STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

Docket No. IA-98-121

In the Matter of Interest Arbitration Between:

CITY OF ELIZABETH ,

-Employer-

and

ELIZABETH FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION, LOCAL NO. 9,

-Union-

OPINION AND AWARD

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

MEDIATION SESSIONS/ FORMAL HEARINGS: December 16, 1998, March 5, 1999, April 28, 1999, June 23, 1999, October 27, 1999, October 28, 1999, November 8, 1999, February 29, 2000.

APPEARANCES:

For the Employer
James J. McGovern, III Esq.
Brian O. Lipman, Esq.
GENOVA, BURNS & VERNOIA

For the Union
David I. Fox, Esq.
Stacey B. Rosenberg, Esq.
FOX & FOX LLP.

BACKGROUND

The undersigned was mutually selected by respective counsel to serve as the Interest Arbitrator in this matter. The Public Employment Relations Commission made the formal appointment of my service pursuant to *N.J.A.C.* 19:16-5.6.

The parties initially met with me on December 16, 1998, March 5, 1999, and April 28, 1999, in mediation sessions. While progress was made, it became apparent that no voluntary settlement would be reached and, as a result, the matter was set down to be decided in a formal interest arbitration hearing with conventional authority resting in the Arbitrator, pursuant to the statute.

Hearings were held on June 23, 1999, October 27, 1999, October 28, 1999, November 8, 1999, and February 29, 2000. March 16, 2000 was also scheduled for hearing, but was not needed since the matter concluded on February 29, 2000. In addition, accompanied by appropriate City and Union officials, the Arbitrator toured the City and was shown various City sites which the parties believed were appropriate for the Arbitrator to visualize. At the conclusion of the hearings, the parties agreed to submit Reply Certifications from their financial experts and to a schedule which called for briefs to be postmarked by June 27, 2000. Note should be made that all counsel, namely, Mr. McGovern and Mr. Lipman for the City and Mr. Fox and Ms. Rosenberg for the Union, served their clients extremely well in this complex arbitration.

CONTROLLING STATUTE

The statutory device to resolve labor disputes between municipalities and public safety unions is set forth in *N.J.S.A.* 34:13a-16. The terminal procedure for this binding interest arbitration is outlined in *N.J.S.A.* 34:13a-16(d), which provides in pertinent part:

...d. The following procedure shall be utilized if parties fail to agree on a terminal procedure for the settlement of an impasse dispute:

(1) In the event of a failure of the parties to agree upon an acceptable terminal procedure the parties shall separately so notify the Commission in writing, indicating all issues in dispute and the reasons for their inability to agree on the procedure. The substance of a written notification shall not be the basis for any delay in effectuating the provisions of this subsection.

(2) Upon receipt of such notification from either party or on the Commission's own motion, the procedure to provide finality for the resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall separately determine whether the total net annual economic changes for each year of the agreement are reasonable under the eight statutory criteria set forth in subsection g. of this section...

In determining which final offer to accept, the Arbitrator is required by N.J.S.A. 34:13A-16(g) to consider the following factors:

1. The interest 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 service 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 jurisdiction, as determined in accordance with section 5 of P.L.1995, c. 425 (C.34:13A-16.2); provided, however that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

4. Stipulations of the parties.

5. The lawful authority of the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c. 68 (C.40A:4-45. 1 et seq.)

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

7. The cost of living.

8. The continuity and stability of employment including seniority rights and such other factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective negotiations and collective bargaining between the parties in the public service and in private employment. (N.J.S.A. 34:13A-16g)

FINAL OFFERS

ELIZABETH FMBA's FINAL OFFER (source FMBA brief, pages 12-20.) The FMBA seeks the following contract modifications.

1. **Salary Increases**

   5.0% effective July 1, 1998

   4.5% effective July 1, 1999

4.0% effective July 1, 2000

5.0% effective July 1, 2001

5.5% effective July 1, 2002

2. **Longevity (Article XI)**

   (a) Effective July 1, 1998, increase maximum longevity benefits from 10% to 14%.

   (b) Maintain longevity benefits for all firefighters, including new hires.

3. **Terminal Leave (new provision)**

   Effective July 1, 1998, implementation of a terminal leave program for retiring Elizabeth firefighters with a benefit of $20,000.

4. **Holiday Pay**

   Effective June 1, 1998, two additional paid holidays.

5. **Prescription Plan**

   Effective June 1, 1998, provide prescription plan for retirees.

6. **Funeral Leave (Article XVIII)**

   Modify the provision to permit one (1) 24-hour shift to be taken off as funeral leave in the event of the death of an aunt or uncle.

7. **Jury Duty (new provision)**

   New provision to provide that firefighters subject to jury duty will be relieved from his/her fire department tour of duty 12 hours before jury duty and 12 hours after jury duty.

THE CITY'S FINAL OFFER (source City's brief, page 6).

1. **Salary Increase**

   3% effective January 1, 1999

   3% effective January 1, 2000

   3% effective January 1, 2001

   3% effective January 1, 2002

   3% effective January 1, 2003

2. **Longevity**

Provided that longevity is eliminated for employees hired on or after July 1, 1999, the following increases are offered by the City for employees hired prior to July 1, 1999:

4th year of employment to completion of 7th year – 2%

8th year of employment to completion of 11th year – 4%

12th year of employment to completion of 15th year – 6%

16th year of employment to completion of 19th year – 8%

20th year of employment to completion of 24th year – 10%

25th year of employment and over – 12%

3. **Holidays**

   One new holiday folded into base pay effective July 1, 1999.

4. **Vision Care**

Employees will be entitled to coverage under the City's vision care program.

TERM OF AGREEMENT

The parties agreed that the term of the successor agreement shall be five years, effective July 1, 1998, and ending June 30, 2003.

The Arguments on Behalf of FMBA's Position

The FMBA argues the following points in support of the contention that its Final Offer should be awarded in its entirety:

Interest and Welfare of the Public

In its brief, the FMBA reviewed the testimony and financial reports of its financial expert witness, Thomas Banker. Banker asserted that the City is in sound financial condition and able to pay the FMBA's Final Offer without burdening the taxpayers or requiring any significant reduction in services.

Banker noted that the City has an excellent program of economic development in progress. He referred to several projects, including the Jersey Gardens Mall which should generate to the City $6.5 million dollars in franchise fees alone, the Mid-Town Redevelopment Project, the Newark-Elizabeth Light Rail Project, the Union County Light Rail Project and the Elizabeth Urban Enterprise Zone. The Union noted that Moody's Investors Service recently upgraded the City's bond rating, stating that "revenues expected from economic development or from management the flexibility to establish and maintain structural balance." (Transcript 2/29/00-26:1-14; Banker Cert. Ex.C).

Banker testified that the difference between the base salary proposals of each party was 1.9% or about $200,000 to $250,000 a year. He estimated the difference as about 3% when the other economic benefits in dispute are included. It was Banker's opinion that the City can afford such an increase without affecting the condition of the taxpayers or the City's properties. He asserted that Elizabeth is in better financial condition than comparable cities such as Newark, East Orange and Irvington, which pay higher compensation to their firefighters. He claimed that the City has budget flexibility, citing about $4,000,000 a year in appropriation reserves. Banker further claimed that the Jersey Gardens Mall and other current development projects will add $6 to 8 million dollars a year to the City's financial condition. The FMBA argues that if the City was awarded the elimination of longevity for new hires which it seeks, the City's final offer over five years would result in no economic increase or even a reduction in overall compensation.

Banker reviewed the City's budgets of the past several years and the proposed and actual budgets for the fiscal years 1996 through 2000. He offered the opinion that Elizabeth has been following sound budgetary practices. He said that the City has been receiving revenues equal to or greater than expectations and generally spending less than the sums appropriated. He noted that the City has been maintaining unobligated appropriation reserves of about $3,950,000 per year. Banker reported that the City's budget for the year 2000 is conservative and includes a property tax rate, which on an equalized basis is actually reduced. He also testified that the City has historically not spent appropriation reserves, permitting them to "lapse to surplus." Banker said that this is a good budgetary practice and noted that for the 1999 budget the City reserved about $4.5 million in appropriations.

