

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

THE CITY OF ORANGE TOWNSHIP,

“Public Employer,”

- and -

**FMBA LOCAL 210,
FIRE OFFICERS ASSOCIATION,**

“Union.”

**DECISION
ON
REMAND**

Docket Nos. IA-2010-101
and IA-2011-024

**Before
James W. Mastriani
Arbitrator**

Appearances:

For the Employer:

Joseph M. Wenzel, Esq.
City of Orange Township

For FMBA Local 210 (FOA):

John D. Feeley, Esq.
Feeley & LaRocca, LLC

On July 7, 2016, I issued a conventional interest arbitration award involving the City of Orange Township [the "City"] and three of its public safety bargaining units. It awarded various terms and conditions of employment for PBA Local 89 (rank and file police officers) and for FMBA Local 10 (rank and file firefighters) from January 1, 2010 through December 31, 2016 and for FMBA Local 210 (Fire Officers Association or FOA) from January 1, 2009 through December 31, 2016.

On July 20, 2016, the City of Orange Township [the "City"] filed a four page appeal of the Award. The appeal asserted that the Award was imperfectly executed because it did not address the 2% cap on the awarding of base salary increases nor properly take into account the financial impact of the Award on the City pursuant to N.J.S.A. 34:13A-16(g)(6). The City requested leniency from PERC because it was unable to produce evidence from the original hearings in support of the appeal. It asserted that the files of the proceeding in the City's law department offices containing evidentiary documents were destroyed due to a flood resulting from a pipe burst. For this reason, the City could not: "simultaneously file an original and nine copies of an appendix containing those parts of the record the appellant considers necessary to the proper consideration of the issues, including such parts as the appellant should reasonably assume will be relied upon by the respondent in meeting the issues raised." (N.J.A.C. 19:16-8.1)

On September 8, 2016, PERC issued a decision on appeal. It remanded the Award for the purpose of providing an explanation and clarification of the financial impact of the Award and to explicate the relative weight and relevance, if any, of N.J.S.A. 34:13A-16(g) factors other than “the following five as those (the arbitrator) had deemed to be the most relevant: interests and welfare of the public (16(g)(1)); internal and external comparability (16(g)(2)); financial impact (16(g)(6)); and statutory limitations on the City (16(g)(5) and (9)).” PERC also found that the arbitrator, by crediting and relying on the un rebutted evidence submitted by the Unions’ financial expert, did not express specific cost figures and instead noted that the costs of the award were less than half of what the financial expert contended the City could afford. PERC directed the arbitrator to “explain which specific evidence from the parties’ experts/witnesses was relied upon.” PERC also directed the arbitrator to “to show total net economic change for each year of the Award.” PERC dismissed the City’s chief argument that the City referred to as “the crux of the appeal” that the awarded salary increases were required to, but did not, comply with the statutory 2% cap on base salary increases. The dismissal of this aspect of the appeal was based upon well settled case law holding that if the prior labor agreements, as here, expired prior to January 1, 2011, they are not subject to the 2% statutory cap as required by P.L. 2010, c. 105 and its amended version, P.L. 2014, c. 11. PERC observed that if the parties avail themselves of interest arbitration after the December 31, 2016 expiration date, the 2% hard cap on base salary increases would then apply.

At the outset, it should be noted that the scope of this award on remand substantially changed after the September 8, 2016 PERC decision to remand. During the pendency of the remand, the City and PBA Local 89 successfully negotiated a Memorandum of Agreement covering years 2010 through 2020. The MOA extended and altered the terms covered by the 2010-2016 Award for the PBA and set new terms for an additional four years thereafter, 2017-2020. On October 24, 2016, after mutual ratification of the MOA, the City filed a request with PERC asking that the portion of its appeal with regard to PBA Local 89 be marked as having been withdrawn with prejudice. On October 27, 2016, PERC accepted the City's request to withdraw the PBA portion of its appeal.

