

STATE OF NEW JERSEY  
PUBLIC EMPLOYMENT RELATIONS COMMISSION

-----X  
In the Matter of the Interest Arbitration

between

CITY OF EAST ORANGE

"City"

-and-

FIREMEN'S MUTUAL BENEVOLENT ASSOCIATION  
LOCAL NO. 23

"Association"

X Re: Docket No.  
IA-97-85

X

X

X

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X

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**APPEARANCES**

**For the City**

MCCORMACK & MATTHEWS  
Thomas M. McCormack, Esq., of Counsel

**For the Association**

COURTER, ROBERT, LAUFER & COHEN, P.C.  
Frederic M. Knapp, Esq., of Counsel

**BEFORE:** Martin F. Scheinman, Esq., Interest Arbitrator

## BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 1995. After the Agreement's expiration, they entered into negotiations for a successor agreement. Those negotiations proved unsuccessful, whereupon the Association demanded interest arbitration. Pursuant to the rules and regulations of the State of New Jersey Public Employment Relations Commission ("the Commission"), I was designated as the Interest Arbitrator to hear and adjudicate this dispute.

Initially, I met with the parties at their request in an attempt to mediate a settlement of this dispute. Although this narrowed the scope of the dispute between the parties, it ultimately proved unsuccessful. Thus, the matter was set down for formal interest arbitration hearings.

Hearings were held before me on September 15, 1997, October 27, 1997, February 3, 1998, and May 11, 1998. At those hearings, the parties were afforded full opportunity to introduce evidence and argument in support of their respective positions. They did so. Each side introduced extensive evidence relevant to the statutory criteria. This included budgetary and financial information. The parties submitted charts, graphs and data dealing with all of the statutory criteria.

Thereafter, the parties submitted briefs in support of their final offers. Upon my receipt of same, the record was declared closed.

### POSITIONS OF THE PARTIES

The Association has proposed a three (3) year Agreement with a term of January 1, 1996 through December 31, 1998. It claims that this is preferable to an Agreement with a longer term.

The Association has proposed, exclusive of increments, across the board wage increases of three percent (3%) effective on January 1, 1996, three percent (3%) effective on July 1, 1996, four and three-quarters percent (4.75%) effective on January 1, 1997, and four and nine-tenths percent (4.9%) effective on January 1, 1998.

The Association maintains that its salary proposal is the most reasonable. It asserts that this conclusion is compelled by a consideration of all of the relevant statutory criteria specified in N.J.S.A. 34:13A-16(g).

With regard to the first statutory criterion, which concerns the interests and welfare of the public, the Association maintains that the interests and welfare of the public would be both protected and promoted by awarding the wage increase it has proposed. It contends that its wage proposal represents an equitable compensation plan, which, if awarded, would lend itself to a stable work force. The Association argues that a stable work force among its Firefighters is in the best interest of the public and furthers the general welfare.

The Association maintains that the parties' salary structure should provide Firefighters with an incentive to remain a City Firefighter. It contends that City Firefighters are continuously exposed to a higher rate of on-the-job hazards when compared to

their counterparts in surrounding municipalities. The Association submits the following data in support of that assertion.

**ANNUAL NUMBER OF RUNS AND TOTAL MANPOWER**

<b><u>ANNUAL NO. OF RUNS</u></b>	<b><u>TOWN</u></b>	<b><u>MANPOWER</u></b>
9,724	Jersey City	574
7,767	Clifton	120
7,000	Elizabeth	270
5,694	Belleville	66
4,700	Plainfield	109
3,932	Bayonne	172
3,870	Linden	123
3,654	Trenton	271
3,622	Union	95
3,100 (1992)	Harrison	60
3,100	East Orange	187
3,048	Cliffside Park	18*
2,929	Teaneck	99
2,874	West Orange	89
2,785	Montclair	84
2,700	Orange	79/52
2,700	Passaic	113
2,500	West New York	97
2,600	Union City	99