Banker reviewed the City's tax rate and concluded that it has been very stable. He noted that the City's tax rate only increased 6.6% over a 5 year period, which is lower than neighboring and comparable communities. He also noted that the equalized rate is also lower than comparable communities. The equalized tax rate went down in 1999. Banker noted that Elizabeth has a lower tax rate than comparable municipalities such as Newark, East Orange and Hillside. He specifically compared the City to Newark, noting that Elizabeth's rate is about 30% lower than Newark's. Banker also compared the equalized assessed value of Newark and Elizabeth. Elizabeth has had an increase in equalized value of about 4.6% in recent years while Newark has had a 1.7% decline.

The FMBA points out that a substantial amount of Elizabeth's growth is not even included in the assessed valuation because projects such as IKEA expansion and Jersey Gardens Mall involve agreements for payments in lieu of taxes (PILOT agreements). Even with the use of PILOT agreements, Banker testified that between 1998 and 1999 Elizabeth's equalized value increased by 3.7% in equalized values or about $102 million. Newark had a decline in its equalized assessment value during the same period.

Banker testified concerning the City's tax collection rate between 1995 and 1999. He said that the City's tax collection rate is very good and has consistently been in the 95% range. The City also has done well in delinquent tax collections. Banker noted that Elizabeth's tax collection rate exceeds comparable cities such as Newark, East Orange, and Irvington.

Banker testified that the City has about $43.4 million in cash available which provides it with great flexibility and permits it to avoid resorting to the use of short term debt. Banker described Elizabeth as "fairly unique" in that it has not entered the short term note market in 25 years. The City had a fund balance of $5.1 million at the end of 1999. During the period of 1995 through 1999, it maintained a fund balance of about 4% of its budget or $4,457,568.

The FMBA challenged the arguments put forth by the City's financial expert and Acting Chief Financial Officer, Anthony Zengaro. Zengaro cited the fact that after 2000, the City will not receive revenue from its water lease. Banker noted, however, that the City will receive revenue from such new projects as the Jersey Gardens Mall which will provide franchise fees and the Urban Enterprise Zones. The FMBA also notes that revenues will likely result from projects such as the Mid-Town Redevelopment Project, the Newark-Elizabeth Light Rail Project, the Union County Light-Rail Project and the Elizabeth Urban Enterprise Zone Initiatives, a $70 million expansion of the Hilton Hotel, and plans for a 700,000 square foot office complex next to the Jersey Gardens Mall and a $125 million hotel and convention center near the Mall. The FMBA further notes that Moody's Investors' Services cited expected revenues from economic development. Because of this extensive development, Banker believes that the City's past use of one shot budget strategies will be reduced.

Banker discounted the significance of a deficit in the sewer utility because the City intends to eliminate the deficit by a sewer rate increase in 2000. The FMBA asserts that the City will receive significant savings as a result of legislation eliminating municipalities' accrued liability contributions to PFRS for the years 2000 and 2001. It cites documentation from the State of New Jersey indicating that Elizabeth will incur savings of $901,833 from this legislation.

In general, the FMBA asserts that its Final Offer is fair, affordable and deserved, while the City's Final Offer eliminates significant benefits and reduces overall compensation to the firefighters.

Comparability

The FMBA compared its economic position with firefighters in the Big Six Cities or those with more than 200 firefighters, as well as firefighters in Essex County and Union County. It claims that the records introduced into evidence show that the Elizabeth firefighters were among the lowest paid during 1997 and 1998 in comparison to these other groups. The FMBA also relied on the following chart which it states shows that the Elizabeth firefighters were the lowest paid firefighters of the largest departments in New Jersey.

FMBA CHART - 1998 Comparison of Total Compensation

City	Salary (Max.)	Longevity	Holiday Pay	Clothing Allowance	Special Pay HAZMAT	Total
Newark	$61,264	$8,577(14%)	$4,595	$950	$1,453	$76,839
North Hudson	$55,957	$11,751(21%)	$3,013	$650	0	$71,371
Jersey City	$58,056	$9,289(16%)	$1,675	$580	0	$69,600
Camden	$56,691	$4,685(11%)	$4,252	$200	$200	$65,828
Paterson (1997)	$55,720	$6,686(12%)	*	$675	$1,672	$64,753
East Orange	$50,788	$8,126(16%)	$4,102	$525	0	$63,541
Trenton	$49,574	$5,453(11%)	$3,736	$720	$2,315**	$61,720
Elizabeth	$53,637	$5,364(10%)	$619	$700	0	$60,320

*- Paterson firefighters receive holidays as part of their vacation benefits.

**- Tillerman, paid drivers and basketmen receive 4.5% stipend in addition to base compensation. Trenton firefighters receive this additional pay.

The FMBA relies particularly on comparisons with Newark. Newark is geographically adjacent to Elizabeth, the two cities provide mutual aid to each other, and they share responsibility for the airport and seaport. The FMBA claims that the Newark firefighters were paid $16,519 more than their counterparts in Elizabeth in

1998. It notes that the Newark collective bargaining agreement was resolved voluntarily and provides for salary increases as follows:

January 1, 1999	-	4.5%
January 1, 2000	-	3.75%
January 1, 2001	-	3.75%
January 1, 2002	-	3.5%

Significantly, the FMBA refers to the fact that there were no reductions in longevity benefits included in the new Newark contract. The FMBA argues that an award in this case in favor of the City would further increase the economic disparity between Newark and Elizabeth firefighters. This is because the Newark firefighters already receive higher compensation than the Elizabeth personnel and the current Newark contract calls for greater increases than the City of Elizabeth's Final Offer. It further points out that Newark firefighters receive "senior man pay", an additional form of longevity pay after ten years on the job.

The FMBA also notes that Newark police officers received similar wage increases, including a 4.5% salary increase for 1998. Further, the Newark police obtained for the first time the inclusion of holiday pay in base pay, which has a cost value of 5%. The Newark police and firefighters received in addition to salary increases an increase in senior man pay of 4.5% in 1999, 3.75% in 2000, 3.75% in 2001, and 3.5% in 2002.

The FMBA further relies on contract settlements entered into evidence at the hearing from municipalities throughout the State which it asserts shows that fire fighter salary and benefit increases have been greater than the City's Final Offer. It argues that PERC's Annual Report of January, 1999, also demonstrates that the City's Final Offer is below average. According to the FMBA, recent contract settlements and interest awards contain an average increase in salary and benefits of at least 4.0% per year. Further, none of the recent contracts or awards have included the elimination of longevity pay.

The FMBA cites an interest arbitration award for Teaneck which was issued by Arbitrator Begin. It awarded firefighters increases of $4.0% effective July 1, 1997, 4.25% effective July 1, 1998, 4.0% effective July 1, 1999, and 4.0% effective July 1, 2000, along with a 2% stipend to base salary for EMT certification and the 24/72 hour schedule. Arbitrator Begin rejected Teaneck's 3% proposal, the same proposal made by Elizabeth in this proceeding. Although the parties agreed to reduce the starting salary for firefighters, the FMBA asserts that it agreed to this in its prior contract with Elizabeth.

The FMBA notes that the City's proposal actually offers only a 1.5% increase for 1998 because it is seeking an award effective July 1, 1998, without paying the salary increase for the first six months of the contract.

The FMBA rejects the examples cited by the City in support of its proposal to eliminate longevity pay for new hires. It notes that the arbitration awards relied on by the City involve suburban police departments, not urban fire departments. These awards include the New Providence PBA, Springfield PBA, Paramus PBA, and Hackettstown-Warren County PBA. The FMBA notes that only Springfield has a paid fire department. Additionally, these municipalities have smaller populations than Elizabeth. Further, the bargaining units at these locations are much smaller, involving between 20 to 47 employees, while the Elizabeth FMBA unit is composed of 207 firefighters. Moreover, only the New Providence award eliminated longevity benefits for new hires.

The FMBA asserts that the City has a substantial burden to establish the necessity of removing the longevity benefit for new employees. It argues that the City has failed to point to any interest arbitration award involving a major firefighting union which eliminated longevity pay for new hires. It notes that of the recent contract settlements or awards involving Bayonne, Newark, Trenton, Jersey City, and Camden, none have included the elimination of longevity pay for new hires. Additionally, the FMBA claims that given the sound fiscal position of the City, it cannot meet its burden.

