months;
 - (e) Employees hired after January 21, 2012 will receive a maximum payout cap of \$15,000.00;
 - (f) All employees hired before 1984 will not be affected by the above changes.
4. Employees must provide notice before the City's budget submission date of the year in which they intend to take terminal leave.
5. Employees shall have an option of one (1) or four (4) year pay-off of the terminal leave accrued monies. Employees who elect to receive the four (4) year pay-off plan shall receive

his/her benefits in four (4) equal payments, with the last payment made on or before the fourth anniversary date of retirement. Provided that timely notice is given, this payment must be made to the employee by the City no later than ninety (90) calendar days of application for the lump sum payment. Subsequently, payment for years 2, 3 and 4 will be made on or before the anniversary date of retirement.

G. In the event of the death to a member of the Fire Department, the city shall pay all accumulated sick time up to three thousand two hundred seventy six¹⁰ (3,276) hours, all clothing allowance and all vacation days in full.

The City proposes to eliminate the terminal leave provisions from the contract. I infer that this proposal would have the effect of eliminating all terminal leave for all unit employees. However, elsewhere in its Final Offer, the City proposes to cap sick leave at \$15,000 for employees hired after 2010. Since these two proposals cannot both be awarded, I will assume the \$15,000 cap proposal is an alternative one.

Indeed, the terminal leave clause provides an enormous benefit to employees upon their retirement, and it is a significant expense to the City. According to City Chief Finance Officer Michael Stinson, the City has paid the following terminal leave benefits recently:

2012 - \$1,506,523 (# employees not provided)

2013 - \$2,138,027 (16 employees)

2014 - \$3,086,418 (26 employees) (C-10)

¹⁰ This number shall be reduced in accordance with Section F.3 above.

For 2014, the record shows that retiring employees walk away with an average payout of over \$118,000 for unused sick leave.

While I find this benefit extravagant for any municipality, it is particularly onerous that the City should be paying these kinds of payouts given its precarious financial condition. It is not in the interests of the taxpayers of Atlantic City to continue this benefit in its present form.

However, I find that I am constrained from providing the City very much relief in this area. In Morris County Board of Education, P.E.R.C. No. 97-142, 23 NJPER 437 (¶23200 1997), the Commission found that a plan to eliminate payments for unused sick leave for all employees who had not yet retired by a date certain amounted to an illegal inducement to retire. The Appellate Division affirmed, finding that, absent the specific consent of the individual employees, their cashout of unused sick leave was a benefit earned under the provisions of the collective agreements and could not be stripped away by the parties' subsequent agreement. The Court reasoned that by not using their sick leave in the year it was earned, the employees earned the compensation which is deferred to retirement and the employees had a vested right to that cash payment. Morris Co. Bd. of Ed., 310 N.J. Super 332 (App Div 1998), recon. den. 5/26/98, certif. denied 156 N.J. 407 (1998).

This case law is applicable here. The firefighters' cash out for paid sick leave is a benefit they earned over the length of their careers by not using their sick leave, and they have a vested right to it. Thus, caselaw prevents me from eliminating terminal leave from the contract for current employees.

In addition, in P.E.R.C. No. 2015-63, the Commission found that the language in Section 17(F)(3)(e) that permits employees hired after January 1, 2010 but before January 1, 2012 to exceed the statutory cap of \$15,000, this provision is preempted by N.J.S.A. 11A:6-19.2. The issue really is with Article 17(F)(3)(d) which shall be modified to read as follows:

"Employees hired after January 1, 2010 will receive a maximum payout cap of \$15,000."

However, I am determined to scale back the benefit to the extent possible. Therefore, I award the following:

Employees hired prior to January 1, 2010, will be permitted to cash out their sick leave earned prior to July 1, 2015, up to the maximums set forth in the contract, section F.3. Sick leave earned after July 1, 2015 is not subject to terminal leave.

Employees hired after January 1, 2010, will be permitted to cash out their sick leave earned prior to July 1, 2015, up to a maximum as set forth in the contract, but in no event shall the amount be greater than \$15,000.

For employees hired after July 1, 2015, terminal leave is eliminated.

OTHER CONTRACTUAL PROVISIONS

ARTICLE 2 - INTERPRETATION

Article 2, paragraphs B and C of the contract currently provide,

B. The City recognizes the International Association of Fire Fighters, Local 198, as the exclusive negotiating agent and representative for all uniformed fire department personnel, excluding all other employees employed by the City.

C. The City agrees that the Union has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions, safety of personnel and equipment, procedures for adjustment of disputes and grievances and all other related matters.

The City proposes to modify section B which is, in essence, the recognition clause, to exclude superior officers - battalion chiefs, fire captains, deputy chiefs, and assistant chief fire inspector - from the negotiations unit. It also asks to remove the titles fire inspector, custodian, maintenance repairer, and air mask technician from the unit.¹¹

In September, 2014, the City filed a Petition for Unit Clarification with the Commission (Docket No. CU-15-004) asking to remove these titles from the unit. It asserts that the titles are supervisory and their continued inclusion in the bargaining unit poses a conflict of interest with firefighters. By letter of April 1, I solicited pre-hearing briefs from the parties concerning (a) whether this issue is mandatorily

¹¹ It is not clear whether this latter group of titles still exist as the City's employee list includes no employees with these titles.

negotiable; and (b) whether the issue is appropriately before an interest arbitrator. Both parties filed briefs arguing that I do not have jurisdiction over this issue.

I find that this proposal does not involve an issue which is mandatorily negotiable. See, Borough of Wood Ridge, 14 NJPER (¶19051 1988), in which the PERC addressed this very issue. It found that while the parties are free to voluntarily negotiate over the provisions of the recognition clause, any unresolved disputes concerning the scope of the bargaining unit are decided by the Commission. Further, it is noted that N.J.S.A. 34:13A-16.7(f)(4) provides that an interest arbitrator may only issue an award on subjects that are within the mandatory scope of negotiations unless the parties agree to include permissively negotiable subjects. Here, they do not so agree. Therefore, I do not have jurisdiction to hear and decide the City's proposal to modify the contract recognition clause. This proposal is denied.

The City also proposes to modify Section C to delete the words "... of personnel and equipment..." In City of Atlantic City, P.E.R.C. No. 2015-63, the Commission found that this language is not mandatorily negotiable. Accordingly, the City's proposal to strike the phrase "...of personnel and equipment..." from the contract is awarded.

Further, the City proposes to add new Section D as follows:

The parties acknowledge that rulings, orders or settlement agreements issued by the Public Employment Relations Commission, pursuant to the Clarification of Unit Petition under Docket No. CU-2015-004, and all items considered as non-negotiable pursuant to the Scope of Negotiations Petition under Docket No. SN-2015-051 shall be incorporated and removed from the Agreement as necessary to ensure compliance with such actions.

I find this language as a proposed contract provision to be unnecessary but not harmful. It is a given that the parties are obligated to comply with rulings of the Public Employment Relations Commission. The inclusion of such wording does not alter this obligation. I note that the IAFF has already modified its proposals to comport with the Commission's rulings on the Scope of Negotiations Petition, SN-2015-051, and I have so awarded contract amendments accordingly. Therefore, I will limit the language to the Unit Clarification Petition, as follows:

The parties will incorporate and modify this collective negotiations agreement to comply with any final rulings, orders or settlement agreements issued by the Public Employment Relations Commission or the courts in the matter of the Clarification of Unit Petition filed with PERC in Docket No. CU-2015-004.

ARTICLE 3 - GRIEVANCE PROCEDURE

Article 3, Step 2 of the contract currently provides,

STEP 2 - Review by Union Grievance Committee. The Union Grievance Committee shall screen and study all grievances within fifteen (15) days of their receipt to determine whether same has or lacks merit. Such

processing of grievances shall take place without discrimination and irrespective of membership or affiliation with the Union. Upon finding merit, the Union Grievance Committee shall present written confirmation of such determination to the Chief of the Department, with the request that the Chief of the Department investigate and resolve same.

The Union seeks to modify Step 2 of the grievance procedure by increasing the screening and studying of all grievances to within 30 days or by the next meeting of the Union Executive Board, whichever is sooner, to determine whether same has or lacks merit.

The IAFF argues that the current time limit is inadequate to permit a proper evaluation of the grievance, since its executive board typically meets once a month. The Union asserts that this change will have no impact upon the City, and will better enable the Union to properly evaluate the merits of each grievance before it is moved through the grievance process.

The City makes no argument about this proposal. The Union's proposal is granted. Absent sufficient time to properly evaluate employees' claimed grievances, the Union is more likely to process superfluous or non-meritorious grievances. Thus, this additional time will hopefully permit the weeding out of unnecessary grievances, saving both parties time and money.

In addition, the Union proposes to add paragraph D, as follows:

D. If the City fails to comply with an arbitration award and the Union is forced to seek enforcement of the award, the City shall be responsible for

all costs, including attorneys' fees, incurred by the Union in enforcing the award.

The Union argues that all too often, it grieves the City's actions, prevails before a grievance arbitrator, and the City then ignores the award. Thus, the Union is forced to seek enforcement of the award in the courts. It cites as an example, the 2014 award of Arbitrator Scott Buchheit finding that the City violated a memorandum of understanding by failing to pay firefighters' increases in educational stipends.

The City argues that the Union has not sufficiently supported this demand with record evidence. I agree. Other than this single instance, the Union has not demonstrated that there is a significant, on-going problem with grievance award compliance. This proposal is denied.

ARTICLE 4 - DUES CHECK-OFF

The City seeks to delete Article 4, Section C.2, of the contract which provides:

{[C.2. Payroll deductions, with respect to any insurance plan approved by the City, shall be at no cost to either the employee or the Union.]

The City contends it seeks to remove this language so as to avoid confusion with the health benefit payroll deductions as required by Chapter 78. The Union asserts any change to this language is unnecessary and unsupported by the record.

On its face, this language appears to pose a conflict with the statutory requirements that employees contribute, via payroll deduction, for health benefits. What other purpose this language was intended to serve is certainly unclear. I grant the City's proposal to remove the language from the contract.

ARTICLE 5 - EMPLOYEE REPRESENTATION

Article 5 of the contract currently provides,

The Union must notify the City as to the names of stewards and accredited representatives. No more than one steward and alternate is to be [designated] for each facility. I.A.F.F. representatives not employed by the City will not be permitted to visit with employees during work hours at their work stations for the purpose of discussing I.A.F.F. representation matters, without notifying the head of the Department.

First, the City proposes to correct the typographical error in that second sentence; the contract reads "designed" and it should be "designated." This proposal is granted. Second, the City asks to modify the third sentence of Article 5 of the contract language as follows:

I.A.F.F. representatives not employed by the City will not be permitted to visit work stations for the purpose of discussing I.A.F.F. representation matters, without written permission in advance from the Chief of the Department or his designee.

The City makes no particular argument about this proposal and there is no record evidence that the current language has presented a particular problem. This proposal has not been supported and is denied.

ARTICLE 7 - MANAGEMENT RIGHTS

Article 7, Management Rights, currently reads as follows:

It is the right of the City to determine the standards of service to be offered by its agencies; determine the standards for selection of employment, direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for any other legitimate reason; maintain the efficiency of its operations to determine the methods, means and personnel by which its operations are to be conducted; determine the content of job classifications; schedule the hours; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and the technology of performing its work. The practical impact of the decisions on the above matters are subject to the grievance procedures. Nothing in this Article shall alter or relieve the City of any obligations undertaken in the Agreement.

The City asks to change the existing contract language as follows:

It is the right of the City to determine the standards of service to be offered by its agencies; determine the standards for hiring, promotion, and assignments, and to determine when and if such actions will be taken; to assign and direct its employees; to take disciplinary action; relieve its employees from duty for any legitimate reason; maintain the efficiency of its operations; determine the methods, means and personnel by which its operation will be conducted; determine the content of job classifications; schedule the hours of work; take all necessary actions to carry out its mission in daily activities and in emergencies; and, exercise complete control and discretion over its organization and the technology of performing its work.