\* - denotes part paid department, also has volunteers

ANNUAL NUMBER OF RUNS AND TOTAL MANPOWER - continued

<u>ANNUAL NO. OF RUNS</u>	<u>TOWN</u>	<u>MANPOWER</u>
2,565	Kearny	99
2,347	Hillside	52
2,402	Irvington	137
1,925	Bloomfield	86
1,800	Ridgewood	41
1,500	Westfield	39
1,324	Morristown	30
1,300	Rahway	52
1,289	Milburn	47
1,040	Nutley	32
942	Maplewood	39
850	Weehawken	50
906	Cranford	28
600	Morris Twp.	21

\* - denotes part paid department, also has volunteers

(Association Exhibit No. 13)

The Association contends that the number of alarms responded to by City Firefighters was even greater in 1997, when they responded to 3,254 alarms. (Association Exhibit No. 13) According to the Association, these alarms resulted in seventy (70) fire service casualties and eleven (11) non-fire service casualties in 1997. (Association Exhibit No. 13) It also asserts that there have

been 201.5 days lost by City Firefighters due to nonfatal injuries during 1997. (Association Exhibit No. 29) It further asserts that City Firefighters have had thirty nine (39) days of restricted/light duty activity and an additional fifty seven (57) injuries without lost work days. (Association Exhibit No. 29)

The Association contends that the City has not disputed the fact that being a Firefighter in the City of East Orange is a most dangerous profession. However, it argues that the economic package proposed by the City fails to recognize this fact. The Association insists that "[t]he effect of the City's [wage] proposal is to even further denigrate the efforts of [its] Firefighters." (Association Brief at pg. 8)

For all of these reasons, the Association argues that the evidence concerning the interest and welfare of the public demonstrates that the Association's wage proposal is reasonable and ought to be awarded.

The Association maintains that the evidence concerning the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions supports awarding its wage proposal. It contends that "[w]hen compared with the salary structures contained in other collective bargaining agreements, the [Association's] wage proposal would result in smaller increases for [the City's Firefighters] than those put in place contractually for police and fire department employees in similar jurisdictions." (Association Brief at pg. 12, citing, Association Exhibit Nos. 16-22) In its

brief, the Association compares East Orange Firefighters with their counterparts in the following jurisdictions: Newark; West Orange; Elizabeth; and Rahway. It maintains that these municipalities are demographically similar and geographically close to East Orange. The Association submits the following data in support of that assertion.

<u>MUNICIPALITY</u>	<u>WAGE INCREASES</u>
Newark Firefighters	1/1/96 - 5.5% 1/1/97 - 5.5% 1/1/97 - 4.5%
West Orange Fire Supervisors	1/1/96 - 3.5% - 7/1/96 - 3.5% 1/1/97 - 3.5% - 7/1/97 - 3.5%
Elizabeth Firefighters	1/1/96 - 6.0% 1/1/97 - 4.0% 1/1/98 - 4.0%
Rahway Fire Supervisors	7/1/96 - 4.5% 7/1/97 - 4.5% 7/1/98 - 4.5%

(Association Brief at pgs. 12-13)

The Association also maintains that the wages paid to the City's Firefighters compare unfavorably to the wages paid to their counterparts in additional comparable communities. It submits the following data in support of that assertion.

**MAXIMUM FIREFIGHTER SALARIES**  
(1995 unless otherwise indicated)

<b><u>RANK</u></b>	<b><u>TOWN</u></b>	<b><u>SALARY</u></b>	<b><u>STEPS</u></b>
1	Ridgewood	*59,058	(7 steps) (1994 salary)
2	Linden	***55,966	(8 steps) (1997 salary)
3	Jersey City	**53,676	(7 steps) (1996 salary)
3	Teaneck	**52,810	(5 steps) (1996 salary)
4	West Orange	***51,051	(7 steps) (1997 salary)
5	Morris Twp.	50,875	(5 steps)
6	Rahway	**50,718	(5 steps) (1996 salary)
7	Cliffside Park	*50,186	(steps n/a) (1994 salary)
8	Nutley	50,152	(5 steps) (1997 salary)
9	New Brunswick	*49,311	(5 steps) (1996 salary)
10	Orange	*49,052	(5 steps) (1996 salary)
11	Morristown	48,603	(4 steps)
12	Newark	48,441	(7 steps)
13	Hillside	48,216	(5 steps)
14	Westfield	48,125	(6 steps)
15	Clifton	*48,062	(7 steps) (1994 salary)
17	Cranford	47,716	(6 steps)