The FMBA rejects the City's reliance on contract settlements with non-public safety employees of the City and its argument that a pattern has been established which should be followed in this case. The FMBA notes that of the approximately 1300 City employees, 630 are police or fire employees. Of the remaining employees, 500 are unionized. The FMBA argues that police and fire employees have historically received higher salary and benefits than the City's non public safety employees. This is because the police and fire employees work longer hours and in more hazardous conditions than the civilian City employees. According to the Union, the only pattern which exists is between police and fire employees. The FMBA produced the following chart in support of its position.

Year	FMBA	PBA	CIVILIAN EMPLOYEES
1991	6.0%	6.0%	
1992	6.0%	6.0%	5.0%
1993	6.0%	6.0%	5.0%
1994	6.0%	6.0%	0%*
1995	6.0%	6.0%	3.0%
1996	6.0%	6.0%	7.0%**
1997	4.0%	4.0%	4.0%
1998	4.0%	4.0%	3.0%***

*No increase for period of July 1, 1994 – December 31, 1994

**effective January 1, 1996 and 4% effective July, 1996.

***FMBA and PBA increase is for first half of 1998, January 1, 1998 through June 30, 1998; 3% increase for civilian employees is effective for July 1, 1998 through June 30, 1999.

The FMBA also cites as further evidence that there is no actual pattern between civilian and public safety employees the fact that the effective dates of the City's offer are January 1 of each year beginning in January 1998, while the effective dates for the civilian employees are July 1 of 1998, 1999, and 2000.

The FMBA argues based on evidence submitted into the record that it is clear that the firefighter position is not comparable to other non-public safety employees in either the public or private sectors. It carries greater risks. Firefighters face more hazardous conditions than civilian employees. They are injured and killed at a rate of about 3 ½ the rate of private sector employees and have more lost work hours resulting from job related illnesses or injuries than other employees. Contrary to the City's suggestions, the FMBA denies that firefighters have substantial periods on the job in which they do not work. They engage in extensive training and because of the demanding nature of their job must have periods of rehabilitation.

The FMBA presented an expert on training, Mr. Petrillo, who stated that an important distinguishing characteristic of firefighting is the vital role of team work. The FMBA asserts that the creation of a two tier system by the elimination of longevity benefits for new hires will have a detrimental effect on the necessary team work involved in firefighting. Petrillo said that this could "drive a wedge" between firefighters. FMBA president Lavin testified to problems he perceived in morale at another department which negotiated the elimination of longevity benefits for new hires.

The FMBA noted that the average percentage increase in major private sector industries in New Jersey was 4.5% in 1996 and 1997.

Stipulations of the Parties

The only substantive stipulation entered into by the parties was an agreement that the successor contract would have a term of 5 years. They did not agree on the effective dates for salary increases.

Lawful Authority

The FMBA relied on the testimony of its financial expert witness, Mr. Banker, and numerous documents introduced into evidence in support of its position that the State CAP law would not be affected by an award in favor of the FMBA. It argues that the City did not produce any evidence that it has a CAP problem. It also asserts that the evidence shows that the City is in sound financial condition. Banker claimed in his Reply Certification that the City will have "an average of about $4 million of CAP appropriation go unspent at the end of the fiscal year 2000" and that "the City is spending at levels that are substantially below the statutory limit."

The FMBA points out that the City has the authority to enact an annual ordinance without voter approval if CAP law restrictions became a problem. It notes that the City has rarely exercised this option in the past. The Division of Local Government Services announced pursuant to statute that the CAP rate for 1998 is 2.5%. The City is permitted by statute to increase the index rate up to 5.0% without voter approval.

Cost of Living

The FMBA introduced cost of living documentation for the period of 1973 through 1998. It claims that the salary increases for Elizabeth firefighters have been only modestly (2.5%) above the CPI. The FMBA further asserts that the evidence presented by the City comparing recent CPI figures and increases granted to the firefighters demonstrates that the cost of living has not been a consideration in the City's previous negotiations with public safety employees. The FMBA also claims that the cost of living increase for the 12 month period ending March, 2000, is greater than the City's Final Offer.

Continuity and Stability of Employment

The FMBA argues that given the compensation disparity which now exists between Elizabeth and other large municipalities in the State and in Essex and Union counties, an award in the City's favor could cause instability of employment by causing increased turnover or making it more difficult to attract new hires. It argues that this effect would be a detriment to the City and its residents, along with the firefighters.

On this point, the FMBA relies heavily on the testimony of its president, William Lavin, who leads both the Elizabeth local and the State FMBA. Lavin testified that recruitment efforts have been "lukewarm," and that the application pool has been smaller than expected. Lavin said that he communicates with firefighters throughout the State on a regular basis. According to Lavin, the reason why there have been difficulties in attracting more candidates for the fire fighter position is that over the years the salaries for new hires has been reduced, while the job has become more dangerous as a result of staffing reductions.

The FMBA asserts that its workload has increased over the last twenty years. It relies on exhibits comparing the number of runs in the years between 1979 and 1999 and the manpower in the department during those years. It states that the records show that 1999 will be considered the busiest year ever, with about 7,500 runs. In comparison, there has been a reduction in manpower of 22% since 1979. The FMBA argues that the economic development taking place in the City, such as

Jersey Gardens Mall, will lead to only greater increases in the workload. It notes that Elizabeth firefighters are among the most completely trained in the State as they are trained in trench and technical rescue as well as urban search and rescue. The FMBA further notes that firefighters in Elizabeth are performing more duties than in the past, citing the fact that firefighters are being trained in First Response and as EMTs.

The FMBA asserts that firefighters work more hours than the City's civilian employees. Specifically, firefighters work an average of 42 hours per week while the unionized civilian employees work 35 hours per week. According to the FMBA, this amounts to 20% more hours being worked on a yearly basis.

The Arguments on Behalf of the City's Position

Cost Analysis

The City asserts that the cumulative cost of the FMBA's proposals for a new contract exceeds the cost of the City's proposals by at least $3,959,719.08. In its brief to the arbitrator, the City presented several charts demonstrating the costs of each parties' proposals and showing how it arrived at this sum.

Interest and Welfare of the Public

The City notes that the Arbitration Act and the New Jersey Supreme Court's decision in *Hillsdale PBA Local 207 v. Borough of Hillsdale,* 263 N.J. Super. 163 (App.Div. 1993) *aff'd in part, rev'd in part,* 137 N.J. 71 (1994) require the arbitrator to consider the interests of the public in determining an appropriate award. In fact, it argues that the purpose of the Arbitration Act was to ensure that the interests of the public are the primary interests considered.

The City argues that its Final Offer serves the interests of the public because it can be financed within the tight restraints of the City's budget and the CAP requirements. It asserts that even though it has been vigilant in controlling City expenses, the tax rate and effective tax rate increased between 1995 and 1999, resulting in Elizabeth having the seventh highest tax rate in Union County. The City notes that it will experience a $19 million shortfall in 2001, a $1.4 million Sewer Utility deficit for 2000, and that it is at the CAP limit. It states that the tax collection rate has been below 96% since 1994.

The City asserts that the FMBA's offer would force an increase in taxes or a reduction in spending. It argues that the Union's demands are unreasonable given that they exceed the average increase received by public and private sector employees, the increases granted other City employees, and the CPI. The City asserts that an increase in taxes is not in the public's interest and a reduction in services would harm other programs which further the public's interests. The City points out that while the average firefighter earns $51,582.50, the per capita income in the City is $12,112.

The City stresses that its offer to the firefighters is the same offer that was made to the other City employees and that nine other bargaining units have accepted the offer. It contends that the FMBA has not shown how its demands will further the public's interests.

Comparability

Comparison with other City employees

The City places strong emphasis on a comparison of the compensation and settlements of the City's non-public safety unions with the offers presented in this case. The City argues that the average City firefighter earns more than the highest paid titles in the civilian bargaining units. It notes that the average base salary in the FMBA unit was $51,582.50 in 1998. The highest paid title in the Police Mechanics and Electricians Association was $45,349, and in the City Hall Maintenance Association was $32,794. The highest salary in the City Yard Workers unit is $32,793; the Recreation Maintenance Workers Association is $32,794; Senior Water Repairer is $28,927; and the highest salary in the Public Health Nurses Association is $28,536.