After confirming that there were ongoing negotiations with FMBA Local 10, on December 11, 2016 I requested a status update on negotiations between the City and FMBA Local 10. I was advised by the City that a resolution had been reached, although it could not be confirmed at that time by FMBA Local 10. On December 21, 2016, FMBA Local 10 advised that it had agreed to terms and that the City had approved a settlement. The MOA with FMBA Local 10 also extended and altered the terms covered by the 2010-2016 Award and set new terms for an additional four years (2017-2020).¹ On December 27, 2016, the City informed PERC that an agreement had been reached with FMBA Local 10 and requested that the portion of its appeal with regard to FMBA Local 10 be marked as without

¹ I requested that the City, FMBA Local 10 or Local 210 submit a copy of the MOA. It was submitted by counsel for Local 210. On December 28, 2016, I requested the City and FMBA Local 10 confirm that the MOA was, in fact, the one that was ratified. I received a response from FMBA Local 10 on January 3, 2017 that the MOA appeared to represent the terms that the City and FMBA Local 10 ratified.

prejudice. It noted that the only remaining active dispute is the portion of its appeal concerning FMBA Local 210 (the FOA). On December 28, 2016, PERC accepted the City's request to withdraw the FMBA Local 10 portion of its appeal. Accordingly, PERC's decision on remand, and the scope of the City's appeal, is now limited to the terms that were awarded for FMBA Local 210, FOA.

Due to the terms of the PBA Local 89 and the FMBA Local 10 MOAs, the financial impact of the Award on the City during the 2010-2016 time period of the Award has changed and now has substantially less financial impact on the City than what had been awarded. I briefly describe some of their terms for the sole purpose of explaining and providing context to the financial impact of the award on FMBA Local 210 as required by the PERC remand. The MOAs each included additional 2% across the board increases beyond that which had been awarded for 2010-2016. Going forward, the MOAs provided each unit with 3% annual across the board increases from 2017 through 2020. However, the terms of the MOAs required no retroactive payments for either unit for any of the across the board increases that were either awarded or later voluntarily agreed to during contract years 2010 through 2016. Instead of receiving retroactive payments, each PBA Local 89 and FMBA Local 10 member received a one-time lump sum payment of between 1.5% and 12.5%, based upon a percentage of an employee's base salary and longevity, depending upon that employee's length of service with the City during the 2010-2016 time period. This aspect of the MOAs reduced the City's financial obligation between 2010 and 2016 under the terms of the Award by

substantial amounts.² Because the MOAs eliminated the retroactive obligation of all of the increases either awarded or agreed to for 2010 through 2016, the financial impact of the FOA award on the City is substantially less than what was required by the Award due to the retroactive portion of the Award now being limited to approximately twenty (20) members of the FOA unit rather than the forty-six (46) members of the FMBA Local 10 unit and the fifty-eight (58) members of the PBA Local 89 unit. The MOAs did create additional costs to the City and improved salaries for PBA Local 89 and FMBA Local 210 going forward beyond the terms of the Award. But during the Award's contract period, the terms of the MOAs eliminated its retroactive obligation for the two significantly larger units leaving the City's retroactive obligation to the smaller FOA unit.

The PERC remand ordered an "explanation and clarification of the financial impact of the salary award" taking "into account both the percentage increases awarded for the term of the successor agreement and the raises resulting from advancement on the salary guide" and explaining "which specific evidence from the parties' experts/ witnesses was relied upon." In addressing the above issues, I observe that the only financial expert offered in this proceeding that offered a financial report and testimony that comprehensively addressed the financial impact of the parties' proposals was Union witness Raphael J. Caprio, Ph.D. He provided specific evidence as to all three bargaining units, including evidence for the one

² The only cost estimates for retroactivity were offered by the Unions' financial expert who estimated the costs for PBA Local 89 alone to be close to \$1,000,000 between 2010 and 2013 based upon its proposed 3% increases. Because the award was half of what the Unions had proposed, the retroactivity costs were lower than what the Unions estimated but the remaining three years beyond 2013 would require at least the costs estimated by the Unions for the PBA alone.