Here, the City seeks to expand its contractual rights to include the hiring, promotion, assignments. It also seeks to

delete the last sentence about the practical impact of these decisions being subject to the grievance procedure. The remaining changes appear to be cosmetic or for simple clarity, and I grant this portion of the City's proposal.

The Employer has a right to make management decisions about its staffing needs, to direct its operations, and assign and direct its staff. However, to the extent that the exercise of such managerial prerogatives has an impact on negotiable terms and conditions of employment, the Union has the right to enforce its contract through the grievance procedure. For example, the Employer may decide that it needs a greater number of staff on the day shift and fewer officers on the overnight shift. However, the hours during which employees will work is a term and condition of employment and remains subject to negotiations. Therefore, I decline to remove the last sentence concerning the grievability of the impact of such issues from the contract. This portion of the City's proposal is denied.

ARTICLE 8 - DUTY OF OFFICERS

Article 8 of the contract currently provides,

The parties agree that the Chief of the Fire Department and all other officers shall exercise their supervisory duties faithfully, irrespective of the fact that they are covered by the Agreement, and they shall be objective in their feelings with personnel subordinate to them, irrespective of affiliation with the Union.

The Employer seeks to delete this article in its entirety based upon its proposal to remove superior officers from the bargaining unit. However, having denied that proposal for lack of jurisdiction, this proposal must also be denied. If the Commission rules in the City's favor in the Unit Clarification Petition, CU-2015-04, then this clause becomes unnecessary. The City's proposal is denied.

ARTICLE 12 - UNION RELEASE TIME

Article 12 of the contract currently provides,

- A. The President, Vice-President, Secretary/State Delegate, Treasurer, Sergeant At Arms and officers of the State Association and members of the State Association committees, shall receive relief from duty with full pay to conduct contract and grievance negotiations, attend regular monthly meetings, attend conventions of the I.A.F.F., attend conventions of the State Association of firefighters and AFL-CIO, and seminars involving Union business.
- B. The member requesting relief must send to the Chief, form 56 at least twenty-four (24) hours in advance of the time requested, stating the matter and location of the business.
- C. Administrative review may be made by the Chief on request by the Association President for time for Union business, without cost to the City.
- D. Firefighters attending conventions and seminars pursuant to this Article must provide proof of attendance acceptable to the Chief.
- E. In addition to the Union Release Time set forth in this Article, the Local President with the approval by the Chief, may use personal/vacation time, one day at a time, for Union business.
- F. Effective January 1, 2008, the Local President shall be granted fifteen (15) hours of release time from duty per week in which to conduct Union Business.

The City seeks to delete Article as written and replace language as follows:

Section A. Convention Leave. The parties agree that Title 11A:6-10 shall govern the number of representatives eligible to attend those state conventions as set forth in said statute. Those members requesting permission to attend must submit requests for written permission to attend such conventions to the Chief or his designee fourteen (14) days in advance of said convention.

The City seeks to eliminate all references to contract negotiations, as leave time to negotiate contracts is covered in Article 16, Section A. In addition, it proposes to eliminate all references to grievance negotiations, as leave time to settle disputes and grievances is covered in Article 3, Section C of the Grievance Procedure.

The Union proposes to modify the contract as follows:

A. The President, Vice-President, Secretary/State Delegate, Treasurer, Sergeant At Arms and officers of the State Association and members of the State Association Committees, shall receive relief from duty with full pay to conduct contract and grievance negotiations, attend regular monthly meetings, attend conventions of the I.A.F.F., attend conventions of the State Association of Firefighters and AFL-CIO, and seminars involving Union business. Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the event triggering the union release time.

It also asks to replace Paragraph F with the following:]

F. Effective January 1, 2015, the following hours of release time from duty work shall apply:

The Local President shall be granted forty-two (42) hours of release time from duty per week with pay in which to conduct Union Business.

1. The Local Vice President shall be granted fifteen (15) hours of release time from duty per week with pay in which to conduct Union Business.

2. The Local Vice President shall be granted fifteen (15) hours of release time from duty per week with pay in which to conduct Union Business.

3. The Secretary and Treasurer shall be granted one (1) day of release time from duty per week with pay in which to conduct Union Business.

Emmell testified that running his local is a "24/7 operation." He believes that the present allotment of union leave time is insufficient and he is forced to use his personal time to conduct union business. Other than Emmell's testimony, the record contains scant evidence concerning the amount of Union leave granted annually for Local 198's officers or the impact such leaves have on operations, staffing levels, and potentially, overtime costs. I note that this clause together with Article 16, permits Union officers have time off to attend the IAFF convention, the AFL-CIO convention, the Firemen's convention and union seminars; negotiations meetings (which do not occur every year and in this contract period, apparently not at all before interest arbitration proceedings); and grievance meetings. In addition, this clause currently provides the Local President with 15 hours a week off to "conduct union business."

The City also seeks to limit release time for firefighters to participate in negotiations to two unit members. The IAFF counters that its negotiations committee currently has three members, and this proposal would impact on the Union committee's ability to negotiate.

I am not inclined to disturb the existing contract language or to award either party's proposal on union leave. The Union seeks to expand this leave time to an aggregate of 84 duty hours a week release time for members of its executive board. Presumably, this would be in addition to the convention leave, and time off for grievances and negotiations. The Union argues that full-time release time for the Local president is consistent with the benefits granted to the Atlantic City PBA (U-62). However, while it appears that the PBA local president has unfettered release time, I note that other members of the PBA executive board do not. I note that members of the IAFF currently work an average workweek of 42 hours. Therefore, Local 198's President and PBA Local 24's president do not currently have a consistent benefit. Internal pattern of settlement is an important consideration in deciding employee benefits, particularly among uniformed services of the same Employer. That said, however, here there is insufficient evidence presented to permit me to grant either party's proposal to change the union leave provisions. With regard to the Union's proposal to more than quadruple the leave time (from 15

to 84 hours), there is insufficient evidence of the need for such time off or of the rationale that the City should fund it. How many grievances and/or arbitration are there annually? How many days of convention leave were taken last year? Does the Department backfill the Union officer's duty time with another firefighter on overtime? The record does not answer these questions. Therefore, the Union's proposal to expand the amount of Union leave for its executive board is denied.

Neither am I inclined to disturb the convention leave provisions in favor of the City's proposal. It appears that the statutory minimum convention leave for this group would not include the AFL-CIO convention or "union related seminars" and therefore, amounts to a reduction in benefits. This proposal has not been supported by any record evidence of time used, the impact of such convention leaves on overtime costs or on operational needs. Therefore, the proposals of both parties to modify the Union Leave article are denied.

I award the Union's proposal to amend Section A of the article as follows:

Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the event triggering the union release time.

This issue is a matter of fundamental safety to the firefighter, the residents and visitors the department serves, and the general public. After attending to union business all day, a

firefighter who must work the next shift will undoubtedly be fatigued and therefore not as attentive as he/she needs to be to effectively perform his duties in the event of a fire, rescue or other emergency call. This creates a safety risk to the officer and to the public, and a potential liability risk to the City. The union's proposal is awarded.

The Union also seeks to add a new section, Paragraph G, as follows:

G. The Local President and the Local Vice President shall both be supplied with new radios, new batteries, extra batteries, and charger by the City.

Emmell testified that there are many instances where he learned critical information second-hand because the department had not been able to radio him. The Union asserts therefore, that such communication devices are necessary.

The City makes particular argument with regard to this proposal. This proposal has merit and the attendant cost of such radios is insignificant. This proposal is granted.

ARTICLE 13 - WORK SCHEDULE

Article 13 of the contract currently provides,

A. Each platoon shall work the following schedule: Two (2) days of duty, ten (10) hours each day (8:00 a.m. - 6:00 p.m.), immediately followed by two (2) nights of duty, fourteen (14) hours each night (6:00 p.m. - 8:00 p.m.) immediately followed by four (4) consecutive days off.

B. With respect only to personnel assigned to staff, the

following memorializes past practice, which the parties intend to continue:

1. Staff personnel shall work four (4) days of duty, ten (10) hours each day, from 0800 to 1800 hours.
2. Staff personnel shall work four (4) or five (5) days, Monday through Friday.
3. A member of the staff shall be assigned one(1) day off during the five (5) day work week. The day off shall be determined by the member's platoon commander.
4. Celebrated holidays which fall during the five (5) working days of staff shall automatically be the assigned day off for every member assigned to staff functions.

The City seeks to delete Section B in its entirety and to replace with the following language:

B. Staff Personnel

Staff personnel shall work a five (5) day schedule, covering Monday through Sunday, working eight (8) hours per day, including holidays.

The Local I.A.F.F. proposes to add the following language as new Paragraph C:

C. Light duty shall be scheduled in four (4) ten (10) hour shifts from Monday to Friday.

It is a well-settled axiom of interest arbitration that the party seeking to change an existing contractual provision bears the burden of justifying the change. Nowhere is this truer than a change in work hours. Here, neither party has demonstrated that there is an operational benefit or cost savings associated with the proposed schedule changes.

Neither has either party demonstrated that there is a worthwhile benefit to the employees assigned to light duty and the absence of any impact to the department. Accordingly, both parties' proposals are denied.

ARTICLE 14 - OVERTIME PAY

Article 14, Overtime Pay, currently provides,

- A. Overtime shall consist of all hours worked in excess of the average forty-two (42) hours of work in any one (1) week, based on the cycle providing three hundred thirty-six (336) hours for eight (8) weeks.
- B. 1. Overtime shall be computed at the rate of one and one-half (1-1/2) times the normal rate and including educational and longevity increments, computed on a forty-two (42) hour work week.
2. All overtime payable in monies will be paid during the appropriate pay period.
- C. Rotation of overtime assignments shall be in compliance with existing department orders. The Union shall have access to the records of overtime so that there is fair distribution of assignments.
- D. When a firefighter is called back to duty, he/she shall receive a minimum of four (4) hours overtime pay, computed as follows:
1. For a general alarm or emergency, at the prevailing rate.
2. For other such order or assignment, on the basis of the applicable normal work week.
- E. Emergency Recall or Holdover: If any employee works through his/her normal shift change, either through previous emergency recall or through an emergency holdover, he/she will only be compensated on an hour for hour basis. This compensation will be paid at the rate of time and one-half (1-1/2) per hour.
- F. The City will comply with the Fair Standards Act.

G. In addition, the City shall send a report detailing the use of overtime for the entire Department to the Union on a quarterly basis.

The City made several proposals to amend the provisions of the overtime clause, as follows:

- Eliminate the educational component from the overtime calculation in Section B.1.

- Extend the time period for cash payments in Section B.2. from "the next pay period" to "within 30 days" after the overtime is earned.

- Modify Section C. as follows:

- Made overtime assignments at the discretion of the Chief.

- Require the Union to make a request to obtain overtime records quarterly rather than the City automatically supplying same.

- Reduce call-back pay from a four-hour minimum to a 2-hour minimum.

- Add a new section that sick leave, vacation time or compensatory time shall not count for overtime purposes.

The City contends that the firefighters' overtime formula is overly generous and, as to call out pay, above the average of other towns surveyed. The data presented by the City shows that the average call-out time is 3.6 hours - less than the benefit here.

The Union asserts that the City has not justified its proposals to remove educational stipends and leave time from the overtime calculations. It argues that these components are

critical components of IAFF members' salary and should be continued.