The City asserts that the maximum salary of a firefighter in 1998, $53,637, exceeds the salaries of the highest paid supervisors in other units. On this point, it notes that the Superintendent of the Water Utility earned $52,010 in 1998 and the highest paid Yard Supervisor earned $45,346. The City states that during the period of 1994 to 1998, the FMBA received a 26% increase, while the civilian units received a 17% increase. It also claims that the FMBA received these increases earlier during this time period than the other units. The City points out that the firefighters receive a clothing allowance of $700 per year while the civilian units do not receive clothing allowances.

The City argues that its proposal will permit the firefighters to continue to receive the top salaries among City employees without furthering what it considers an excessive disparity in compensation between firefighters and other public employees in Elizabeth. It claims that the FMBA's proposal will exacerbate the disparity.

The City places great reliance on an argument that there has been "pattern bargaining" among the City bargaining units which should be followed in this case. It argues that historically the City has followed a single schedule in providing longevity benefits to employees in all bargaining units. It notes that at the time of the expiration of the prior agreement between the parties, all Elizabeth employees had received longevity pay based on one scale for at least 30 years. The City argues that a new scale has been established through collective bargaining. In this regard, the City's contracts with 9 other bargaining units of City employees contains the longevity scale which it seeks in this case. The new longevity scale provides for an increase to 12% for the maximum benefit, a shorter period to obtain additional longevity increases, and the elimination of longevity pay for new employees.

The City repeatedly stressed during negotiations that the civilian unions also wished to maintain longevity pay for new hires and that if this benefit is awarded to the firefighters, the City's other employees will feel "cheated." This would result in havoc in the City's labor relations and make it very difficult to reach future agreements. The City asserts that in this case the FMBA is seeking to obtain the increases in longevity benefits obtained by other City unions –and add to those increases- without paying for them by agreeing to the elimination of the benefit for new employees.

The City argues that the wage increase it has offered to the FMBA is consistent with the pattern of wages reached through negotiations with other units. It notes that nine (of the 10) civilian bargaining units cited above have agreed to the wage proposal sought by the City in this arbitration – 3.0% increase on January 1 of each year of the agreement. The City has also offered this settlement to the one civilian unit which has not settled its contract with the City yet, as well as to the three uniformed units.

Based on these arguments, the City asserts that its economic proposal is more reasonable than the proposal submitted by the FMBA.

Public Employment in General

The City argues that firefighters have been doing very well in comparison to other public employees. In the last year of the prior contract, 1998, City firefighters received a 4% increase. The City cites statistics showing that state and local government employees received median increases of 3% for 1998 and 1999. Additionally, in 1999 the average Interest Arbitration settlement was 3.53% and the average award was 3.47%. According to the City, its Final Offer, including increased benefits such as increased longevity pay and another holiday, is equal to 4.45% over 5 years. This is a higher rate than the median increase for other public employees.

The City points out that several arbitration awards and settlements have included wage freezes. It cites the State Troopers Interest Arbitration awards in 1997 and 1998 which contained wage freezes for some years. The Essex County Sheriff Officers award issued in 1997 also contained a wage freeze for the first year. The contract between AFSCME and the State of New Jersey for hospital and institutional workers contained a wage freeze for the first two years. Additionally, a recent contract settlement in Guttenberg resulted in a seven year agreement, with a wage freeze for the first two years.

The City refers to other public sector contracts in support of its position that its Final Offer is more consistent with that provided to other public employees. For example, the Montclair State University contract provides for a 2.0% increase in July, 1998, and a 1.25% increase in January, 1999. A New Jersey Transit contract with Transportation Local 60 provides for a 16% wage increase over 5 years, and with Transportation Communication Lodge 6053 contains a 3% increase in July, 1999, and a 3.5% increase in July, 2000. The Newark Teachers Association contract is a two year agreement with a 2% increase each year. The Bergenfield Education Association contract runs for three years, with a 3.0% increase in the first two years and a 3.75% increase for the third year.

Comparability with Firefighters

The City cites the New Jersey Supreme Court decision in *Hillsdale PBA Local 207 v. Borough of Hillsdale* and the recent amendments to the Arbitration Act to argue that arbitrators are not permitted to simply compare the "going rate of settlement" among other public safety employees. Instead, the arbitrator must also place emphasis on the comparison with other public employees of the same municipality. Regarding other firefighter units, the City claims that the appropriate comparison is with other municipalities within Union County and with the "Urban 15" group. Only 9 of the 21 municipalities within Union County have a paid fire department. According to the City, Elizabeth firefighters receive better or at least comparable compensation to other Union County firefighters. It relies on the following Chart to support its position.

City	Base Salary	Holidays	Holidays Value	Longevity	Limits on Longevity	Value of Longevity	Uniform	Total
Cranford	53,644	12	3,527.28	N/A	Merit based N/A		575	57,171.28
Elizabeth	53,637	14	4,114.62	10%		5,363.70	700	63,690.32
Hillside	52,891	88hrs	2,125.30	12%		6,346.92	1,500	62,063.22
Linden	55,966	10	3,066.63	10%	Max 1200 (none after 1/75)	1,200.00	0	61,732.63
Rahway	55,385	13	3,945.23	12%	None after 1/99	6,646.20	150	65,976.43
Roselle	51,689	14	3,965.23	10%		5,168.90	0	60,973.08
Summit	57,311	4.85% of base	2,779.58	10%		5,731.10	1,000	65,821.68
Union	54,909	13	3,911.33	12%	6% after 7/96	6,589.08	200	66,409.41
Westfield	54,500	13	3,882.19	9%	None after 8/98	4,905.00	0	63,487.19
AVERAGE	54,437		3,479.70			5,243.86	458.33	63,036.14

According to the City, this review demonstrates that it pays its firefighters about $600 above the average in Union County. The City further points out that several communities have reduced longevity benefits. These include Linden, which terminated the benefit for employees hired after January, 1975; Rahway and

Westfield which eliminated longevity for new employees; and Union which reduced longevity for new employees by half. The City points out that if the FMBA's Final Offer is awarded, Elizabeth will pay the highest longevity benefits in Union County. Additionally, the gap with other municipalities will increase if the two-tier system proposed by the City is not granted.

The City asserts that only Hillside firefighters receive a greater longevity benefit than Elizabeth employees. It claims that in the two other municipalities which grant greater longevity benefits to their firefighters, a two-tier system has been established which eliminates longevity for new employees. The City argues that its proposal for a two tier system is common in Union County and that four of the eight municipalities which grant longevity benefits have a two tier system, with three eliminating longevity for new hires. The City further claims that its longevity offer will provide firefighters with the most generous longevity benefits in Union County because it increases the top step from 10% to 12% and accelerates the longevity schedule.

The City asserts that the salary it provides is within the average in Union County. The Elizabeth firefighters earn approximately $800 less than the County average but receive greater benefits and work fewer hours given that they receive paid time off in lieu of holiday pay. It notes that under the City's Final Offer, Elizabeth firefighters will reduce the gap with the three communities which provide higher compensation. It cites Rahway as an example. Rahway firefighters will receive 3% each year (1999-2003) but will not receive additional holidays or longevity benefits. The City claims that the gap will be reduced in half to $1,133.00. The City notes that only Roselle firefighters receive as many holidays as the Elizabeth employees and that with an additional holiday the Elizabeth firefighters will lead Union County.

The City argues that it must be recognized that it has fewer resources than other Union County communities. The per capital income of the other eight Union County communities with paid firefighters is $21,439.22, while in Elizabeth it is $12,112. Elizabeth also has the highest number of residents living in poverty (almost 16%) and receiving public aid (11.44%). Given these disparities, Elizabeth asserts that it is remarkable that its firefighters rate so well in comparison to the compensation provided to other communities in Union County. The City claims that the FMBA's Final Offer would result in Elizabeth firefighters earning far more than their Union County counterparts.