remaining unit that is subject to this award on remand. Dr. Caprio submitted a 14 page Certification addressing relevant financial issues as well as a 68 page financial analysis of the City of Orange Township that included 55 exhibits that were relevant to the City's financial and socio-economic profile. Dr. Caprio also provided testimony in support of his report and was cross-examined by the City. As indicated in the Award (at page 76), his report was essentially unrebutted. Two Certifications offered by the City were received into evidence. Although not subject to cross-examination, the content of the Certifications were admitted into evidence and relied upon by me in part to award half of the across the board increases the Unions proposed and to defer retroactive payments on those increases to 2016 and 2017. Dr. Caprio's report and testimony, while providing credible evidence, were not fully adopted nor relied upon by the arbitrator to award the salary proposals advanced by the three Unions because, for reasons stated in the Award, "I do not agree that the City is capable of funding the costs of the Unions' proposals." (at p. 75). I relied on Dr. Caprio's specific cost estimates and analysis that related to the salary proposals of FMBA Local 210 (FOA). (See p. 8 of Report and Exhibit Numbers 24, 25, 26, 26A, 26B, 26C, as well as many exhibits in the FOA's binder submissions at hearing). I find Dr. Caprio's calculations to be credible in the absence of any competing analysis provided by the City. This cost analysis was subject to cross-examination and was not contradicted. The credible nature of his report and testimony was reflected in his candid acknowledgement that the City failed to plan or reserve monies between 2010 and 2013 that would fully support retroactive payments required by either an award or a voluntary

settlement although he noted that “prudent planning by the City should have encumbered appropriate funds.” This observation is less significant now that all of the retroactive payments for PBA Local 89 and FMBA Local 10 between 2010 through 2016 have been eliminated by their MOAs.

The terms of the Award for FMBA Local 210 (the FOA) began on January 1, 2009. The FOA, unlike the other three public safety units, did not have a labor agreement for contract year 2009. PBA Local 89 and FMBA Local 10 were in the last year of their agreements. Both received a 3% increase on January 1, 2009 and an additional 1% on July 1, 2009. The Police SOA was party to an agreement that expired on December 31, 2011 and contained a wage increase in 2009 of 2% on January 1, 2009 and 1% on July 1, 2009. In this proceeding, the FOA proposed an increase of 3% effective January 1, 2009 and an additional 1% effective July 1, 2009 for the 2009 contract year in which it, unlike the other units, did not have an agreement. The City proposed 0% as it also did for 2010, 2011 and 2012. For reasons stated in the July 7, 2016 award, I awarded a 2% increase for the FOA for 2009 despite the fact that this represented a break in longstanding internal comparability with the other units. This finding was based mainly on the fact that economic circumstances had dramatically changed after the time that the City had made agreements with PBA Local 89, FMBA Local 10 and the Police SOA. Due to the financial impact of retroactive costs for the 2009 increase, I deferred the 2009 increase to 1%, effective January 1, 2015 with the other 1% effective January 1, 2016 without any retroactive payments. Based upon this, there were no costs

associated with the 2009 increase until January 1, 2015 and January 1, 2016. These costs must be calculated on their effective dates of January 1, 2015 and January 1, 2016 in addition to the costs required by the annual 1.5% increases effective January 1, 2010 through January 1, 2016 and the delayed retroactivity for all of the increases.

The costs of the Award will be calculated based upon the salary award set forth for the FOA at Section 10, pages 82 and 83 as follows:

The 2009 salary schedule for the FOA shall be increased by 2%. The increases shall be deferred to 2015 and 2016. One percent of this salary adjustment shall become effective January 1, 2015. The other 1% shall be effective January 1, 2016. There shall be no retroactivity to accompany these wage adjustments.

There shall be 1.5% increases at rank effective January 1, 2010, January 1, 2011, January 1, 2012, January 1, 2013, January 1, 2014, January 1, 2015 and January 1, 2016. Retroactive payments for years 2010, 2011 and 2012 shall be made at 50% of what is due and payable during contract year 2016 as soon as is administratively feasible with the remaining 50% due and payable on the first pay period that occurs in January 2017.

I next turn to the specific cost figures as requested in the PERC remand. The part of the PERC remand requiring calculation for the costs of step increases is no longer operative given the fact that the appeal is now limited to the FOA. There are zero costs for step movements or increments in any year for members of this unit due to the fact that the FOA contract does not provide a salary schedule with step increases such as the ones that exist in the PBA Local 89 and FMBA Local 10 units. Therefore, the Award contains no costs for step movement. The

salaries for Captains and Deputy Fire Chief, the only ranks in the units, have the following contract structure on which to base costs. Fire Officers receive contractually defined annual amounts that are defined as "base salary." However, after the display of that figure, the last full contract (2001-2004) goes on to calculate "annual salaries" that include longevity percentages depending on percentage amounts received. The contract also provides for a portion of holiday pay to be folded in on top of base salary based upon a negotiated formula. The holiday pay to be folded in is contractually defined as ninety-five (95) hours of each officer's "base salary" rate. The number of annual hours is set at 2,184 hours based upon an average 42 hour week. This formula causes holiday pay to be calculated at 0.435% of base pay. The last such reference to this specific salary structure appeared in the labor agreement that expired on December 31, 2004. Thereafter, there was an MOA that contained percentage increases as an addendum to the full contract. In addition, there is a \$2,000 stipend for a Fire Inspector/Fire Official License that which was not changed by the terms of the award.