With regard to the City's proposal seeks to extend the time period for payment from one pay period to 30 days, the Union argues that, not only did the City fail to present any evidence justifying the need for such a lengthy time period, but such proposal could violate the Fair Labor Standards Act ("FLSA") which is applicable to state and local governments. U.S. v. Woodward, 469 U.S. 105 (1985). Under the FLSA, overtime earned in a particular workweek must be paid on the regular pay day for the period in which such workweek ends and payment may not be delayed for a period longer than is reasonably necessary for the employer to compute and arrange for payment of the amount due, and in no event may payment be delayed beyond the next payday after such computation can be made. See 29 C.F.R. § 778.106. The City's proposal seeks to make payments beyond an employee's next payday and the City presented no justification or evidence as to why the computation of an employee's overtime could not be made in a timely fashion.

Moreover, the Union argues that the effect of overtime payments on the City is minimal as overtime is generally not permitted. In 2014, the City disbursed a total of \$167,798 for overtime to IAFF employees. C-14. This amounts to less than \$1,000 per year per employee for overtime. There is no reason

rationalizing the City's proposal and as such, it must be denied.

With regard to the City's proposal to limit Union access to payroll records, the Union argues that access to overtime records is critical to ensure that the distribution of overtime assignments is made in an equitable fashion. The City's proposal merely hinders the IAFF's objective without any justification to support its rationale, and should be denied.

Concerning the City's proposal to reduce call-back back from four hours minimum to two hours minimum, the Union argues that this reduction is unwarranted, made without any justification or support, and is insufficient to compensate an employee whose time off has been destroyed as a result of being called back. Moreover, the cost of overtime for this bargaining unit has had a minimal effect on the City.

I find that the City has not demonstrated that there is sufficient justification for awarding any of these proposals. The cost of overtime for 2014 was \$167,798 - less than an average of \$700 per employee. The City has not articulated the cost savings in removing educational stipends from the calculation nor the impact of subtracting sick, vacation and compensatory time from the formula. Absent any data demonstrating that these issues are presenting an overtime problem the City seeks to cure with this proposal, the proposal cannot be granted.

Moreover, any component of base pay used for overtime calculations may have an impact on what PFRS classifies as "pensionable base pay" for pension calculations. In other words, if the educational stipend were removed from the overtime calculation, then arguably, it is no longer part of "base pay" for pension purposes. This would have a dramatic impact on firefighters' pensions, which, for some employees, are based upon their last year of salary. Therefore, absent specific justification to support such a proposal, this proposal is denied.

With regard to the City's proposals to reduce minimum call-out pay from four hours to two hours, I cannot properly evaluate this proposal absent more information about the specific overtime costs attendant thereto, and the frequency with which this call-out occurs. Further, the City's proposal to modify the overtime assignment to give the Chief discretion over such assignments, while attractive, has not been supported by the evidence. So too, the City's proposal to require the Union to make a request to obtain the overtime reports has not been supported. Accordingly, the City's proposed modifications to the overtime clause are denied.

ARTICLE 15 - CLOTHING ALLOWANCE

Article 15 of the contract currently provides,

A. The City shall, upon hire, issue to all new personnel, all required uniforms and wet goods, in lieu of Eight Hundred Fifty Dollars (\$850.00) only in

the first year.

B. Effective January 1, 2000, apprentice firefighters beginning with year two (2) of employment through year six (6) shall receive a Four Hundred Fifty Dollar (\$450.00) clothing allowance. Firefighters beginning with year seven (7) of employment and thereafter shall receive a Two Hundred Seventy-Five Dollar (\$275.00) clothing allowance. Fire captains, fire inspectors, maintenance/repair personnel, civilians and air mask technicians shall receive a One Hundred Dollar (\$100.00) clothing allowance. Battalion chiefs, assistant chief fire inspector, deputy chiefs and the fire official shall receive no clothing allowance.

C. The City shall be responsible for changes in uniforms and wet goods, and for replacing all wet goods damaged, destroyed, or contaminated in the line of duty. Employees shall be responsible for all other items.

The City proposes to modify Section A as follows:

The City shall issue to all new personnel all required uniforms and wet goods, only in the first year. [Eliminate the words "in lieu of Eight Hundred Fifty Dollars (\$850.00)"]

The City also proposes to eliminate Section B in its entirety, thus eliminating the clothing allowance.

I decline to award either of the City's proposals. First, no explanation has been provided concerning the proposed language change in section A. Second, as to the City's desire to eliminate the clothing allowance entirely, this must also be declined. There is no dispute but that firefighters must buy, at their own expense, both Class A and Class B uniforms after the first set provided by the City. While it could be argued that firefighters are sufficiently well paid and therefore can afford to buy their own uniforms, this is not the case for

firefighters in their first few years of employment. During their first five years with the City, firefighters earn less than \$60,000 a year, in the second salary tier - those most likely to be affected by this proposal. The parties evidently recognized this concept in created a gradually decreasing uniform allotment as service time and pay increase. The additional expense of buying replacement uniform components would not be fair or realistic. Moreover, I note that in comparing uniform allowance of the firefighters to that in the police contract, uniform allowance is greater in the police group. Therefore, I decline to award this change in the clothing allowance clause.

The Union seeks to make the following modifications to the existing contract language:

A. The City shall, upon hire, issue to all new personnel, all required uniforms and wet goods, in lieu of Eight Hundred Fifty Dollars (\$850.00) per year for all personnel.

B. Delete in its entirety.

C. The City shall be responsible for issuing all uniforms, including Class A, Class B, and wet goods, and changes in uniforms and wet goods, and for replacing all wet goods damaged, destroyed or contaminated in the line of duty.

Employees shall be responsible for all other items. The City shall provide said uniforms and wet goods within thirty (30) days after a class has graduated from the academy.

I also decline to accept the Union's proposal to eliminate

the uniform allowance in favor of the City providing the uniforms on an on-going basis. The record contains no indication of the costs associated with this proposal, and therefore I cannot consider it on its merits.

I do award the Union's proposal to provide uniforms and wet good within 30 days after the firefighter has graduated from the academy. The City has not addressing this proposal specifically with any particular objection, and I am therefore unaware of any negative impact to the City. It would appear that there would be no additional cost, as the uniforms and wet goods must be provided as per the contract in any event - it appears to merely be a matter of providing them on a timely basis.

Emmell testified that there have been occasions when academy graduates do not yet have their uniforms and have had to go without. Emmell explained that this effects employee morale and is degrading to the new firefighter. Therefore, I award the revision of paragraph A as follows:

A. The City shall issue all required uniforms and wet goods, in lieu of Eight Hundred Fifty Dollars (\$850.00) to all new personnel within thirty (30) days after a class has graduated from the academy.

ARTICLE 16, LEAVES

A. Union Business

The City proposes the following modifications to Article 16.A, Union Business, as follows:

"Leave from duty with full appropriate pay shall be granted to two (2) members of the Local's Negotiating Committee..."

The Union proposes the following modifications to Article

16.A:

Leave from duty with full appropriate pay shall be granted to members of the Local's Negotiating Committee who attend meetings between the City and the Union for the purpose of negotiating the terms of the contract, provided the employee is scheduled for duty at the time of the meeting. Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the meeting.

With regard to the City's proposal to limit the number of unit members permitted leave time to participate in negotiations, the Union strenuously objects to this proposal and points out that during the interest arbitration, it had three employees at the table.

At the moment, this is a fairly large bargaining unit. However, the unit is on the verge of some possible major changes, owing to the Petition for Unit Clarification filed with PERC to remove superiors from the unit, and to the City's planned layoff of 85 unit members. Further, the Local should not expect that it is entitled to an unlimited number of unit employees at the table on paid time. Moreover, the proposed language does not limit the number of members of Local 198 permitted at the bargaining table - it limits the number at the table who are "on the clock." Noting that the work schedule of

firefighters includes four consecutive days off, I am inclined to limit the number on union leave to two. I am also persuaded to add the Union's proposed language limiting shift assignment immediately after negotiations because of the safety risk caused by the firefighter's possible fatigue.

I award the following language:

In addition to the local president, leave from duty with full appropriate pay shall be granted to two members of the Local's Negotiating Committee who attend meeting between the City and the Union for the purpose of negotiating the terms of the contract, provided the employee is scheduled for duty at the time of the meeting. Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the meeting.

B. Sick Leave

The contract currently provides, in Section 16.B:

1. Sick leave shall be allowed to one hundred forty (140) working hours per year, to be cumulative from year to year. In no event shall any employee enter the present contract with less than ten (10) working hours credited to each month of service, or one hundred forty (140) working hours at the beginning of each contract period. (no change from contract)
2. For all employees hired after January 1, 1996, sick leave can only be accumulated one hundred (100) hours per year, to be cumulative from year to year. (no change from contract)

The City proposes to modify 16.B, Sick Leave, as follows:

3. "Employees shall be entitled to seventy (70) working hours of sick leave per year, which will accumulate to a maximum of \$15,000, or the amount of sick leave accumulated at retirement, whichever is less, payable upon retirement after 25 years of service with the City."

4. Eliminate this paragraph in its entirety.

The Union seeks to add the following paragraph:

"Sick leave" is hereby defined to mean an absence from the post of duty by a bargaining unit member, due to illness, accident, injury, disability, and/or exposure to contagious disease or the necessity to attend to and care for a seriously ill member of his or her immediate family. The term "immediate family" for the purpose of this Article shall include the following: a) spouse; b) parent; c) step-parent; d) child; e) step-child; f) foster child; g) parent of child; and h) any other relative residing in the bargaining unit member's household.

The City proposes to restrict annual sick leave allotment to 70 hours (reduced from the present 100) and to cap the sick leave accumulation and the death benefit at \$15,000. I award neither. First, in 2012, Arbitrator Pecklars reduced the sick leave allotment from 150 hours to 100 hours for new hires after 1/12/15. Second, consistent with the discussion about terminal leave above, I am constrained by caselaw to impose a cap on sick leave already earned before 2010.

The Union seeks to add a provision under Sick Leave that would define when sick leave may be used. The Union's proposal is reasonable and consistent with the parameters of FMLA and the New Jersey Family leave Act. Inclusion of this provision in the contract adds clarity and does not appear to create a problem for the City. I award the Union's language with the exception of "parent of child" as I see no basis for this inclusion.

G. Death Payment

The City seeks to modify Section 16.G as follows:

In the event of the death of an employee represented by this bargaining unit, the City shall pay a maximum of \$15,000, or the amount of sick leave accumulated at retirement, whichever is less, to said employee's estate.

For the reasons discussed above concerning the proposed changes to terminal leave, this proposal is denied.

C. Illness and Injury

The contract currently provides as follows:

1. In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she shall be compensated at full pay for a period not to exceed one (1) year. A Medical Review Board shall be created for the purpose of examining all matters pertaining to sick and/or injured members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.
2. In the event that any illness or injury sustained by an employee is not service connected, said employee shall have his/her injury or illness reviewed by the Medical Review Board for the purpose of determining whether or not such an occurrence is of a major nature, thereby rendering the employee eligible for additional sick leave compensation in excess of the yearly one hundred forty (140) hours, or accumulate[d] sick leave which he/she may have exhausted. However, in no event shall any firefighter who shall have attained the commencement of his/her fourth year of employment not be compensated if he/she is sick or injured and requires convalescence, notwithstanding the nature of the illness or injury or whether or not said employee has exhausted his/her yearly or cumulative sick time.

3. All excuses and notification of illness or injury shall be submitted to the medical Review Board for its determination. The Medical Review Board shall consist of the Mayor, or his/her designee, either of whom may act as chairperson; the Fire Surgeon or his/her medical designee; the Union President or his/her designee, and, one (1) superior officer selected by the Union or his/her designee. The Personnel officer or his/her designee shall be an ex-officio, non-voting member of the Medical Review Board.

The City seeks to modify Section C as follows:

1. In the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment, he/she may be compensated at full pay for a period not to exceed six (6) months, unless it is determined that said employee is fit to return to work.