\* 1994 salary

\*\* 1996 salary

\*\*\* 1997 salary

(Association Exhibit No. 6) Based upon this data, the Association argues that "East Orange firefighters ranked twenty-fourth (24th) out of twenty-eight (28) municipalities listed with a maximum



salary of \$46,479.00 per annum in 1995. The median firefighter salary (at maximum) of those twenty-eight (28) municipalities was \$52,548.00 per year. The average (mean) firefighter maximum salary of the same group was \$49,078.00. Accordingly, East Orange firefighters were 5.6% below average for a maximum firefighter's salaries throughout the State of New Jersey in 1995." (Association Brief at pg. 15) (emphasis in the original)

The Association maintains that even if its wage proposal were awarded, City Firefighter salaries would increase in 1996 to only \$49,309.00 per year and would advance only slightly when compared to the salaries of firefighters in comparable jurisdictions. It submits the following data in support of that assertion.

**MAXIMUM FIREFIGHTER SALARIES - 1996**  
**(1996 unless otherwise indicated)**

**RANK**

1	Ridgewood	59,058.00	(1994 rate)
2	Maplewood	53,676.00	
3	Morris Twp.	52,910.00	
4	Newark	51,105.00	
5	Rahway	50,718.00	
6	Westfield	50,387.00	
7	Cliffside Park	50,186,.00	
8	Elizabeth	49,590.00	
9	New Brunswick	49,311.00	(1994 salary)
	East Orange per FMBA proposal	\$49,309.00	

10	Orange	49,052.00
11	Belleville	48,671.00
12	Weehawken	47,549.00
13	Harrison	46,039.00

Source: MJFMBA SALARY Guide

(Association Exhibit No. 7)

As to the criterion regarding comparisons to public employment in general, the Association maintains that these comparisons also support the reasonableness of its wage proposal. It contends that the parity between the salaries of East Orange Police Officers and East Orange Firefighters, "which had previously been obtained under a memorandum of agreement in 1994 ... has effectively been eliminated as a result of the 3% wage increase granted to police officers effective January 1, 1996." (Association Brief at pg. 14, citing, Association Exhibit No. 5) The Association insists that the City's wage proposal, if awarded, would perpetuate the wage disparity between the City's Firefighters and its Police Officers. It also maintains that the City granted certain civilian employees four percent (4%) pay raises in 1996.

Thus, the Association insists that when all of the relevant comparisons are made, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion regarding overall compensation, the Association acknowledges that the City, like many comparable communities, provides fringe benefits to its Firefighters which

include health insurance, a maximum of twenty eight (28) vacation days per year, fourteen (14) paid holidays per year, longevity, uniform allowance, fifteen (15) paid sick days per year and bereavement leave. However, it points out that the City has proposed eliminating dependent health insurance coverage for new employees. As discussed below, the Association opposes that City proposal. It also insists that the City is literally "giving with one hand and taking with the other." (Association Brief at pg. 19) Thus, the Association argues that this criterion also supports the awarding of its wage proposal.

As to the criterion regarding stipulations between the parties, the Association contends that there have been none to date.

As to the criterion regarding the lawful authority of the City, the Association maintains that this requires an evaluation of the City's authority to pay for the Association's economic proposals pursuant to the requirements of New Jersey's Cap Law. It contends that New Jersey's Cap Law presents no impediment to my awarding the Association's economic proposals.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the Association maintains that the impact of its wage proposal, if awarded, would be of minimal significance. It contends that the awarding of its wage proposal also would be financially prudent.

With regard to the City's property taxes, the Association maintains that its expert, Ralph Capric, explained that the City's

property tax rate had only increased an average of two and seven tenths percent (2.7%) over the immediately proceeding seven (7) years. It contends that Capric also testified that this rate of increase in property tax rates was well below the percentage increase in the cost of living over the same time period.

The Association also maintains that Capric found that the City often underestimated its property tax receipts and in 1998, had conservatively underestimated its property tax receipts by approximately five hundred thousand dollars (\$500,000). It submits the following data in support of that assertion.