The staffing table for the FOA contains fluctuations due to retirements and promotions, although total staffing at record close averaged twenty (20) officers. There was also a period in 2010/2011 where four Captains were temporarily demoted to firefighters due to a Reduction In Force. Their Captain rank was later restored in 2011 by mutual agreement. For the purposes of cost calculations, I will assume a staffing level of fifteen Captains and five Deputy Chiefs due to testimony indicating the existence of four firefighting platoons and one administrative unit,

although, as indicated, staffing levels have been less and subject to change during the contract period due to retirements and promotions. The cost analysis will be by individual Captains and Deputy Fire Chiefs as well as collectively. If later changes were made, actual costs can be calculated based upon the individual costs calculated for each ranking officer.

In the agreement that expired on December 31, 2004, the last contractually defined "base salary" for a Fire Captain was \$73,681 at the end of 2003. That agreement provided for a wage re-opener in 2004. The parties then negotiated an addendum to the agreement through December 31, 2008. Based upon the percentage wage increases reflected in the addendum to the contract from January 1, 2005 through July 1, 2008 [3%-1%, 3%-1%, 3%-1% and 2%-1%], and a schedule of salaries through the last increase on July 1, 2008, the contractually defined "base salary" for the Fire Captain rose to \$88,902.06. A similar analysis, based upon this record evidence, reflects that the contractually defined "base salary" for a Deputy Chief on July 1, 2008 rose to \$99,501. These represent the baseline base salaries for each rank. For the purpose of cost calculations, a reasonably accurate projection for an overall individual salary beyond base salary for both ranks upon which costs can be calculated will assume the Fire Captain and Deputy Chief's receipt of longevity at the highest step of 14% and holiday pay at 95 hours, or 0.435% of annual base pay based upon 2,184 annual hours of work, I accept the comparisons offered in FOA Exhibits 19, 20, 21, 22, 23 and 24 which have not been contradicted in the record.

I first turn to the rank of Deputy Chief. Under the terms awarded, the cost of the Award for an individual Deputy Chief is zero in 2009. The 2% increase on the \$99,501 base salary for 2009 calculates to \$1,990. This increase was deferred to 1% (\$995) effective January 1, 2015 and the other 1% (\$995) to January 1, 2016 without retroactivity. These costs will be calculated at the times they occur. The 1.5% increase to base salary effective January 1, 2010 is \$1,493, raising the base salary to \$100,994. The increase in holiday pay received is an additional \$65. The increase on 14% longevity is an additional \$216. The total increase for the 1.5% increase is \$1,774 or 1.78%. The 1.5% increase to base salary effective January 1, 2011 is \$1,515, raising the base salary to \$102,509. The increase in holiday pay received is an additional \$66. The increase on 14% longevity is an additional \$221. The total increase for the 1.5% increase is \$1,802 or 1.78%. The 1.5% increase to base salary effective January 1, 2012 is \$1,537, raising the base salary to \$104,046. The increase in holiday pay received is an additional \$67. The increase on 14% longevity is an additional \$225. The total increase for the 1.5% increase is \$1,829 or 1.78%. The 1.5% increase to base salary effective January 1, 2013 is \$1,561, raising the base salary to \$105,607. The increase in holiday pay received is an additional \$68. The increase on 14% longevity is an additional \$228. The total increase for the 1.5% increase is \$1,859 or 1.78%. The 1.5% increase to base salary effective January 1, 2014 is \$1,584, raising the base salary to \$107,191. The increase in holiday pay received is an additional \$69. The increase on 14% longevity is an additional \$231. The total increase for the 1.5%