It also seeks to eliminate the balance of paragraph 1, relating to the Medical Review Board, and to eliminate paragraphs 2 and 3 in their entirety.

Both parties have submitted proposals concerning the length of Injury on Duty leave. The City seeks to reduce the limit from one year to six months; the Union seeks to expand the language to make it applicable to every occurrence. I award neither proposal. Neither party has provided information in the record about the current usage rates of IOD leave for me to evaluate whether there is a problem that needs to be cured by these respective proposals. Both proposals are denied.

Finally, the City proposes to eliminate language in paragraph 1, concerning the Medical Review Board, and to eliminate paragraphs 2 and 3 in section C, Illness/Injury. These sections provide for a medical review board to review and

determine whether extraordinary sick leave should be awarded. To the extent that the City seeks to abolish the Medical Review Board, as referred to in paragraph 1, I decline this proposal. The Commission did not find that the existence of the Medical Review Board created a non-negotiable contract provision. Rather, the Commission found that the board may engage in fact-finding and make recommendations to the City concerning extended medical leaves not related to on-the-job injuries, but does not have the power to bind the City to a result.

The extraordinary leave provisions in 16.C.2 guarantees a firefighter with more than four years of service will not be without pay provided the medical review board finds that he is unable to perform his duties, without regard to whether he has earned sick leave remaining or not. While this sounds like unlimited sick leave which the City can no longer afford, I have not been provided with sufficient record evidence to properly evaluate whether this provision should be eliminated. Therefore, I decline to award the City's proposal.

Consistent with the Commission's ruling in City of Atlantic City, P.E.R.C. No. 2015-63, the following language is eliminated from the contract:

16c(1). A medical Review Board shall be created for the purpose of examining members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.

16c(3). All excuses and notification of illness or injury shall be submitted to the Medical Review Board for its determination.

D. Sick Leave Records and Abuse

This Section currently provides:

Each year the City or its designee shall make available to each member of the Fire Department a current record of sick and injured days taken and the accumulated balance, if any. This record shall be made available with the annual withholding statements. Notwithstanding the foregoing, and for the purposes of this section, sick leave shall be credited at the rate of ten (10) hours for each shift taken, regardless of the actual length of the specified shift. The City may process as a grievance any situation wherein an employee persistently abuses sick leave time.

Finally, the City asks to modify the language in 16 that permits the City to initiate a grievance over sick leave abuse. It points out that this is not the usual or appropriate method for an employer to deal with an employee who the employer finds is guilty of sick leave abuse. Rather, it points out that the appropriate result in such circumstances is for the employer to resort to discipline - which might then be grieved by the Union. I agree with the City. Therefore, I award the City's proposal to eliminate this language.

E. Terminal Leave; F. Terminal Leave Options:

These Sections have been discussed above.

I. Funeral Leave

This Section currently provides:

1. Five (5) work days shall be granted in the

event of a death of a member of the immediate family or domestic or civil union partner of a firefighter. Immediate family shall include spouse, mother, father, sister, brother, child, mother-in-law, father-in-law, grandparent, grandchild, step-mother, step-father, step-sibling and step-children. These days are to be taken from either the date of death on or from the date of the funeral back.

4. Travel time of two (2) work days maximum will be granted to any member for an approved leave as per subsection 1 and/or 2 above, who must travel more than two hundred fifty (250) miles round-trip to the funeral or viewing. For the purpose of this provision, two hundred fifty (250) miles will be calculated by means of vehicular travel utilizing MapQuest.com or similar internet website mutually agreed upon by the parties.

Both parties offer proposals concerning funeral leave. The Union asks to expand the leave to include related members of the employee's household. The City seeks to curtail funeral leave by making it "up to five days"; to require the leave to be taken from the date of death; and to eliminate the section about out-of-town funerals.

The City's language of "up to five days..." leaves an ambiguity over who will have discretion to decide how many days will be permitted. Funeral arrangements and the grieving process is such an individualized and personal matter, that I would not be inclined to leave the decision about how much time is sufficient up to another. I will modify the language as follows:

"Up to five work days, at the discretion of the employee,..."
The remainder of the City's proposals are not awarded, as there

has been no demonstration of any particular problem with funeral leave. I award the Union's language, modified as follows:

...stepchildren. Up to three working days, at the employee's discretion, shall be granted for any other related member of the employee's household.

ARTICLE 17 - VACATIONS

The existing contract language for Article 17, Vacations, provides,

1. The following shall apply to all employees hired prior to January 1, 2012:

<u>YEARS</u>	<u>VACATION DAYS</u>	<u>PERSONAL DAYS</u>
1	12	0
2	12	0
3	12	0
4	16	0
5	20	0
6	24	0
7 through retirement	24	4

2. All employees hired on or after January 1, 2012 shall be entitled to vacation and personal days as follows:

<u>YEARS</u>	<u>VACATION DAYS</u>	<u>PERSONAL DAYS</u>
1-3	10	0
4-10	12	0
11-20	16	0
20-retirement	18	2

B.1.a. All Captains, Fire Inspectors, Air Mask Technicians, Maintenance/Repair Personnel and custodians shall be entitled to twenty-eight (28) actual working days paid vacations and four (4) personal days;

1.b. All employees hired after January 1, 2012 and promoted to Captain shall be entitled to twenty (20) actual working days paid vacation;

1.e. Those employees hired prior to January 1, 2012, but promoted to Captain after January 1, 2012, will receive vacation leave in accordance with the previous vacation schedule set forth above in Article 17 (A) (1).

2.a. All Battalion chiefs and Assistant Chief Fire Inspectors shall be entitled to thirty-two (32) actual working days paid vacation and four (4) personal days;

2.b. All employees hired after January 1, 2012 and promoted to Battalion Chief shall be entitled to twenty-four (24) actual working days paid vacation;

2.c. Those employees hired prior to January 1, 2012, but promoted to Battalion chief after January 1, 2012, will receive vacation leave in accordance with the previous vacation schedule set forth above in Article 17 (A) (1).

3.a. All Deputy Chiefs and the Fire Official shall be entitled to thirty-six (36) actual working days paid vacation and four (4) personal days.

3.b. All employees hired after January 1, 2012, and promoted to Deputy Chief shall be entitled to twenty-four (24) actual working days paid vacation;

3.c. Those employees hired prior to January 1, 2012, but promoted to Deputy Chief after January 1, 2012, will receive vacation leave in accordance with the previous vacation schedule set forth above in Article 17 (A) (1).

D. A maximum of four (4) vacation days may be converted to sick days per year with approval of the Medical Review Board. All personnel who are in the negative shall be docked pay for sick time unless they are convalescing from a sickness approved by the Medical Review Board.

E. It is the intent of this Article to assure personnel covered by this Agreement that they will receive the maximum amount of actual vacation days to which they are entitled. Days that they are normally scheduled off, that fall during vacation period, shall not be computed as part of the vacation days.

G. Fire personnel working in administrative positions shall be entitled to the number of vacation days based upon their job title and multiplied by ten (10) hours per day.

The City proposes to modify Section A as follows:

- A. The following vacation schedule shall apply to all firefighters, regardless of date of hire:

<u>Years</u>	<u>Vacation Days</u>
Up to one (1) year of service	One (1) working day for each month of service
After one (1) year and up to ten (10) years of continuous service	12 working days
After ten (10) years and up to twenty (20) years of continuous service	15 working days
After twenty (20) years of continuous service	20 working days

"All employees shall receive one (1) personal day per year, regardless of rank or date of hire."

The Union asserts that, in its current form, the IAFF's vacation system is a two-tiered system based on a firefighter's date of hire. The IAFF's proposal seeks to eliminate the two-tiered system and provide all firefighters with the same number of vacation days. As President Emmell testified, the two-tiered system has a negative impact on morale because firefighters

hired on or after January 1, 2012 recognize that they will never receive the number of vacations days as a firefighter who was hired prior to January 1, 2012. As all firefighters work alongside one another on a daily basis, the two-tiered vacation system only serves as a caste-system that damages an employee's self-worth. By contrast, the IAFF's proposal would act positively and provide assurance to all employees that everyone is on a level playing field and no one is treated more favorably than another based merely on one's hire date. As the City provides no valid justification for maintaining the two-tiered vacation system, the IAFF asserts that its proposal must be awarded.

The City contends that the Union did not provide a cost analysis of this proposal, and the proposal has not been justified. At hearing, the City pointed out through cross-examination of Emmell, that its proposal for a single tier vacation plan would eliminate the Union's concerns about the disparity a two-tier system creates.

I note that the 2013-2015 PBA contract includes a four-tier system depending upon date of hire. The fourth tier, for officers hired after 1/1/13, is slightly more generous than the one found in the IAFF contract. In fact, the City's proposal in this matter which it seek to have applied to all firefighters regardless of hire date, is the mirror image of the police

fourth tier. I note that, like the police contract, the City proposes that all firefighters have one personal leave day.

I decline to dismantle the two-tier vacation plan as proposed by the IAFF. In Atlantic City, there is a pattern among the City's negotiations units for tiered benefits. I particularly note that is true with regard to uniformed services. A pattern of settlement is to be given significant weight. Therefore, I intend to match the two contracts for new hires.

I award the firefighters hired after January 1, 2012 the vacation plan that matches the police contract in the fourth tier:

Up to one (1) year of service	One (1) working day for each month of service
After one (1) year and up to ten (10) years of continuous service	12 working days
After ten (10) years and up to twenty (20) years of continuous service	15 working days
After twenty (20) years of continuous Service	20 working days

I also award the proposal that all firefighters with less than 20 years' service be provided with one (1) personal leave day a year. Firefighters with 20 or more years of service will continue to receive 4 personal leave days.

The City's proposal to eliminate Section D is granted. This section permits the conversion of vacation time to sick time upon approval of the Medical Review Board. I see no basis to

continue this practice. Employees are afforded a generous amount of leave time, and are permitted to apply to extraordinary sick leave when circumstances dictate. In P.E.R.C. 2015-63, the Commission found the second sentence of this article concerning docking of pay when employees are out of leave time is non-negotiable. Section D is deleted from the contract.

I do not award the City's proposal to remove section E from the contract. This section provides that employees will not be charged vacation time for days they are not on duty. The present language is fair and reasonable, and there is no basis to alter it.

The City further proposes to delete Section B in its entirety, as this section relates to superior officers which the City proposed to remove from the unit. For the reasons expressed above, this proposal is denied.

The Union seeks modify the vacation leave section A to remove the reference to employees hired before January 1, 2012. That is, it seeks to eliminate the two-tier plan and put all unit employees in tier 1 for vacation allowances. Thus, all employees would have the following vacation plan:

<u>YEARS</u>	<u>VACATION DAYS</u>	<u>PERSONAL DAYS</u>
1	12	0
2	12	0
3	12	0

4	16	0
5	20	0
6	24	0
7 through retirement	24	4

The Union also proposes to delete paragraphs A.2., B.1.b, B.2.b, B.3.b. These proposals are not supported by the record and are denied.

ARTICLE 18 - ACTING OUT OF TITLE

Article 18 of the contract currently provides,

A.1. Class A: Any out-of-title position due to retirement, extended illness, injury, death or military call-back of a minimum of ninety (90) calendar days, will be paid on a per diem rate of the out-of-title position and all Class A or provisional officers will receive all benefits of the out-of-title position. Computing shall start with the beginning of an assignment.

A.2. Regulations for Class A: In the event an employee is assigned to act out-of-title, he/she shall be selected from an existing promotional list of eligible employees. If no existing list is current, such an employee shall be selected from the rank next preceding the vacated position. Assignments in Class A out-of-title shall be rotated on a cycle of ninety (90) working days, distributing such assignments equitably among the senior qualified personnel on the following basis:

(a) A roster of those eligible for higher rank assignments shall be maintained. A daily log shall be kept and shall be the responsibility of the personnel officer or his/her designee in locating assignments to higher ranked positions. Each calendar quarter, it will be made available to the parties to this Agreement to ascertain whether there has been an equitable distribution of assignments. Adjustments shall be made in the next calendar quarter by making more assignments to those who served or had the opportunity to serve the least number of days for the preceding quarter.