The City also reviewed its position in comparison to firefighters in the "Urban 15" communities. It claims that its overall compensation compares favorably with this group. The average earnings were $56,416.93, which is $2,035.49 less than the average Elizabeth firefighter. Elizabeth firefighters receive an average $4,114.62 in holiday benefits, in comparison to the average Urban 15 sum of $3,482.67.

The City asserts that the FMBA's argument that these communities provide greater longevity benefits than Elizabeth does is misleading. It points out that the FMBA's argument is based on the maximum longevity benefits available in other communities. The average Elizabeth firefighter, however, has only been on the job for 12 years and the norm in the profession is to retire after 25 years. The FMBA seeks maximum benefits after 25 years seniority, while the maximum step is reached in Passaic after 31 years, in Jersey City after 28 years and in Newark after 30 years.

The City compares its offer of a maximum longevity benefit of 12% after 25 years. Within the Urban 15, one city (Dover) does not have a paid fire department. Only 6 of the 13 others provide a benefit greater than 12%. Additionally, Elizabeth compares well with other cities such as Morristown which provides a maximum longevity benefit of 6% and Atlantic City which provides a maximum longevity benefit of 10%. The City further claims that under its proposal firefighters will receive an additional 32% over a 25 year career, which will exceed that provided to firefighters in the other Urban 15 cities. The City asserts that its proposal both increases longevity benefits and accelerates the receipt of those benefits, increasing firefighters' earnings over the typical 25 year career.

The City argues that the two tier proposal it has made is not unreasonable. It notes that such large cities as Hackensack, Camden, Edison, and Passaic have two tier longevity scales.

COMPARISON WITH THE PRIVATE SECTOR

The City compared the compensation received by its firefighters with private sector employees. It noted that the median first year increase in private sector contracts for 1998 and 1999 was 3.0%. Elizabeth firefighters received a 4.0% increase in 1998 and the City's offer for 1999 is 3.0%. The City asserts that if its longevity and holiday proposals are included, the increase will be 4.45% per year. The City also cited several private sector agreements which were negotiated in New Jersey that provide for increases of 3.0% or less.

According to the City, its firefighters are doing well financially and will continue to receive better increases than private sector employees under the City's offer. It argues that the FMBA's offer of 24% over five years is particularly excessive in comparison to the private sector.

Overall Compensation

The City notes that the average base salary of a firefighter is $51,582.50. Additionally, firefighters receive extensive benefits. They earn much more than the average resident of the City ($12,112) or of Union County ($22,353). The City notes that its Final Offer is higher than the average increase earned by other public and private sector employees. The City asserts that its offer is more reasonable, noting that the FMBA's offer will further increase the earnings gap between City firefighters and residents while requiring the residents to pay higher taxes to fund the salaries.

Lawful Authority

The City asserts that under *Hillsdale PBA Local 207 v. Borough of Hillsdale, supra,* this criterion requires the arbitrator to consider the effect of an award on the City's CAP law restraints and its entire budget. The City notes that this award will cover a contract term of July 1, 1998, to June 30, 2003. Given that the 1998, 1999, and 2000 budgets are complete, any award which is greater than the amount budgeted by the City will have to be paid out of the budgets for 2001 and 2002. This limits the ability of the City to fund the award while also staying within the CAP requirements.

The City finds it significant that the FMBA's expert acknowledges that the City is at its CAP limitation, faces a $19 million revenue shortfall, and has a $1.4 million sewer deficit. According to the City, the FMBA has not pointed to any specific revenue which would permit the City to fund its demands. The City argues that its final offer will not force a reduction in services or increased taxes, while permitting the firefighters to continue to receive increases greater than most private and public sector employees and to earn far more than most Elizabeth employees or residents.

Financial Impact

The City cites the Appellate Division's and Supreme Court's opinions in *Hillsdale PBA Local 207 v. Borough of Hillsdale, supra,* which stated that the employer need not prove an inability to pay. Instead, the arbitrator must consider the impact of an award on the public, other public employees and on governmental programs.

The City estimates that in the next two years it will suffer a $19,300,000 reduction in non-recurring revenues, based on the budgets for 2000 and 2001. This reduction in non-recurring revenues primarily results from a lease with the Water Utility which paid a final payment to the City of $19,000,000 in 2000. The City also notes that in 2000 it must fund a $1,400,000 Sewer Utility deficit. The City also states that it must begin to pay a deferred debt of $20,000,000. This obligation is the result of a restructuring of the debt in 1994. The City plans on meeting this obligation through revenues gained from the Jersey Gardens Mall.

The City argues that any increase in firefighters' salaries will have a major impact on the its budget. This is because the salaries of uniformed officers (fire and police) consumed 42.28% of the City's operating expenses of $93,653,770.87 in 2000, and the award entered entered in this case will be used as a standard by the other three uniformed employee bargaining units.

The City notes that because 54.09% of City tax revenue goes to Union County and the School Board, it must finance City services based on $0.45 of each dollar paid in taxes by City residents. The overall estimated tax rate is $10.76 per $100 of assessed value in 1999. The effective tax rate increased from 2.842 in 1995 to 2.970 in 1998.

The City acknowledges that as a result of its efforts it has experienced significant economic growth. It cites various reasons why that growth does not result in substantial revenues available to finance the FMBA's demands. It states that it anticipates tax abatement revenues of about $8,900,000 from the Jersey Gardens Mall. However, it has assigned that revenue to a $142,000,000 obligation to the New Jersey Economic Development Authority. That obligation was incurred to pay for infrastructure and environmental redemption. The City's taxable land is limited given that 45% of it is tax exempt. The Port Authority own about 30% of Elizabeth property and the Union County government and public hospitals are also present in the City. The City asserts that only about 33.3% of the land is owned by businesses.

Regarding the CAP limits, the City notes that although the index rate in 2000 was 1.5%, it increased the CAP to the maximum 5%. It cites the Certification of its financial expert, Anthony Zengaro to show that the year 2000 budget is $743.50 under the CAP. The City asserts that it must strictly enforce its budget to meet the 2001 CAP limit. It rejects the FMBA's claim that the surplus from the prior year's budget can be used to finance the FMBA's demands. It argues that surpluses are usually used for tax stabilization. The City notes that it currently has a six year capital improvement program for the fire department which began in 1999 and will cost $15,900,000.

The City reviewed the testimony and certification of FMBA financial expert, Thomas Banker. It notes that Banker acknowledged that the City will incur a $19,000,000 deficit beginning in 2001 as a result of the elimination of funds from the Water Utility lease, that a $1,400,000 Sewer Utility deficit is included in the 2000 budget, and that the City used up almost its entire CAP allowance in 2000. The City cites Zengaro's analysis showing that the City cannot afford the FMBA's demands. Contrary to Banker's claim, the Sewer Utility debt will not disappear because the taxpayers will have to pay it through either City taxes or through higher Utility rates. The City rejects Banker's claim that it can pay for the $19,000,000 deficit through revenues obtained from the Jersey Gardens Mall and other projects. Zengaro states that based on the revenues collected so far, the City will receive only $2,800,000 from the Jersey Gardens Mall in 2001. Additionally, the projects referred to by Banker such as the Hilton Hotel and office complex, Urban Enterprise Zone, Light

Rail projects and Midtown Redevelopment cannot contribute to the 2001 budget because construction has not even begun on the projects. The City asserts that Banker failed to point to any source of revenue which will meet the $19 million deficit facing Elizabeth for the 2001 fiscal year.

The City disputes Banker's claim that a 3% salary increase will only increase expenses by $1.65 million. It cites Zengaro's certification noting that longevity increases and promotions further increase costs. He also notes that the City will face an increase of $2,000,000 for 2001 as a result of increased costs for employee hospitalization benefits. In support of the argument that the City's residents cannot afford the FMBA's demands, Zengaro notes that the Moody's report cited by Banker also states that Elizabeth has a 16% poverty rate, 32% home ownership, high unemployment, and a median family income in 1990 which was 66.1% of the state median. Zengaro also asserts that Banker overstates the franchise assessment fees which will be received by the City. The City further disputes Banker's claim that tax exempt property is not relevant to the arbitration. It notes that 45% of the property in Elizabeth is exempt, which is significant because it means that the remaining 55% of the property owners must fund any increases in the City's budget.