increase is \$1,884 or 1.78%. On January 1, 2015, the Deputy Chief would receive the 1%, or \$995 increase of the portion of the 2% increase for January 1, 2009 that was deferred to January 1, 2015. This would raise the base salary to \$108,186 before the 1.5% increase to base salary. The 1.5% increase to the adjusted base salary effective January 1, 2015 is \$1,622. This increase raises the base salary amount to \$109,808. The increase in holiday pay received is an additional \$113. The increase on 14% longevity is an additional \$382. The total increase for the 1.5% increase as supplemented by the implementation of one half of the 2009 increase is \$3,100 or 2.8%. On January 1, 2016, the Deputy Chief would receive the other 1%, or \$995 increase of the portion of the 2% increase for January 1, 2009 that was deferred to January 1, 2016. This would raise the base salary to \$110,803 before the 1.5% increase to base salary. The 1.5% to the adjusted base salary effective January 1, 2016 is \$1,662, raising the base salary to \$112,465. The increase in holiday pay received is an additional \$116. The increase on 14% longevity is an additional \$388. The total increase for the 1.5% increase as supplemented by the implementation of the other half of the 2009 increase is \$3,161 or 2.8%.

I next turn to the costs of the Award for those in the rank of Captain. Under the terms awarded, the cost of the Award for an individual Captain is zero in 2009. The 2% increase on the \$88,902 base salary for 2009 calculates to \$1,778. This increase was deferred to 1% (\$889) effective January 1, 2015 and the other 1% (\$889) to January 1, 2016 without retroactivity. These costs will be calculated at

the times they occur. The 1.5% increase to base salary effective January 1, 2010 is \$1,333, raising the base salary to \$90,235. The increase in holiday pay received is an additional \$58. The increase on 14% longevity is an additional \$195. The total increase for the 1.5% increase is \$1,586 or 1.78%. The 1.5% increase to base salary effective January 1, 2011 is \$1,353, raising the base salary to \$91,588. The increase in holiday pay received is an additional \$59. The increase on 14% longevity is an additional \$198. The total increase for the 1.5% increase is \$1,610 or 1.78%. The 1.5% increase to base salary effective January 1, 2012 is \$1,373, raising the base salary to \$92,961. The increase in holiday pay received is an additional \$60. The increase on 14% longevity is an additional \$201. The total increase for the 1.5% increase is \$1,634 or 1.78%. The 1.5% increase to base salary effective January 1, 2013 is \$1,394, raising the base salary to \$94,355. The increase in holiday pay received is an additional \$61. The increase on 14% longevity is an additional \$204. The total increase for the 1.5% increase is \$1,659 or 1.78%. The 1.5% increase to base salary effective January 1, 2014 is \$1,415, raising the base salary to \$95,770. The increase in holiday pay received is an additional \$62. The increase on 14% longevity is an additional \$207. The total increase for the 1.5% increase is \$1,684 or 1.78%. On January 1, 2015, the Captain would receive the 1%, or the \$889 increase of the portion of the 2% increase for January 1, 2009 that was deferred to January 1, 2015. This would raise the base salary to \$96,669 before the 1.5% increase to base salary. The 1.5% increase to the adjusted base salary effective January 1, 2015 is \$1,450. This increase raises the base salary amount to \$98,119. The increase in holiday

pay received is an additional \$102. The increase on 14% longevity is an additional \$343. The total increase for the 1.5% increase as supplemented by the implementation of one half of the 2009 increase is \$2,784 or 2.8%. On January 1, 2016, the Captain would receive the other 1%, or \$889 increase of the portion of the 2% increase for January 1, 2009 that was deferred to January 1, 2016. This would raise the base salary to \$99,008 before the 1.5% increase to base salary. The 1.5% increase to the adjusted base salary effective January 1, 2016 is \$1,485, raising the base salary to \$100,493. The increase in holiday pay received is an additional \$109. The increase on 14% longevity is an additional \$354. The total increase for the 1.5% increase as supplemented by the implementation of the other half of the 2009 increase is \$2,837 or 2.8%.

The total net annual economic change in percentages, including the annual across the board increases and the roll up costs for increases in holiday pay and longevity over the terms of the award (2009-2016) for Deputy Chiefs is 0% in 2009, 1.78% in 2011, 1.78% in 2012, 1.78% in 2013, 1.78% in 2014, 2.8% in 2015 and 2.8% in 2016. Assuming a staffing level of five (5) Deputy Chiefs, the total annual economic change in dollars is \$0 in 2009, \$8,870 (\$1,774 x 5) in 2010, \$9,010 (\$1,802 x 5) in 2011, \$9,145 (\$1,829 x 5) in 2012, \$9,295 (1,859 x 5) in 2013, \$9,420 (\$1,884 x 5) in 2014, \$15,500 (\$3,100 x 5) in 2015 and \$15,805 (\$3,161 x 5) in 2016.