(b) Firefighters offered assignments out-of-title may refuse them, but such refusal will be charged as time spent in a higher rank for purposes of determining equitable distribution of assignments.

(c) If there is an existing Department of Personnel list for the higher rank the number one person on the list shall be placed in the vacancy.

(d) In the absence of an existing Department of Personnel list, the senior person who is qualified shall be placed in the vacancy for ninety (90) working days and receive the pay at the higher rank. After these ninety (90) working days, the next senior person with qualifications shall replace that person and the same conditions will prevail. In the event of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.

(e) In the event of refusal of assignment, the most junior eligible person must perform the higher rank assigned. All refusals shall be reported to and recorded by the Chief or his/her designee.

(f) The Fire chief and the Mayor shall take steps to maintain promotional opportunities by obtaining for fire department personnel, periodic Department of Personnel qualifying examinations for higher ranks and by declaring job vacancies as they occur.

(g) When a promotional vacancy is created due to the terminal leave provision, and where there is an existing promotional list, such promotion shall be made within fifteen (15) consecutive days of the vacancy. In the event there is no existing list, Section A.2(d) will prevail.

B.1. Class B: This position is any temporary out-of-title position caused by vacation, sickness, injury, military leave, funeral leave or emergency leave. Any person covered by this Agreement who is requested to accept the responsibilities and carry out the duties of position or rank above that which he/she normally holds, shall be paid at the rate for the position or rank while so acting. Computing shall start with the beginning of an assignment.

B.2. Regulations for Class B:

(a) Any person who is assigned to a higher position will be paid for the days he/she worked in the higher position, excluding days off.

(b) The person assigned will be paid the difference in the hourly rate of the out-of-title position.

(c) Acting Captain will be performed by journeymen firefighters in the same company if possible.

(d) Acting Battalion chief will be performed by Captains on the same platoon.

(e) Acting Deputy Chief will be performed by Battalion chiefs on the same platoon.

(f) In the event of a promotional list, only Personnel on the list will act out-of-title in their position. In the event there is no individual on the list permanently assigned to a Company, pursuant to Department of Personnel regulations, personnel on the list will be reassigned to perform the acting out-of-title work. If there is no promotional list, then the acting out-of-title position will be performed by a journeyman assigned by seniority. At the company level, the acting out-of-title position will be rotated on a four (4) day working basis. In the event of a two-part promotional examination, in which an interim list is issued, only personnel on the interim list will be deemed "qualified" to act out-of-title in the higher position.

(g) All acting out-of-title assignments for Captain, Battalion Chief and Deputy Chief will be distributed on an "equitable basis." "Equitable basis" shall be interpreted to mean the number of days worked as opposed to the number of assignments in higher position.

The City seeks to modify Article 18 as follows:

Modify Section A.1., Class A, as follows:

Appointment to acting assignments shall be made at the sole discretion of the City, and may be commenced and terminated as necessary to meet the City's needs. If appointed, firefighting personnel shall serve at the higher title until they are notified by the City of the termination of their appointment. During acting assignments, the employee will be paid at the rate for the position or rank while so acting. In order to become eligible for payment, an employee must perform acting duties on a full-time basis for 30 consecutive work days.

Eliminate Section A.2., Regulations for Class A, in its entirety.

Eliminate Section B.1., Class B, in its entirety.

Eliminate Section B.2., Regulations for Class B, in its entirety.

The City makes no particular argument concerning its proposal in its brief.

The Union asserts that the City's proposal to modify the paragraph of A.1 serves no purpose than to provide a mechanism for the employer to abuse the system. If the City's language were adopted, the City could avoid paying an employee out-of-title pay by requiring the employee to work out-of-title for twenty-nine (29) days, revert the employee to their normal title for one (1) day, only to once again reassign them to work out-of-title for an additional twenty-nine (29) days. This cycle could last indefinitely. Fundamental fairness dictates that an employee should be paid for the job they are performing when they perform it. The employee should not be forced to take on the responsibility and job duties of a higher title, and then

allow the City to not compensate that employee for assuming the responsibility and job duties of that title.

Finally, the Union asserts, the City has again failed to provide any evidence that would offer a rational basis for such a proposal. In that regard, there is no evidence that paying an employee for working out-of-title has been an issue in the past. For the above reasons, the City's acting-out-of-title proposal must be denied.

I am inclined to grant a modified version of the amendments the City seeks in Section 18.A. The City seeks to have the firefighter serve for a minimum of thirty days before acting pay takes effect. I note that in the PBA's 2013-2015 contract, police officers have the following provision concerning acting pay:

Once an officer is assigned out of title, and performs in that capacity for eight days, the officer shall be compensated at the higher rate of pay.

Internal comparability is one of the statutory criteria to be considered by an interest arbitrator in deciding whether to award a proposal. Parity between members of the uniformed services in the same municipality is common and promotes a sense of fairness and harmony. Therefore, I award this language to be added to 18.A in the contract.

The remainder of the City's proposals, that is, to eliminate Section A.2, B.1 and B.2 are denied. These proposals

have not been supported by the record, nor any rationale for awarding them.

Finally, in P.E.R.C. No. 2015-63, the Commission found 18A(2)(g) is not mandatorily negotiable. Therefore, the following section shall be excised from the new contract:

When a promotional vacancy is created due to the terminal leave provision, and where there is an existing promotional list, such promotion shall be made within fifteen (15) consecutive days of the vacancy. In the event there is no existing list, Section A.2.(d) will prevail.

ARTICLE 20 - PAY SCALE

Article 20, Pay Scale currently provides,

A. 1. A firefighter who fails an apprenticeship test, either the first, second, or third year apprenticeship tests, shall remain at the step that they were until they pass that test. However, once the test is passed, the firefighter shall move to the next step effective immediately upon passing the test, and the firefighter shall be moved to the appropriate step of salary guide for that firefighters' class.

2. A committee shall be developed by the parties creating an Apprenticeship Test commit consisting of representation selected by the Local and by the City/Chief.

B. 1. If a first, second or third year apprentice passes the apprenticeship test the first time taken and the test is taken before his/her anniversary date, the salary rate change shall be effective on the employee's anniversary date.

2. If a first, second or third year apprentice passes the apprenticeship test the first time taken and the test is taken after his/her anniversary date, the salary rate change shall be effective retroactive to the employee's anniversary date.

3. If the first, second or third year apprentice fails the test and he/she retakes the examination and

passes it, the salary rate change will not become effective until the employee's next anniversary date.

4. Firefighters on military leave shall be entitled to take the apprenticeship examination upon their return to work, at the request of the firefighter [and] shall receive the higher salary rate retroactive to the date of his/her return to work.

The City seeks to modify Section 20.A.1., second sentence, as follows:

However, once the test is passed, the firefighter's salary rate change will not become effective until the employee's next anniversary date.

It appears that the language of the current contract has created a conflict between the second sentence in Section 20.A.1 and Section 20.B.3. As currently written, the former section provides that the firefighter will be immediately moved to the next step on the salary guide once the test had been passed. However, Section B.3 provides that if an apprentice fails the test, retakes the exam, and passes it, the salary rate change will not become effective until the employee's next anniversary. These provisions are inconsistent with one another. Therefore, the City's proposal to delete the last sentence from 20.A.1 is awarded.

The City also proposes to eliminate Section 2 in its entirety. This section concerns the structure of the Apprenticeship Test Committee. No basis has been provided for the elimination of this section.

The City also proposes to delete all titles from the salary guide above Senior Journeyman. This is consistent with the City's position taken in its Unit Clarification Petition Docket No. CU-2015-004. However, as addressed above, I do not have jurisdiction over this issue. The superior officer titles today remain part of the bargaining unit and will remain in the salary pay provisions in this article unless otherwise subsequently ruled upon by the Commission.

The City seeks to delete Sections 20.E and 20.F in their entirety. These sections both have to do with pay increases in 2012, 2013, and 2014. I agree that these sections are no longer applicable and I award their deletion.

ARTICLE 23 - TRANSFERS AND ASSIGNMENTS

Article 23, Transfers and Assignments, currently provides,

A. Transfers and assignment shall provide the highest degree of efficiency in every unit of the Fire Department by assigning a combination of experienced and less experienced personnel. Whenever possible, each unit shall consist of the following balance:

One (1) Company Officer
 One (1) Senior Firefighter
 Two (2) Journeymen Firefighters
 One (1) Apprentice Firefighter

B. Definitions:

1. Senior Firefighters - excess of fifteen (15) years of service

2. Journeyman Firefighter - less than fifteen (15) but more than three (3) years of service

3. Apprentice Firefighter - one (1), two (2) or three (3) years of service.

C. A higher seniority vacancy may be covered by a firefighter with lower service time. However, a lower security vacancy may not be covered by a firefighter with a higher service time. Exception: Journeyman Firefighters may cover when no apprentice is available.

D. Apprentice firefighters shall be rotated to meet the requirements of the Fire Department's training program.

E. Transfers will not be utilized to punish or discriminate against any personnel.

F. Captains with less than one (1) year in grade shall be subject to training assignments, which training shall occur within a reasonable period after placement into rank of Captain.

G. Personnel may transfer by mutual agreement with personnel of equal rank and seniority with approval of the Platoon commander and the Chief of the Fire Department.

H. All personnel may request a transfer by opening his/her assignment to bids by other personnel of equal rank and seniority, with the approval of the Platoon Commander and the Chief of the Fire Department. The individual's new assignment would be determined by the vacancy created by the successful bidder to his/her position.

I. Mutual transfer and initiated transfers shall be limited to one (1) per year.

J. Posting procedure and Selection Criteria:

1. When a vacancy or new position occurs within the bargaining unit, it shall be filled temporarily by the Chief of the Department. The City shall immediately post notices on the bulletin boards in all fire stations setting forth the classification, job duties and requirements, hours and days of work, starting time, and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department

setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees who are not at work during the entire posting period and who have sufficient qualifications and seniority shall be considered as filing an application for the job.

2. In filing vacancies by promotion or transfer, where ability and other qualifications are equal, seniority within the Fire Department shall control. The term "ability and other qualifications" used herein shall include observing the rules and regulations of the Fire Department. The Chief of the Department shall define and determine the standard of "ability and other qualifications", which cannot be arbitrarily or selectively established.

3. Employees who are placed into vacant or new positions by process of their submitting a bid under the provisions of Section J. above, shall not be entitled to or assured of vacation preference previously submitted and/or authorized, although the Chief of the Department shall attempt to accommodate the employees' own preference if, and whenever, possible.

4. The Chief of the Department may deny placement of an applicant possessing ability and other qualifications to the vacant or new position should the Chief of the Department determine, exercising bona fide discretion, that such individual is needed more in the position already assigned.

5. The parties have agreed to form a committee to develop new wording, where appropriate, for this Article.

The City proposes to delete Article 23 in its entirety and replace with the following language:

Transfers and assignments shall be made at the sole discretion of the City, and may be commenced and terminated as necessary to meet the City's needs.

The Union proposes the following modifications to
Article 23¹²:

J. Posting Procedure and Selection Criteria:

When a vacancy or new position occurs within the bargaining unit, it shall be filled temporarily by the Chief of the Department. The City shall immediately post notices on the bulletin boards in all fire stations and via electronic mail to all bargaining unit members setting forth the classification, job duties and requirements, hours and days of work, starting time and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the Secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees are not at work during the entire posting period and who have sufficient qualifications and seniority shall be considered as filing an application for the job.