The City rejects Banker's claim that even though it is at the maximum CAP in 2000, there is enough money to fund the FMBA's demands because of unspent money. It argues that it only has $743.50 left under the CAP. Additionally, the City states that even though it has had surpluses in its budget in prior years, any significant surplus for fiscal year 2000 could not occur because of the $19 million loss of revenue. Zengaro rejected the availability of the average $2,500,000 surpluses cited by Banker as available to fund the FMBA's demands, noting that this money has been used to stabilize taxes.

The City concludes that it cannot afford the FMBA's Final Offer. In reaching this conclusion, it specifically cites the undisputed fact that it faces a $19 million shortfall in revenues and is already at the CAP limit.

Cost of Living

The City argues that the income of firefighters has surpassed the increases in the cost of living. It notes that the CPI increased 11.90% between 1994 and 1998, while firefighter salaries increased by 26%. The City asserts that the FMBA's own evidence shows that for the past 26 years, firefighters' salaries have increased at an annual rate of 13.71%, while the CPI increase was 10.95%. The City argues that the firefighters do even better than this data indicates because the City has paid for increases in health insurance and prescription drugs, which were important parts of the CPI increases.

The City asserts that its Final Offer will permit the FMBA to continue to obtain increases above the CPI, while the FMBA offer would be excessive.

Continuity and Stability of Employment

The City states that its firefighters have not experienced layoffs or downsizing, unlike other employees in New Jersey and the nation. In support of this position, it cites several examples of recent layoffs of private sector employees. The City notes that the FMBA produced no evidence of any turnover in the fire department. It further notes that firefighting services have not been subject to privatization. The City cites the fact that the average seniority within the bargaining unit is 12 years.

According to the City, the firefighters have historically enjoyed very stable employment. The FMBA's offer, however, could threaten that stability by forcing the City to reduce services.

NON-ECONOMIC PROPOSALS

The City objects to the FMBA's proposal that the funeral leave provision, Article XVII, be changed to grant a firefighter one 24 hour shift off instead of the current one working day off (12 hours) in the event of the death of an aunt or uncle. The City asserts that even though the FMBA describes this as a non-economic proposal, it will result in increased costs to the City. Additionally, the FMBA did not provide evidence showing why this change was necessary. Therefore, the City opposes the proposal.

The City similarly objects to the FMBA's proposal for a new article providing that firefighters called to jury duty be relieved from their jobs 12 hours before and after jury duty. The City argues that the FMBA did not show that this new provision is necessary and asserts that it would create scheduling problems for the department given the 24 hour shifts worked by firefighters.

DISCUSSION

A review of the statutory criteria and the proofs adduced thereunder by each party leads to the following analysis:

Stipulations of the Parties

As noted above, the parties agreed that the term of the agreement shall be five years, effective July 1, 1998, and ending June 30, 2003. There were no other relevant stipulations.

Cost of Living

The FMBA acknowledges that wage increases in the recent past have exceeded the cost of living, although it claims that the increases have not greatly exceeded the

CPI. It also argues that the discrepancy demonstrates that the CPI has not been a factor in the City's negotiations with the Union.

The City relies on a comparison of the CPI between 1994 and 1998 to argue that wage increases have exceeded the CPI. In particular, during that period the CPI increased by 10.95%, while salaries increased by 26%. It argues that the FMBA's offer is excessive compared to the CPI.

On balance, the City's 3% offers over the five years of the proposed contract must be said to be more reasonable when considering the CPI. Therefore, this criterion supports the City's position. However, the full impact of the parties final offers will be discussed in greater detail later in this award.

Continuity and Stability of Employment

This criterion does not carry great weight in determining the ultimate award. The record demonstrates that there have not been layoffs in the fire department and does not show any significant turnover among personnel. Although both parties argue that an award in favor of the other side's position may lead to instability in the department, these arguments are based on speculation only and not supported by hard evidence. Accordingly, this criterion is not a substantial factor in rendering an award in this matter.

Overall Compensation Received by Firefighters

It is clear that Elizabeth firefighters are well compensated and receive a range of benefits. The average base salary of a firefighter in 1998 was $51,582.50. Firefighters receive benefits such as longevity pay, 14 holidays, $700 uniform allowance, health insurance, and retirement. Of course, these benefits are commonly enjoyed by public safety employees.

The crucial issues in dispute concern the City's effort to eliminate longevity pay for new hires, and salaries for the new contract. These issues will be dealt with on an item-by-item basis below.

The City cites the fact that bargaining unit employees are among the highest paid City employees. It points out that an average firefighter earns more than the highest paid civilian bargaining unit employee. Additionally, the highest paid firefighters earn more than supervisors in the civilian units. Firefighters also earn substantially more than the average Elizabeth resident.

Although it is true that the overall compensation provided to firefighters is quite good, there are several factors which mitigate against a conclusion that they receive excessive compensation. These employees work long hours and must be able to work day or night, every day of the year. They face physical demands and threats to their health and safety which are greater than those faced by non-public safety employees. Because of the unique nature of a firefighters' duties, it is extremely difficult to make a meaningful comparison between how they are compensated versus other public or private sector employees. The legislature has recognized the unique status of firefighters and police officers in the statute which grants authority to an impartial arbitrator to resolve disputes and to award wage increases. Accordingly, the statistics cited by the City comparing firefighter compensation with other employees and the residents of the City must be considered in the context of the unique nature of a firefighters' duties. Moreover, it should be noted that the compensation currently received by firefighters resulted in large measure from earlier negotiated contracts.

The Lawful Authority of the Employer

The record indicates that Elizabeth is close to the CAP for the year 2000. The opposing financial experts, however, presented conflicting testimony as to whether the Union's final offer presents a CAP problem for the City. The City claims that it cannot afford the FMBA's demands without unacceptable cuts in services or increases in taxes. The Union cites the significant economic development which has occurred in the City recently and the sound budgetary practices followed by the City over the years to argue that its final offer can be paid by the City without creating CAP problems.

My conclusion on this issue is that although the City has enjoyed economic progress recently and has followed prudent budgetary practices, it is also undisputed that the year 2000 budget is very close to the CAP. Accordingly, this factor has been given careful consideration in rendering the award.

Comparability

Private Sector

The City argues that Elizabeth firefighters have fared well in comparison to private sector employees. It points out in City Exhibit 73 that the median first year private sector increase for 1998 and 1999 was 3.0%. Additionally, it cites several private sector agreements in New Jersey which provided for increases of 3.0% or less per year. According to the City, its offer is in excess of the private sector rates. The City states that firefighters would receive an increase totaling 4.45% per year (3.0% salary increase plus benefit improvements) under its Final Offer. The FMBA, in contrast, asserts that comparisons to the private sector are not particularly useful given the unique nature of the firefighter position.

I have taken note of the FMBA's position that firefighters have unique duties and face demands which do not exist in most, if any, private sector jobs. It is clear to this trier of fact that there are significant differences between the job of a firefighter and that of the typical private sector employee. Nevertheless, the statute requires a comparison with employees in private employment in general.

In connection with the passage of the amended Interest Arbitration statute, the Department of Labor prepares for PERC reports concerning private sector wage changes for jobs covered by unemployment insurance. The most recent comparison reveals that the average annual private sector wage in New Jersey in 1997 was $37,032 and increased by 5.7% to $39,138 in 1998. In Union County, the 1997 average annual private sector wage was $39,512 and increased by 7.3% to $42,394 in 1998. With respect to the issue of comparability with the private sector, it is fair to conclude that an Elizabeth firefighter compares favorably. The firefighter has neither an inexplicable monetary advantage or disadvantage over a New Jersey private sector employee.

Public Employment in General and within Elizabeth

The City anchors its arguments concerning the proposed salary increases and its effort to eliminate longevity pay for new hires on a comparison with the agreements reached with other public employees in Elizabeth. According to the City, it has engaged in pattern bargaining with its unions. The City argues that its contract settlements with nine of the ten non-public safety unions contain the same terms it has offered in this case – 3% salary increases and the elimination of longevity pay for new hires combined with enhanced longevity benefits for existing employees. It claims that the stability of its labor relations would be disrupted if the firefighters were able to retain the longevity pay which the other unions desired to retain but eventually agreed in negotiations to eliminate. The FMBA argues that there has been no pattern bargaining between the civilian and public safety unions. Instead, the only pattern which exists is between the fire and police unions.