The total net annual economic change in percentages, including the annual across the board increases and the roll up costs for increases in holiday pay and longevity over the terms of the award (2009-2016) for Captains is 0% in 2009, 1.78% in 2010, 1.78% in 2011, 1.78% in 2012, 1.78% in 2013, 1.78% in 2014, 2.8% in 2015 and 2.8% in 2016. Assuming a staffing level of fifteen (15) Captains, the total annual economic change in dollars is \$0 in 2009, \$23,790 (\$1,586 x 15) in 2010, \$24,150 (\$1,610 x 15) in 2011, \$24,501 (\$1,634 x 15) in 2012, \$24,885 (\$1,659 x 15) in 2013, \$25,260 (\$1,684 x 15) in 2014, \$41,780 (\$2,784 x 15) in 2015 and \$42,555 (\$2,837 x 15) in 2016.

The PERC remand required the arbitrator to “provide an explanation regarding the relevance, if any, ascribed to the 16(g) factors not specifically identified in the Award as being most relevant.” The other 16(g) factors that were not included among the “most relevant” were the cost of living (16(g)(7)), the continuity and stability of employment (16(g)(8)), the stipulations of the parties (16(g)(4)) and overall compensation received by the employees (16(g)(3)). Although I did not identify these factors as being among the “most relevant” (such as the interests and welfare of the public (16(g)(1)), comparison of wages (16(g)(2)), lawful authority of the employer (16(g)(5)), and statutory restrictions imposed on the employer ((16(g)(9)), this did not constitute a finding, nor did it intend to imply, that the remaining factors were not relevant, nor entitled to any weight whatsoever.³ I note that the Award did specifically identify the criteria that

³ I incorporate the July 7, 2016 award by reference into the decision on remand.

were deemed not to be among the “most relevant factors.” By doing so, the Award addressed their relevance. I incorporate the inclusion of those references into this Award on Remand:

N.J.S.A. 34:13A-16g(7) – Cost of Living

The City’s wage proposals are below the cost of living data. The Unions’ wage proposals are above the cost of living data. A salary award cannot be directly tied to the cost of living data. While it may be a factor that influences a wage result, it is only one of the many criteria that are relevant and entitled to weight when making a wage determination. The weight to be given to this data suggests an award higher than proposed by the City but lower than what has been proposed by the Unions. (p. 66-67).

N.J.S.A. 34:13A-16g(8) – Continuity and Stability of Employment

The City’s wage proposal (3% over six (6) years for PBA Local 89 and FMBA Local 10 and 3% over seven (7) years for FMBA Local 210, FOA) would cause a broader gap in comparisons within Essex County generally and among municipalities within the County that are the most comparable to Orange. Such a result is not in consistent with the interests and welfare of the public and could undermine department morale, interfere with continuity and stability of employment and lessen the effectiveness of the public safety operation. (p. 68).

N.J.S.A. 34:13A-16g(3) - Overall Compensation Received by the Employees

The continuity and stability of employment for police officers, firefighters and fire superiors has not been shown to have been adversely impacted by wage and benefit levels set forth in the respective collective negotiations agreements. The City’s proposal, if awarded, could alter this finding for prospective years because wage levels would stagnate in relation to other jurisdictions. The overall compensation currently received is comparatively low but the relative assets of the City to fund its labor agreements must be taken into consideration as a reason for wage disparities. It is reasonable to conclude that overall compensation levels are in harmony with what the City has been able to afford for the difficult and dangerous

work performed by its public safety officers. An improvement in those terms is warranted but the level of improvement must be consistent with all of the statutory factors and not limited to salary comparisons among the County's wealthiest municipalities. (p. 71).

N.J.S.A. 34:13A-16g(4) – Stipulations of the Parties

There were no stipulations of the parties and thus this factor is not relevant. The Award did not state this nor indicate that this factor had no relevance due to the absence of any evidentiary stipulations offered by the parties.