In its revised proposal, the IAFF proposed to delete the following section, which was in part found to be non-negotiable by P.E.R.C. No. 2015-63:

J.2. In filling vacancies by promotion or transfer, where ability and other qualifications are equal, seniority within the Fire Department shall control. The term "ability and other qualifications" used herein shall include observing the rules and regulations of the Fire Department. The Chief of the Department shall define and determine the standard of "ability and other qualifications," which cannot be arbitrarily or selectively established.

I decline to award the City's proposal to put the entire issue of Transfers and Assignments into the sole discretion of

¹² The Union withdrew its proposal for modifications to Section A after the Commission determined that the entire section was non-negotiable. It also withdrew its proposal to add a new section establishing a transfer committee to review applications for transfers and determine qualifications.

the City. The Commission did not find the entire article was a managerial prerogative; rather it found the following sections must be excised from the contract: Section A, C, the first sentence of J.1, the last sentence of J.2, and the phrase "...exercise bona fide discretion..." in J.4. I award the elimination of these provisions from the contract. There remains in the Article some valuable language dealing with the posting of vacancies and transfer procedures. The City has not justified the wholesale scrapping of these provisions.

I award the Union's proposal to add electronic posting to the vacancy announcement procedures. In this digital age, this only makes sense. The provisions of Article 23 are modified as follows:

Delete Section 23.A.

Delete Section 23.C.

Modify section 23.J as follows:

1. When a vacancy or new position occurs within the bargaining unit, the City shall immediately post notice on the bulletin boards in all fire stations setting and via electronic mail to all bargaining unit members setting forth the classification, job duties and requirements, hours and days of work, starting time and wage rate of the job to be filled permanently. Employees desiring to apply for the job shall make application to the Chief of the Department setting forth their qualifications, seniority, etc. Copies of these applications and of the notices are to be filed with the Secretary of the Union. Notices shall remain posted for ten (10) days. Employees who do not make application within the period of the posting shall have no right to consideration for the job, with the exception that employees are not at work during the entire posting period and who have

sufficient qualifications and seniority shall be considered as filing an application for the job.

Eliminate Section 23.J.2.

Modify 23.J.4 as follows:

The Chief of the Department may deny placement of an applicant possessing ability and other qualifications to the vacant or new position should the Chief of the Department determine, [exercising bona fide discretion], that such individual is needed more in the position already assigned.

Delete 23.J.5. This provision is no longer necessary.

ARTICLE 24 - HEALTH AND SAFETY

Article 24, Health and Safety, currently provides,

A. The general safety and health for members of the Atlantic City Fire Department is the responsibility of the Chief of the Department. The Joint Labor/Management Safety and Health Advisory Committee shall have the responsibility for making recommendations on safety and health matters impacting the members of the Atlantic City Fire Department. Such safety and health considerations shall include protective equipment and technological innovations. The Committee shall meet at the call of the Chairman or upon majority vote of its members, but at least quarterly.

B. The Committee shall be comprised of the Chief of the Department acting as Ex Officio Chairman, the Fire Surgeon, a designee of the Chief of the Department; the President of the bargaining unit; a designee selected by the President of the Local and the Risk Manager.

C. Committee action shall be taken upon the majority vote of the members with the Chairman casting the deciding vote in the event of a tie.

D. Unresolved safety and health issues after recommendations by the Committee shall be subject to the grievance procedure.

E. Both parties agree that the Union and/or Union Safety Committee can make nonbinding recommendations to the Chief of the Fire Department to set safety manning standards for (fire) engines and trucks.

F. The City pledges to do whatever is economically feasible regarding increased staffing levels to ensure continued safe fire protection of its citizens and a continued safe working environment for members of the bargaining unit.

G. First level supervisors shall be trained by the Department at a level equal to or better than standards described in N.F.P.A. Standard No. 1021 Fire Officer.

The City seeks to delete Article 24 in its entirety. This proposal is rejected. The Health and Safety Committee is one example of how the City and the Union can work collaboratively to find solutions to improve operations and the safety of the firefighters and the City's residents. To this end, this serves the public interest. I particularly note, as did the Commission, that the Committee has no power to implement anything on its own, but merely makes recommendations to the City. Therefore, the City's proposal to dismantle the Health and Safety Committee is denied.

I reform the provisions of Article 24 to conform with the findings in P.E.R.C. No. 2015-63 as follows:

Delete the following sentence from Section A:

Such safety and health considerations shall include protective equipment and technological innovations.

Eliminate paragraph F and G.¹³

ARTICLE 25 - EDUCATION

Article 25, Education, currently provides,

A. The City and the Union agree that the amount and quality of an employee's education often determine that value to his/her department and his/her community, and the degree of proficiency with which he/she performs his/her duties.

B. To provide an incentive and encourage members of the Department to achieve the advantage of advanced education, the City shall conform to the rules and regulations of the New Jersey Department of Personnel concerning this provision.

C. 1. Fire science or relative training and educational achievements are considered an important factor in the professional development of the firefighter. Achievements in these areas shall be acknowledged with special increments, which shall apply to employees hired before January 1, 2012 based upon the following scale:

(a) Upon completion of fifteen (15) credit hours, of which three (3) credits must be in the professionalism courses, and/or jobs related training, the firefighter shall receive a two percent (2%) increment of hi/her base salary.

(b) Upon completion of thirty (30) credit hours, of which six (6) credits must be in the professionalism courses, and/or jobs related training, the firefighter shall receive a three percent (3%) increment of hi/her base salary.

(c) Upon completion of forty-five (45) credit hours, of which nine (9) credits must be in the professionalism courses, and/or jobs related training, the firefighter shall receive a four percent (4%) increment of his/her base salary.

¹³ The Union withdrew a proposal to require the City to adhere to all NFPA standards on April 14.

(d) Upon completion of an Associate's Degree of sixty-four (64) credit hours, of which twelve (12) credits must be in the professionalism courses, and/or job related training, the firefighter shall receive a six percent (6%) increment of his/her base salary.

(e) Upon completion of seventy-nine (79) credit hours, of which fifteen (15) credits must be in the professionalism courses, and/or job related training, the firefighter shall received a seven percent (7%) increment of his/her base salary.

(f) Upon completion of one hundred (100) credit hours, of which eighteen (18) credits must be in the professionalism courses, and/or job related training, the firefighter shall received an eight percent (8%) increment of his/her base salary.

(g) Upon completion of a Bachelor's Degree or one hundred twenty-eight (128) credit hours, of which twenty-four (24) credits must be in the professionalism courses, and/or job related training, the firefighter shall received a nine percent (9%) increment of his/her base salary.

(h) Upon completion of a Master's Degree or one hundred seventy-five (175) credit hours, of which twenty-four (24) credits must be in the professionalism courses, and/or job related training, the firefighter shall received a ten percent (10%) increment of his/her base salary

2. Those employees hired prior to January 1, 2012, but not receiving an educations incentive prior to January 1,m 2012, will remain eligible to receive the educational incentive under the schedule set forth above in Article 25(C)1.

3. All employees hired after January 1, 2012 that receive fire science or related training and educational achievements as set forth below shall be acknowledged with special salary increments, based upon the following "new" scheduled scale:

(a) Upon completion of an Associate's Degree or sixty-four (64) credits, of which

fifteen (15) credits must be in professionalism (job related) courses and/or job related training, the employee shall receive a \$2,500.00 additional increment on his/her base salary.

(b) Upon the completion of a Bachelor's Degree or one hundred and twenty-eight (128) credits, of which thirty (30) credits must be in professionalism (job related) courses, and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

(c) Upon the completion of a Master's Degree or one hundred seventy-five (175) credits, of which thirty-six (36) credits must be in professionalism (job related) courses, and/or job related training, the employee shall receive a \$1,000.00 additional increment on his/her base salary.

4. All non-fire related courses mandated by an institution as a requisite for a fire science degree shall be eligible for educational increments. Adjudication of these payments shall be subject to the approval of the Education Committee.

5. Other specialized training, such as seminars or special courses, can be used with college credits as a basis for increment. The general guidelines are that the total hours spent in the approved special programs will provide credit equal to hours spent in the classroom at the following rate: three (3) college credits = forty (40) hours related training.

6. Professionalism courses and/or job related training shall be interpreted to mean the following: All fire science courses taught at an accredited fire science institution, and fire related courses.

7. Job related training shall be given for the following:

- (a) One (1) Math course
- (b) One (1) Science course
- (c) One (1) Construction course
- (d) One (1) Management course

D. Applications for training and educational incentives shall be made to the designated personnel officer, and review and final approval shall be with

the consent of Committee in February and July of the calendar year. Percentage increments become effective February 1st and July 1st of the year the submissions are filed, regardless of the date/s of approval.

The Union seeks amend section C.7. as follows:]

(e) One (1) water course related to fire services

The City did not oppose this proposal. Local 198 President Emmell testified that part of Atlantic City's fire department responsibilities include water rescue. Therefore, the inclusion of such training is reasonable, and promotes the safety of the firefighter and the public. I award this proposal.

The Union also seeks to modify section D as follows:

D. Applications for training or educational incentives shall be made to the designated personnel officer, and review and final approval shall be with the consent of the Education Committee in February and July of the calendar year. Percentage increments become effective February 1st and July 1st of the year the submissions are filed, regardless of the date/s of approval. Payments will be made within thirty (30) days of the date/s of approval.

Given my award above concerning the freezing of educational incentive pay, I need not consider this issue during this contract period. This proposal is denied.

ARTICLE 26 - SECONDARY JOBS

The contract currently provides at Article 26, Secondary Jobs, as follows:

The parties agree that all members of the Atlantic City Fire Department who are employed at other jobs, in addition to their activities as members of the department, shall comply with all existing rules and regulations.

The Union proposes deleting this Article in its entirety.

It argues that the clause is unnecessary. The City makes no particular argument regarding this proposal. I find that the clause is simply unnecessary. There is no basis to single out unit employees with other employment in this provision. In fact, all members are the fire department - not just that employed at other jobs are obligated to comply with all existing rules and regulations of the department. The proposal to eliminate the article is granted.

ARTICLE 27 - PERSONNEL COMMITTEE

Article 27, Personnel Committee, currently provides,

A. For the purpose of this Agreement, a Personnel Committee shall be created, consisting of the Mayor or his/her designee, who shall act as Chairman; the Chief of the Department or his/her designee; the President of Local 198 or his/her designee; and, one superior officers assigned by the Union or his/her designee; and the Personnel Officer or his/her designee shall be an ex-officio non-voting member of the Committee.

B. The Personnel Committee, in addition to other duties provided within the Agreement, shall determine:

1. The amount of sick leave for each firefighter accumulated up to and including the present contract.
2. Whether or not an employee is eligible for an incentive pay increase as a result of any special training and/or college credits.

3. Whether or not a particular employee is suited for special training available to the members of the Atlantic City Fire Department.

The City proposes to delete Article 27 in its entirety. In Atlantic City, P.E.R.C. No. 2015-63, the Commission held that this clause is mandatorily negotiable. The City has not provided any other justification for removing the clause from the contract. Accordingly, this proposal is denied.

ARTICLE 29 - EXCHANGING TIME

Article 29, Exchanging Time, currently provides as follows:

A firefighter has the option to exchange time of shifts with a fellow firefighter no more than two-hundred sixteen (216) hours in any single calendar year, taken in four (4) hour minimums, with prior approval of his/her superior officers. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.

The City proposes to modify Article 29 as follows:

A firefighter has the option to exchange time of shifts with a fellow firefighter no more than forty-eight (48) hours in any single calendar year, taken in ten (10) hour minimums, with prior approval of the Chief of the Department or his designee. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.

The Union seeks to modify Article 29 as shown below:

A. firefighter has the option to exchange time of shifts with a fellow firefighter no more than two-hundred sixteen (216) hours in any single calendar year, taken in one (1) hour minimums, with prior approval of his/her superior officers. Additional

hours may be approved by the City's discretion. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.