A review of the record evidence confirms that the City has successfully obtained the termination of longevity pay for new hires with each of the unions with which it has reached a contract. The public safety unions (fire and police), however, have not agreed to new contracts containing this change in benefits. The record evidence does not demonstrate that there has been a well established pattern of bargaining between the civilian and public safety bargaining units. In this regard, it is noted that although employees in all units have enjoyed longevity pay until the recent contract settlements with the civilian units, the firefighters have generally obtained higher wage increases than the civilian employees. In my discussion of the salary and longevity proposals, below, I will further address the issues of pattern bargaining and comparability among City employees.

As set forth above, the City has established that the firefighters receive compensation significantly in excess of that received by employees in the civilian bargaining units. Regarding public employment in general, a Department of Labor report issued by PERC to Interest Arbitrators indicates that between 1997 and 1998 the average federal government salary increased by 3.1% from $44,330 to $45,692. During this same period, the average state government salary increased by 3.4% from $41,904 to $43,308. Finally, the average local government salary increased by 3.5% from $39,083 to $40,440.

Comparability with other Firefighters

Both parties submitted extensive documentary evidence concerning the economic position of Elizabeth firefighters in comparison to other firefighters in New Jersey. The parties compared Elizabeth firefighters to other Union County firefighters and to firefighters in other large municipalities in the state. The City presented the contracts of other fire units within Union County. It acknowledged that the Elizabeth firefighters earn an average salary about $800 below that of other firefighters in Union County, but asserts that it provides superior benefits which result in Elizabeth personnel receiving compensation about $600 above the Union County average. It appears to the arbitrator that the Elizabeth firefighters are essentially in the middle range of Union County firefighters.

The parties also compared Elizabeth to other large municipalities. The FMBA focused specifically on Newark. It argues that Newark is the best comparison because it is a large city which is geographically adjacent to Elizabeth, the two cities provide mutual aid to each other, and they share responsibility for the Port and the airport. It points out that the maximum salary in Newark is $61,264 in comparison to $53,637 in Elizabeth. Newark firefighters also receive higher longevity pay and other benefits which make the compensation difference even greater. The contract negotiated for Newark for the period of January 1, 1999, to January 1, 2002, does not contain reductions in longevity pay and provides for wage increases of 4.5%, 3.75%, 3.75%, and 3.5%. The FMBA further compared Elizabeth firefighters to those firefighters in the cities which employ more than 200 firefighters and presented documentation indicating that Elizabeth firefighters received overall compensation on the low end of this group. The City cited evidence comparing Elizabeth to a somewhat larger group, the "urban 15" large communities. It asserts that Elizabeth pays average earnings of $2,035.49 more than this group.

A review of the extensive documentation reveals that Elizabeth firefighters appear to be in the broad middle range of paid firefighters in large municipalities in terms of compensation. However, when the focus is narrowed to the largest cities, Elizabeth would appear to lag somewhat in compensation. Specifically, as noted by the FMBA, in 1998 Newark provided a maximum salary of $61,264 and Jersey City a maximum salary of $58,056, while the maximum Elizabeth salary was $53,637. The largest municipalities also do not appear generally to have taken the step which Elizabeth seeks here of eliminating longevity benefits for new hires. For example, the recent contracts negotiated or awarded covering Newark, Trenton, Jersey City, and Camden do not contain the elimination of longevity benefits.

Interest and Welfare of the Public

This criterion is essentially a quality of life index. The issue before me is to determine which Final Offer or combination of the offers best serves the interests and welfare of Elizabeth. Although financial concerns are included in this criterion, they are more fully addressed under the financial impact criterion. The role that they play in this issue is basically whether the cost of a settlement, while in the public's interest and welfare, would prove prohibitive. The answer here, as in most cases, is that it would not be.

Elizabeth is one of the largest cities in New Jersey. It has the significant problems of many large urban areas. These include a relatively high poverty rate of 16%, a median family income in 1990 of 66.1% of the state median, and a 32% home ownership rate. On the other hand, it has been more successful than many other urban areas in attracting economic development. The Jersey Gardens Mall opened in 1999 and will provide significant revenue to the City through franchise fees. Other projects planned include the Midtown Redevelopment Project, Light Rail projects, an

Urban Enterprise Zone, and other developments. Moody's Investors Service took note of the economic development taking place in the City and up-graded the City's bond ratings.

It is obvious that it is in the best interests and welfare of the community to provide reasonable compensation for an essential service such as the fire department, which is vital to both the residents and businesses of the City. The complex mixture of positive economic development in Elizabeth along with the continuing problems typical of lower income urban settings, however, leads to the conclusion that this factor does not clearly favor the Final Offers of either party.

Financial Impact on the Governing Unit, Its Residents and Taxpayers

This criterion is best addressed as part of the rationale offered on an item-by-item basis. By way of background, I note as described above, that Elizabeth is both enjoying impressive economic development for an urban area while being faced with the same demands for services which are common in these municipalities. The City presented evidence that it is very close to the CAP for the year 2000. Additionally, it faces a $19 million shortfall in 2001, and a $1.4 million sewer utility deficit in 2000 which will have to be financed by either higher taxes or higher utility rates. Although the City states that it is able to finance its Final Offer, it claims that an award in favor of the FMBA would force a reduction in spending or an increase in taxes. The FMBA claims that the City can afford its Final Offer. Its financial expert asserts that the City will have about $4 million of unspent CAP appropriation at the end of 2000 and that it is spending at rates below the statutory limit.

From this record, it appears that although the City has followed sound budgetary practices in the past, its financial resources are limited. This factor has been given due consideration in the determination of each proposal at issue in the arbitration.

THE FINAL OFFERS

The Final Offers made by each side have been fairly evaluated and examined in reaching the final wage and benefit package. It is important to realize that inclusion or exclusion is decided to a great degree on the reasonableness and necessity of each demand.

LONGEVITY PAY

The City has proposed to eliminate longevity pay for new hires. In return for this concession, it offers to increase longevity pay for current employees. Specifically, the City proposes that if it is permitted to eliminate the benefit for employees hired on or after July 1, 1999, it would increase longevity pay according to the following scale:

4th year of employment to completion of 7th year – 2%

8th year of employment to completion of 11th year – 4%

12th year of employment to completion of 15th year – 6%

16th year of employment to completion of 19th year – 8%

20th year of employment to completion of 24th year – 10%

25th year of employment and over – 12%

It argues that this increase would result in current employees receiving an additional 2% in longevity benefits for most years of their careers. The FMBA rejects the City's attempt to eliminate longevity pay for new hires. It proposes instead that effective July 1, 1998, the maximum longevity benefit be increased from 10% to 14%.

The City's offer seeks to eliminate a significant economic benefit for new employees. It will create a two-tier system in which some firefighters receive longevity pay and others do not. This arbitrator has consistently held that economic benefits such as longevity pay are vested benefits which have been earned and for which consideration has presumably been given. Given their vested nature, the party seeking to eliminate the benefit carries a substantial burden of showing that its proposal is the more reasonable offer - by a significant margin. *See Township of Randolph and Randolph FOP Lodge 25*, PERC Docket Nos. IA-95-073,079 (Light 1996).

A careful review of the evidence presented does not persuade me that the City has met its burden of establishing the necessity for its proposal to eliminate longevity pay for new employees. The City places strong reliance on the fact that 9 of the 10 civilian bargaining units have agreed to the elimination of this benefit. That is certainly significant. However, the public safety unions have not accepted this proposal. Both parties compared the proposal to other firefighter units. On this record, it appears clear that there is not a discernable trend supporting the elimination of longevity pay for new firefighters. Although some municipalities have taken this step, the record does not disclose that a majority of large urban fire departments have eliminated this benefit. Rather, cities such as Newark, Bayonne, Trenton, Jersey City and Camden continue to provide that new employees will be entitled to some form of longevity pay.