Given the record in this proceeding and the now much narrower scope of this decision on remand, the conclusions reached in the original award do not warrant change in the original terms that were awarded with respect to FMBA Local 210. The last increase received by this unit was on July 1, 2008. An exception to this conclusion is the portion of the Award on retroactivity. The contract year (2016) in which 50% of the retroactivity was deferred and due has passed leaving the entire amount to be paid in one fiscal year rather than two. The amounts of retroactivity can be calculated based upon the cost analysis previously provided. The absence of any retroactive obligation to the other units that were subject to the original award substantially eases the burden to pay retroactivity for the costs of the award previously described.

The costs of the Award for the FOA will not cause adverse impact on the governing body nor the taxpayers. It is noted that management of the fire department requires staffing by experienced experts in fire prevention and

firefighting and those who can effectively supervise and manage in a densely populated urban environment. The record shows that the City appropriated less funds that were allowable under the appropriations cap between 2010 and 2013. These figures range from \$1,295,000 in 2013 to \$4,800,000 in 2010. This spending authority is, of course, limited by the City's requirement to live within the property tax levy cap. In other words, its inability to raise revenue from taxes could prevent its ability to increase appropriations if such appropriations were to be limited by the City's inability to raise revenues without exceeding its tax levy cap. During the same time period, the record reflects that the City did not use its discretion to raise revenue through taxation within the limit of its lawful taxing capacity.⁴ Moreover, the City has been consistently able to replenish its fund balance and reached an unencumbered fund balance approaching \$3 million in 2013. During these years, the City did not appropriate funds to meet any increase in the funding of its labor agreements. While this is not to suggest that use of surplus is the most desirable method of funding labor agreements in the absence of budgeting funds for this purpose, the amount of funds required to fund the award can use unencumbered funds as a source of payment. Also, the record shows that the percentage of lost employee income due to mandatory Chapter 78 premium contributions for FOA members at approximately 9% to 10% of their salaries has been a significant source of savings to the City. Dr. Caprio provided substantial evidence of the extent of the unit's contributions in Exhibits 16, 17, 18,

⁴ Exhibits 1 and 2 of Dr. Caprio's report.

19, 20, 21, 22 and 23. The record shows that the estimated average premium co-pay by an FOA member's average premium co-pay would rise to \$9,401 in 2015.

Based upon all of the above, I respectfully enter the Award on Remand.

AWARD ON REMAND

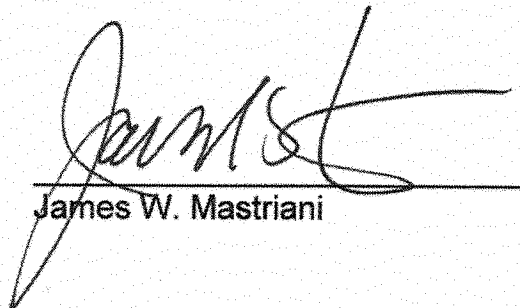
The Award on pages 81 through 83 as set forth in the July 7, 2016 Award shall be incorporated herein with the exception of the following changes due to the passage of time.

10. **Salary**

The 2009 salary schedule for the FOA shall be increased by 2%. The increases shall be deferred to 2015 and 2016. One percent of this salary adjustment shall become effective January 1, 2015. The other 1% shall be effective January 1, 2016. There shall be no retroactivity to accompany these wage adjustments.

There shall be 1.5% increases to base salary for each rank effective January 1, 2010, January 1, 2011, January 1, 2012, January 1, 2013, January 1, 2014, January 1, 2015 and January 1, 2016. Retroactive payments for all contract years beyond 2009 shall be made as soon as is administratively feasible but, except for mutual agreement to the contrary, within sixty (60) days.

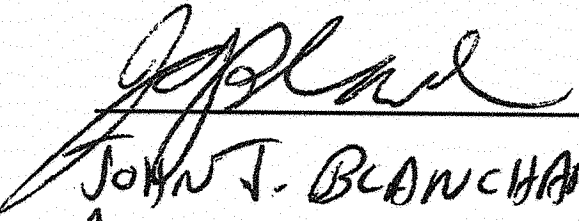
Dated: January 3, 2017
Sea Girt, New Jersey



James W. Mastriani

State of New Jersey }
County of Monmouth } ss:

On this 3rd day of January, 2017, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.


JOHN J. BLANCHARD
Attorney At Law
of New Jersey