Although the City provided comparable data from other paid fire departments which show that Atlantic City has the most lenient shift exchange program in the County among departments that have limits, it also shows that many departments have no set limits. While one might imagine that tracking employees' shift changes could be an administrative nightmare, no such evidence was proffered. Conversely, the Union did not justify its proposal to expand the flexibility in the program to permit shift changes in one hour increments. Accordingly, both proposals are denied.

ARTICLE 31, SUSPENSION AND FINES

Article 31, Suspensions and Fines, currently provides,

- A. All suspensions and fines assigned to Atlantic City Firefighters shall be dispensed in accordance with the rules and regulations of the Department of Personnel.
- B. In any case where a member is relieved from duty and suspended by a superior officer, that member shall be so informed and be furnished with a copy of the charges to be filed against him/her no longer than twenty-four (24) hours after the incident occurs, outside of Saturdays, Sundays and legal holidays. If a member is suspended, he/she shall be given a hearing before the Mayor or his/her designee. The member shall have the right to be represented in the form of counsel at his/her own expense or by a designated representative of the Union. The above limits can be extended by mutual consent.

C. All members must be granted a hearing before the Fire Chief/Fire Director or his/her designee on any charge that costs the member in suspension or fine.

D. A suspension or fine shall be calculated at a rate equal to a per diem of the member's base wage.

The City seeks to modify section B by deleting the following language:

"If a member is suspended, he/she shall give a hearing before the Mayor or his/her designate."

The Union seeks the following modification to section C:

All members must be granted a hearing before a mutually agreed upon neutral/impartial hearing officer on any charge that costs the member in suspension or fine.

The Union argues that providing for disciplinary hearings before a mutually agreed upon neutral and impartial hearing officer. This proposal would alleviate the IAFF's concerns that hearings are biased and one-sided. President Emmell testified that overwhelmingly IAFF bargaining unit members who have had hearings before the hearing officer have not had favorable results. Providing hearings before a neutral and impartial hearing officer would ensure a fair and equitable result and result in an avoidance of unnecessary appeals through the New Jersey Civil Service Commission and/or New Jersey Public Employment Relations Commission. The benefit to both parties is undeniable and thus, the proposal must be awarded.

The City's rationale for this proposal is that the employee has remedies with the Civil Service Commission, and with the Office of Administrative Law, if applicable.

It appears that the provisions of Section B and Section C conflict: Section B grants a hearing before the Mayor or his designee for suspensions; Section C grants a hearing before the Fire Chief/Director for suspensions or fines. Obviously, an employee does not need two disciplinary hearings.

In a civil service jurisdiction, such as Atlantic City, disciplinary hearings are held after the employee is given a preliminary notice of discipline. Generally, the purpose of the hearing is for the employer to determine whether there are sufficient grounds for discipline. It is also an opportunity for the employee to tell his side of the story - to offer a defense. If the employer determines there is sufficient cause for discipline, the employer will proceed by issuing the employee a final notice of discipline. This is then appealable, to either an arbitrator or is heard by the Office of Administrative Law. Generally, the hearing officer for the internal disciplinary hearing is appointed by the Employer and there is no pretense of neutrality. The role of the Hearing Officer is to act as the agent of the municipality to determine if there is sufficient cause to proceed.

If the Union's proposal were granted, the question becomes who would hire the neutral? How neutral would the hearing officer be if hired and paid by the City? And at what cost? Second, the employee would have a second opportunity at defending against charges before the OAL judge or before an arbitrator. While I agree with the Union that a mutually selected hearing officer to conduct internal disciplinary hearings might weed out unnecessary grievance/civil service appeals, it would add an extra layer of appeals for the employee being charged, and an extra expense to retain the neutral's services. Therefore, the Union's proposal is denied. The City's proposal to delete the provision for a hearing before the Mayor is granted, as the employee is already entitled to a hearing before the Fire Chief/Fire Director or his designee, as provided in section B.

ARTICLE 32 - HEALTH BENEFITS

Article 32, Health Benefits, currently provides,

A. Effective January 1, 2007, the major medical deductible under the City's self-insured indemnity plan shall be increased to \$150.00 per year for the individual coverage, and to \$300.00 per year for family coverage. Additionally, effective January 1, 2009, the co-payment for non-generic drugs shall be increased to \$15.00 per prescription and the co-payment for generic drugs shall be \$10.00 per prescription. All members covered by this Agreement as of January 1, 2003 shall commence to receive Blue Cross/Blue Shield U.C.R plan which consists of the following:

1. U.C.R. Surgical Blue Shield

2. Three hundred sixty-five (365) days coverage, Blue Cross
3. Rider "J"
4. Dependent children to age twenty-three (23) (not married)
5. Non-member rider
6. Emergency room rider
7. Catastrophic major medical of \$250,000.00 - Effective January 1, 2001, this amount shall be \$350,000.00 per event and effective January 1, 2002, this amount shall be increased \$400,000.00 per event.
8. The lab and x-ray benefits will be combined for a limit of \$300.00.
9. At least one (1) member of the family must reach or exceed this amount in order to effectuate the family deductible. When this occurs, the first member to satisfy the deductible shall recover eighty percent (80%) of the next \$1,500.00 and then one hundred percent (100%) thereafter. All other family members become eligible for one hundred (100%) reimbursement once the family deductible has been satisfied.
10. Co-insurance limit shall be \$1,500.00.
11. The health insurance coverage shall provide for a mandatory second opinion.
12. Effective retroactive January 1, 1987, all members of the bargaining unit who retire on or after January 1, 1987 will receive a maximum of \$35.00 [per] month for dental and eyeglass costs. The retiree will only be permitted to apply this benefit to the actual costs incurred for any dental and eyeglass expenses.
13. Effective retroactive to June 30, 1998, all members of the bargaining unit who retire on or

after January 1, 1991 and before December 31, 1999, will receive \$1,000.00 annually to apply to actual costs incurred by the retiree for any dental and eyeglass expenses. Retirees having chosen the \$1,500.00 per annum, for seven (7) years have no other option.

14. Effective June 30, 1998, all firefighters who qualify for insurance under this Article who have gone off coverage, as set forth above, and do not return to coverage shall be eligible for \$35.00 per month.

15. Effective January 1, 2000, any member who retires will receive a maximum of \$35.00 per month for dental and eyeglass costs. The retiree will only be permitted to apply this benefit to the actual costs incurred for any dental and eyeglass expenses. Those covered employees who retired on or after January 1, 1991 shall be subject to the condition that, should they qualify for substantially equivalent coverage through another job or a spouse, they shall not be eligible while such coverage is available.

16. Unit employees shall be provided retiree benefits to correspond with Ordinance No. 85 that was adopted by the Council of the City of Atlantic City on August 11, 2004 and approved by the Mayor on August 13, 2004 with the modification that those eligible for this benefit shall be firefighters who retired after January 1, 2003. Implementation and payment of the program by the City to eligible firefighters shall commence on January 1, 2007.

B. Dental-Basic Benefits

1. One hundred percent (100%) basic services
2. One hundred percent (100%) periodontal services
3. Seventy-five (75%) orthodontic services

C. Retiree Health Benefits

Bargaining unit members shall receive retiree health benefits to correspond with Ordinance No. 85 that was adopted by the Council of the City of Atlantic City on August 13, 2004 with the following modification: Those eligible for this benefit shall be firefighters who retired after January 1, 2003. Implementation and payment of the program by the City for eligible firefighters shall commence on January 1, 2007.

The City seeks the following modifications to Article 32:

Remove Section A in its entirety, and replace with Section D as it exists in the current Agreement. The Union also seeks the inclusion of paragraph D in the contract.

Neither party mentioned the City's proposal to delete Section 32.A from the contract in their respective briefs. It appears that Article A., which has sixteen separate provisions, several of which apply to retirees, would not be adequately replaced by the language in Section 32.D which deals exclusively with employees. Therefore, I do not award the elimination of Section 32.A.

The City also asks to add the following language to Section 32.B:

Dental Benefits - Effective upon ratification of the successor Agreement, active employees shall pay a \$50.00 deductible for covered services.

Add the following language to Section C:

Retiree Health Services: Retirees shall receive medical health coverage upon completion of twenty-five (25) years of service with the City, and such service shall be in good standing with the Police and Fire Retirement System.

Prescription - Effective upon ratification of the successor Agreement, active employees, and those who retire on or after the date of ratification, shall pay the following co-pays for prescription drugs:

\$20.00 for generic drugs

\$50.00 for brand-name drugs

With regard to the City's proposal to increase prescription and dental co-pays, the Union argues that such increases are unnecessary and that employees are already contributing towards the cost of medical benefits as a result of chapter 78.

I notice that the prescription co-payment amounts have been in effect since 2009. There can be no doubt that the cost of prescriptions has increased substantially during that seven-year period. Therefore, a reasonable increase in the employee's share of prescription costs is warranted. While the City has not yet negotiated prescription increases with its other bargaining units, this contract is the first contract going forward beyond 2015. Therefore, I award an increase in prescription co-pays as follows:

Effective January 1, 2016, the co-payment for generic drugs shall be increased to \$15.00 per prescription and the co-payment for non-generic drugs shall be increased to \$35.00 per prescription.

The current contract provides at Section 32.B for 1 benefits. I note that there is currently no co-payment associated with dental benefits and the plan covers basic services and periodontic services at 100%. By today's standards,

this is a generous plan. I believe it is in the interests of the taxpayers, particularly in this time of fiscal stress, to have the employees share in the costs of their dental benefits with a modest deductible. Therefore, I award the City's proposal for \$50 dental deductible.

Further, the City proposes a new section that would provide medical benefits to retirees with 25-years' City service. The Union argues that this would disenfranchise firefighters who have come from prior military service or other departments.

I find that it is not in the public interest to pay for the health benefits of firefighters who retire with less than 25 years of service with the City of Atlantic City. The pension plan for police and fire, through the PFRS, provides for a regular retirement with a minimum of twenty years' pension credits, which apparently are attainable from any New Jersey fire or police force. The import of this is that a firefighter might do a significant number of years with another department and then transfer mid-career to Atlantic City. The current system would require the taxpayer's of Atlantic City to shoulder the costs of that firefighter's medical benefits during his many years of retirement prior to his eligibility for Medicare. This is an unreasonable financial burden on the City and its taxpayers.

On the other hand, neither party provided me with any evidence of the possible impacts to the individual firefighters

in the City's fire department. I am reluctant to immediately change the criteria on which retirement e=benefits might be granted without knowing the meets and bounds of the impact of the proposal on the bargaining unit's retirement rights.

Accordingly, I award the following provisions to be added to the contract:

Retiree Health Services:

For employees hired after July 1, 2015, retirees shall receive medical health coverage upon completion of twenty-five (25) years of service with the City, and such service shall be in good standing with the Police and Fire Retirement System.

ARTICLE 33 - PHYSICAL FITNESS EQUIPMENT

Article 33, Physical Fitness Equipment, currently provides,

The City will make physical fitness equipment available to the firefighters, with equipment being located in one or more firehouses and with all unit members having reasonable access to the equipment.

The Union proposes the following modifications to Article 33:

The City will make physical fitness equipment available to the firefighters, with equipment being located in all firehouses and with all unit members having reasonable access to the equipment.

The Union has not justified this proposal nor provided any cost estimates of awarding this language. Accordingly, this proposal cannot be awarded.

ARTICLE 34 - FIREHOUSE EQUIPMENT

Article 34, Firehouse Equipment, currently provides,

All firehouses will be equipped with a commercial quality stove; a commercial quality refrigerator; a commercial quality sink; furniture for the stations; and, first aid kits. The City shall not only purchase, but also install (or, in the alternative, arrange for installation of) all the above items. The specifications are to be mutually agreed upon by the Chief of the Fire Department and the Local 198 Health and Safety Committee.