Several of the criteria set forth in the statute are not directly relevant to this proposal. For example, there is no CAP law issue concerning the eligibility of new hires for longevity pay. Similarly, the cost of living can only be applied to present costs and is not directly relevant to an issue of future savings. It has not been shown that the failure to eliminate this benefit will have an effect on the continuity and stability of employment. The City and the FMBA obviously consider the proposal to be a cost saving which would have a financial impact on the governing unit. The true future savings, of course, is speculative. Nonetheless, this factor would favor the City's proposal. I consider most important the interest and welfare of the public criterion. An award in favor of the City would create a two-tier system of benefits. This would be a detriment to the public given its likely negative effect on the bargaining unit and the morale of its employees.

In sum, I have considered the City's longevity proposal and concluded that it has not met its substantial burden of showing the necessity for eliminating longevity pay for new hires. Accordingly, I reject the City's Final Offer on this issue.

The FMBA, in addition to resisting the proposed elimination of longevity pay for new hires, seeks an increase in the maximum longevity benefits from 10% to 14%. After reviewing the arguments and evidence presented, I conclude that the FMBA's proposal is also unreasonable. The record indicates that few other firefighter units receive such high longevity pay without either requiring more years of service to receive the highest rate of longevity pay or as part of a two tier system in which some firefighters receive reduced longevity benefits. The FMBA's proposal would obviously have a financial impact on the governing unit by increasing its costs. As noted above, the City has limited financial means. In sum, I have not been convinced of the reasonableness of the proposal and it is denied.

SALARY INCREASES

The FMBA seeks the following increases during the stipulated five-year contract term:

5.0% effective July 1, 1998

4.5% effective July 1, 1999

4.0% effective July 1, 2000

5.0% effective July 1, 2001

5.5% effective July 1, 2002

The City proposes the following:

3% effective January 1, 1999

3% effective January 1, 2000

3% effective January 1, 2001

3% effective January 1, 2002

3% effective January 1, 2003

Both offers, for the purpose of reaching the most reasonable resolution, are not acceptable. I have reviewed all of the economic data presented, the testimony offered, the CPI figures, recent settlements and awards among Union County municipalities and the larger cities within the State, the increases negotiated by other City bargaining units, the general public and private sector increases within the state, and the economic condition of the City. I have also considered the several hundred documents and pages of transcripts submitted by the parties. I have determined that the most reasonable wage increase is as follows:

Effective and retroactive to January 1, 1999 - 3.5%

Effective and retroactive to January 1, 2000 - 4.0%

Effective and retroactive to January 1, 2001 - 3.75%

Effective and retroactive to January 1, 2002 - 4.0%

Effective and retroactive to January 1, 2003 - 3.75%

HOLIDAYS

The FMBA seeks two new paid holidays effective June 1, 1998. It supports its position by citing evidence showing that firefighters in Newark, Jersey City, Paterson, Trenton, East Orange, Passaic, and North Hudson receive significantly more holiday pay than Elizabeth firefighters. It has not shown, however, that the number of holidays provided to Elizabeth firefighters is burdensome to the average firefighter. The City has offered an additional holiday to be folded into base pay effective July 1, 1999. There has not been a sufficient showing, beyond a desire to obtain the number of holidays enjoyed in some other municipalities, to award more than the City's offer on this issue. Accordingly, one additional holiday will be included in the Award but the FMBA's request for two holidays is denied.

TERMINAL LEAVE

The FMBA seeks a new contract term providing retiring firefighters with a benefit of $20,000. It argues that Elizabeth is the only large city which does not provide terminal leave benefits to retiring firefighters. Although the Union has provided evidence showing that some other cities provide such benefits, a simple "me too" argument is insufficient to obtain such a new significant economic benefit in arbitration. It is a matter which the parties can discuss in their negotiations for future contracts. However, I will not order it included in this contract.

PRESCRIPTION PLAN

The FMBA seeks a prescription plan for retirees. Once again, it cites the fact that some other jurisdictions provide this benefit. The City objects, contending that it could subject it to significant new costs. For the reasons expressed above concerning the terminal leave proposal, the request is denied.

MODIFICATION OF FUNERAL LEAVE – ARTICLE XVIII

The FMBA seeks to modify this provision to provide that firefighters may take one 24 hour shift off in the event of the death of an aunt or uncle. It claims that its proposal would create uniformity for scheduling and time off procedures. The current provision refers to the day and evening shifts under the 10/14 hour work schedule which no longer exists. The Union contends that when the parties agreed to change to a 24/72 hour shift schedule they failed to modify Article XVII to make it consistent with this new schedule.

The City opposes this proposal. It asserts that there was no evidence offered to show that there has been any disruption in scheduling. Additionally, it argues that the FMBA is seeking to double the time off received by employees from the current 12 hours to 24 hours.

I have not been convinced of the need or reasonableness of this provision and, accordingly, it is denied.

JURY DUTY

The FMBA seeks a new provision permitting firefighters called for jury duty to be relieved from their tour of duty 12 hours before and after jury duty. It states that this provision would be consistent with the practice of most duty chiefs. However, because some duty chiefs have not followed this practice, a contract provision is necessary. It argues that the 12 hour standard is reasonable because it would not be fair to require a firefighter who serves on jury duty from 9 a.m. to 5 p.m. to then immediately return to duty.

The City opposes this proposal because it asserts that it would create serious scheduling problems because of the difference between the court's schedule and the 24 hour firefighter schedules. It suggests that the City would be required to cover partial shifts in addition to other problems.

Although the FMBA has presented some legitimate concerns regarding jury duty, the City's concerns regarding scheduling problems are also legitimate. This is an issue which the parties may wish to revisit. However, I will not order the proposal included in the contract.

VISION CARE

The City has proposed that the firefighters be entitled to coverage under the City's vision care program. The FMBA naturally does not oppose this proposal. Accordingly, the proposal is granted and will be included in the new contract.

CONCLUSION

The Arbitrator has listened to days of testimony, reviewed hundreds of exhibits and absorbed hours of counsels' arguments in oral argument and written briefs. Elizabeth is a unique city. It has been successful in attracting new development and has maintained sound budgetary practices over the years. It also faces all of the problems of large cities in this nation, such as significant pockets of poverty, residents who earn substantially less than their suburban counterparts, and a limited ability to raise revenue through the property tax. This award seeks to stabilize wage increases over the five year term of the agreement. Although the wage increases exceed those negotiated by the civilian bargaining units, this is appropriate given the unique demands of the firefighter position. The FMBA's other demands were not awarded. Conversely, the significant give-back sought by the City, the elimination of longevity pay for new hires, was not awarded because the City failed to prove the necessity and reasonableness of this proposal. The fact that this may have been accepted by other units, although supportive of the proposal, was not persuasive.

Having well considered all of the proposals under each of the statutory criteria, I award the following:

AWARD

TERM OF AGREEMENT

Effective July 1, 1998, and ending June 30, 2003.

SALARY INCREASES

Effective and retroactive to January 1, 1999 - 3.5%

Effective and retroactive to January 1, 2000 - 4.0%

Effective and retroactive to January 1, 2001 - 3.75%

Effective and retroactive to January 1, 2002 - 4.0%

Effective and retroactive to January 1, 2003 - 3.75%

LONGEVITY PAY

The proposals of both the City and the FMBA are **DENIED.**

HOLIDAYS

Effective July 1, 1999, fold one new holiday into base salary.

The FMBA's proposal regarding holidays is **DENIED.**

VISION CARE

Employees will be entitled to coverage under the City's vision care program.

TERMINAL LEAVE

The FMBA's proposal is **DENIED.**

PRESCRIPTION PLAN

The FMBA's proposal is **DENIED.**

FUNERAL LEAVE

The FMBA's proposal is **DENIED.**

JURY DUTY

The FMBA's proposal is **DENIED.**

ROBERT E. LIGHT, Interest Arbitrator

STATE OF NEW JERSEY :
:SS
COUNTY OF MIDDLESEX:

On this 30th day of August, 2000, before me personally came and appeared ROBERT E. LIGHT, 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.

ELLEN ORLANDINI
Notary Public of NJ