The City seeks to make the following modifications to Article 34:

Delete the following sentence from this Article:

The specifications are to be mutually agreed upon by the Chief of the Fire Department and the Local 198 Health and Safety Committee.

The Union proposes to make the following modifications to Article 34:

All firehouses will be equipped with a commercial quality stove; a commercial quality refrigerator; a commercial quality sink; a commercial quality dishwasher; furniture for the stations; and, first aid kits. The City shall not only purchase, but also install (or, in the alternative, arrange for installation of) all the above items. The specifications are to be mutually agreed upon by the Chief of the Fire Department and the Local 198 Health and Safety Committee.

Local 198 President Emmell testified that commercial dishwashers are necessary because of the risk of contamination and the

spread of communicable diseases among firefighters. However, the Union has not provided any cost estimates of awarding this language. Accordingly, this proposal cannot be awarded.

ARTICLE 37 - GRANT COMMITTEE (NEW)

The Union proposes to add the following Article to the Agreement:

In light of the financial situation in the City, a Grant Committee shall be established to consider all grant opportunities. The Grant Committee shall consist of the Mayor or his/her designee, the Union President or his/her designee, and the Fire Chief or his/her designee.

Any grant approved by the Grant Committee shall be submitted to City Council.

The Union argues that given the City's current financial crisis, it should welcome the Union's participation in seeking out grants which would benefit the department. The City has not commented upon this proposal.

The proposal is awarded. This committee has no authority to approve or apply for grants; it merely has the ability to recommend grant opportunities. It is in the interest of the public that the City administration and the City's employees work collaboratively together whenever possible for the mutual benefit of all.

SUMMARY OF AWARD

I award the following:

CONTRACT DURATION

Three-year contract covering the period January 1, 2015 through December 31, 2017.

SALARIES

- Increment payments will be made to eligible employees on their anniversary date for the life of this contract.

- The two-tiered salary guides as set forth in the 2012-2014 contract will continue for 2015.

- On July 1, 2016, unit employees in the senior journey and above will receive a salary increase of \$1,000. The salary guide will be adjusted according.

- In 2017, the salary guide for all unit employees unchanged and there shall be no increases except the payment of increments.

EDUCATIONAL INCENTIVE PAY

I award a freeze on the current value of employees' educational incentive pay for the life of this contract. Those employees who currently have such benefit in the form of a percentage of pay will be frozen at their current dollar amount for this benefit. That is, for example, if a firefighter currently earns 8% of base pay for his current degree, that amount will not increase, even if base pay increases or additional degrees are earned. Additionally, employees who have educational incentive pay in dollar amounts will also have their educational incentive

pay frozen at the current dollar amount even if additional degrees are earned.

LONGEVITY

1. Freeze employees at their current (12/31/2014 rate) longevity levels for the life of the contract.
2. Abolish the tier 2 in the contract. For employees hired after January 1, 2012, the longevity benefit is eliminated.

TERMINAL LEAVE PAY

Modify Article 17(F) (3) (d) as follows:

"Employees hired after January 1, 2010 will receive a maximum payout cap of \$15,000."

I award the following:

Employees hired prior to January 1, 2010, will be permitted to cash out their sick leave earned prior to July 1, 2015, up to the maximums set forth in the contract, Section F.3.

Employees hired after January 1, 2010, will be permitted to cash out their sick leave earned prior to July 1, 2015, up to a maximum as set forth in the contract, but in no event shall the amount be greater than \$15,000.

For employees hired after July 1, 2015, terminal leave is eliminated.

ARTICLE 3 - GRIEVANCES

Modify Step 2 language as follows:

STEP 2 - Review by Union Grievance Committee. The Union Grievance Committee shall screen and study all grievances within thirty (30) days of their receipt to determine whether same has or lacks merit. Such processing of grievances shall take place without discrimination and irrespective of membership or affiliation with the Union. Upon finding merit, the Union Grievance Committee shall present written confirmation of such determination to the Chief of the Department, with the request that the Chief of the Department investigate and resolve same.

ARTICLE 2 - INTERPRETATION

Modify Section C as follows:

C. The City agrees that the Union has the right to negotiate as to rates of pay, hours of work, fringe benefits, working conditions, safety [of personnel and Equipment], procedures for adjustment of disputes and grievances and all other related matters.

Add new Section D:

The parties will incorporate and modify this collective negotiations agreement to comply with any final rulings, orders or settlement agreements issued by the Public Employment Relations Commission or the courts in the matter of the Clarification of Unit Petition filed with PERC in Docket No. CU-2015-004.

ARTICLE 4 - DUES CHECK-OFF

Delete Section C.2, which provides:

{[C.2. Payroll deductions, with respect to any insurance plan approved by the City, shall be at no cost to either the employee or the Union.]

ARTICLE 5 - EMPLOYEE REPRESENTATION

Modify Article 5, first sentence, as follows:

The Union must notify the City as to the names of stewards and accredited representatives. No more than one steward and alternate is to be [designed] designated for each facility.

ARTICLE 7 - MANAGEMENT RIGHTS

Modify Article 7, first sentence, as follows:

It is the right of the City to determine the standards of service to be offered by its agencies; determine the standards for hiring, promotion, and assignments, and to determine when and if such actions will be taken; to assign and direct its employees; to take disciplinary action; relieve its employees from duty for any legitimate reason; maintain the efficiency of its operations; determine the methods, means and personnel by which its operation will be conducted; determine the content of job classifications; schedule the hours of work; take all necessary actions to carry out its mission in daily activities and in emergencies; and, exercise complete control and discretion over its organization and the technology of performing its work.

ARTICLE 12 - UNION RELEASE TIME

Amend Section A to add:

Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the event triggering the union release time.

Add new Section G as follows:

G. The Local President and the Local Vice President shall both be supplied with new radios, new batteries, extra batteries, and charger by the City.

ARTICLE 15 - CLOTHING ALLOWANCE

Revise section A as follows:

A. The City shall issue all required uniforms and wet goods, in lieu of Eight Hundred Fifty Dollars (\$850.00) to all new personnel within thirty (30) days after a class has graduated from the academy.

ARTICLE 16, LEAVESA. Union Business

I award the following language:

In addition to the local president, leave from duty with full appropriate pay shall be granted to two members of the Local's Negotiating Committee who attend meeting between the City and the Union for the purpose of negotiating the terms of the contract, provided the employee is scheduled for duty at the time of the meeting. Any bargaining unit member who is released for these reasons will not be assigned a shift the day or night of the meeting.

B. Sick Leave:

Add the following new section:

The Union seeks to add the following paragraph:

"Sick leave" is hereby defined to mean an absence from the post of duty by a bargaining unit member, due to illness, accident, injury, disability, and/or exposure to contagious disease or the necessity to attend to and care for a seriously ill member of his or her immediate family. The term "immediate family" for the purpose of this Article shall include the following: a) spouse; b) parent; c) step-parent; d) child; e) step-child; f) foster child; and g) any other relative residing in the bargaining unit member's household.

C. Illness/Injury

The following provisions are eliminated:

16c(1). A medical Review Board shall be created for the purpose of examining members of the Atlantic City Fire Department. Any employee may be required to present to this Board a doctor's certificate to the effect that the illness or injury specified above required extended convalescence.

16c(3). All excuses and notification of illness or injury shall be submitted to the Medical Review Board for its determination.

D. Sick Leave Records and Abuse

Eliminate the last sentence from this section:

The City may process as a grievance any situation wherein an employee persistently abuses sick leave time.

I. Funeral Leave

Modify section 1 as follows:

1. Up to five (5) work days, at the discretion of the employee, shall be granted in the event of a death of a member of the immediate family or domestic or civil union partner of a firefighter. Immediate family shall include spouse, mother, father, sister, brother, child, mother-in-law, father-in-law, grandparent, grandchild, step-mother, step-father, step-sibling, step-children. Up to three working days, at the employee's discretion, shall be granted for any other related member of the employee's household.

These days are to be taken from either the date of death on or from the date of the funeral back.

ARTICLE 17 - VACATIONS

I award the following changes to Article 17:

Firefighters hired after January 1, 2012 will have the following vacation benefit:

Up to one (1) year of service	One (1) working day for each month of service
After one (1) year and up to ten (10) years of continuous service	12 working days
After ten (10) years and up to	15 working days

twenty (20) years of continuous service

After twenty (20) years of continuous 20 working days
Service

All firefighters with less than 20 years' service are provided with one (1) personal leave day a year. Firefighters with 20 or more years of service will continue to receive 4 personal leave days.

Eliminate Section B concerning the conversation of vacation time to sick time.

Delete Section D from the contract.

ARTICLE 18 - ACTING OUT OF TITLE

Incorporate the following provision into Section 18.A:
Once an officer is assigned out of title, and performs in that capacity for eight days, the officer shall be compensated at the higher rate of pay.

Remove the following language from Article 18, Section A.2.g:

[When a promotional vacancy is created due to the terminal leave provision, and where there is an existing promotional list, such promotion shall be made within fifteen (15) consecutive days of the vacancy. In the event there is no existing list, Section A.2.(d) will prevail.]

ARTICLE 20 - PAY SCALES

In addition to the salary award as discussed above, delete the last sentence from Section A.1., and sections E and F.

ARTICLE 23 - TRANSFERS AND ASSIGNMENTS

J. Posting Procedure and Selection Criteria:

Modify the second sentence of this section as follows:

The City shall immediately post notices on the bulletin boards in all fire stations and via electronic mail to all bargaining unit members setting forth the classification, job duties and

requirements, hours and days of work, starting time and wage rate of the job to be filled permanently.

Delete Sections A, C, the first sentence of J.1, the last sentence of J.2, the phrase "...exercise bona fide discretion..." in J.4 and Section J.5.

ARTICLE 24 - HEALTH AND SAFETY

Delete the following sentence from Section A:

Such safety and health considerations shall include protective equipment and technological innovations.

Eliminate paragraph F and G.

ARTICLE 25 - EDUCATION

Add to section C.7. as follows:

(e) One (1) water course related to fire services

ARTICLE 26 - SECONDARY JOBS

Eliminate this Article in its entirety.

ARTICLE 31, SUSPENSION AND FINES

Delete the following language from section D:

[If a member is suspended, he/she shall give a hearing before the Mayor or his/her designate.]

ARTICLE 32 - HEALTH BENEFITS

Modify Section B as follows:

Effective January 1, 2016, the co-payment for generic drugs shall be increased to \$15.00 per prescription and the co-payment for non-generic drugs shall be increased to \$35.00 per prescription.

Modify Section B.2 as follows:

Dental Benefits - Effective January 1, 2016, active employees shall pay a \$50.00 deductible for covered services.

Add the following provision:

Retiree Health Services:

For employees hired after July 1, 2015, retirees shall receive medical health coverage upon completion of twenty-five (25) years of service with the City, and such service shall be in good standing with the Police and Fire Retirement System.

ARTICLE 37 - GRANT COMMITTEE (NEW)

Add the following new Article:

In light of the financial situation in the City, a Grant Committee shall be established to consider all grant opportunities. The Grant Committee shall consist of the Mayor or his/her designee, the Union President or his/her designee, and the Fire Chief or his/her designee.

Any grant approved by the Grant Committee shall be submitted to City Council.

* * *

All proposals by the County and the PBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been modified by the terms of this Award and any prior agreements between the parties.

Pursuant to N.J.S.A. 34:13A-16(f), I certify that I have taken the statutory limitation imposed on the local tax levy cap into account in making the award. My Award also explains how the statutory criteria factored into my final determinations.

Susan W. Osborn
Interest Arbitrator

Dated: June 4, 2015
Trenton, New Jersey

On this 4th day of June, 2015, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.