**Table 2**

**Analysis of Municipal Property Tax Collection**

(\$ in millions)

<b><u>Year</u></b>	<b><u>Anticipated</u></b>	<b><u>Actual</u></b>	<b><u>Excess</u></b>
1997	\$36.9	\$40.8	\$3.9
1996	37.8	40.1	2.3
1995	32.5	29.8	(2.7)
1994	23.1	26.7	3.6

\* In three of the last four years, East Orange has underestimated property tax collections by an average \$3.3 million a year. This is especially significant in 1996 and 1997, when, despite an increase in the tax rate, tax collections came in ahead of projections.

\* A conservative estimate of property tax underestimation in 1998 would equal \$500,00.

Sources: East Orange Annual Budget: 1997  
 East Orange Annual Financial Statements: 1994-1997  
 East Orange Audit Reports: 1995/1996

(Association Exhibit No. 3 at Table 2) The Association asserts that this data shows that the amount of property taxes collected by the City has increased substantially over the last three (3) budget years. It further asserts that the evidence shows that the City's property tax collection rate has risen approximately six percent (6%) over the same three (3) year period. It submits the following data in support of that assertion.

**Table 4**

**Analysis of East Orange Property Tax Collection Rates**

<u>Year</u>	<u>Property Tax Collection Rate</u>
1997	88%
1996	84%
1995	82%

\* Property tax collection rates are an indication of the fiscal health of a municipality. East Orange's property tax collection rates are improving, rising to 88 percent between 1995 and 1997.

Source: East Orange Annual Financial Statements: 1995-1997

(Association Exhibit No. 3 at Table 4) Thus, the Association argues that the economy in East Orange is improving.

For all of these reasons, the Association argues that pursuant to this criterion, its wage proposal is clearly reasonable and ought to be awarded.

As to the criterion concerning the cost of living, the

Association maintains that it is not a pivotal factor in this dispute. It acknowledges that the Association's wage proposal is slightly greater than the cost of living. However, the Association contends that the City's wage proposal also is slightly greater than the cost of living. Therefore, it argues that this criterion should be given little weight.

As to the criterion regarding the continuity and stability of employment, the Association contends that awarding the City's wage proposal would adversely affect continuity and stability of employment within East Orange's Fire Department. It also argues that the "potential turnover created by the failure [of] experienced officers to remain in the East Orange Fire Department causes, among other things, poor morale among the officers and the hiring of inexperienced officers to work in an environment plagued by extreme stress and a high fire rate. This, in turn, creates discontent among the residents of the [City] because unhappy and/or inexperienced firefighters will be unable to perform at their best." (Association Brief at pg. 23) Thus, the Association argues that pursuant to this criterion, its wage proposal is clearly the more reasonable and ought to be awarded.

The Association has proposed that effective upon execution of this Agreement, the parties' current work schedule be changed to a "24/72" schedule. It maintains that its 24/72 work schedule proposal is supported by the testimony and detailed analysis of William Lavin, President of the New Jersey State Fireman's Mutual Benevolent Association, and President of FMBA Local No. 9. The

Association contends that Lavin's testimony demonstrated that utilization of its proposed work schedule has resulted in reduced sick leave and overtime in several other municipalities, including Elizabeth. It asserts that Lavin's testimony concerning the positive aspects of a 24/72 work schedule was unchallenged and unrefuted by the City. Thus, the Association insists that its 24/72 work schedule proposal, if awarded, will increase the number of hours worked by the City's Firefighters and provide the City with greater utilization of its firefighting work force. It further insists that utilization of the Association's proposed 24/72 work schedule will increase protection for the public and increase Firefighter morale by providing City Firefighters with a more rational lifestyle. It also maintains that its 24/72 work schedule proposal is supported by evidence regarding comparability. For all of these reasons, the Association insists that its 24/72 work schedule proposal is supported by the evidence concerning the relevant statutory criteria and ought to be awarded.

The Association has proposed that effective upon execution of this Agreement, retiree health benefits be paid for by the City. It argues that the Association's retiree health insurance proposal is reasonable and ought to be awarded.

The Association has proposed that effective upon execution of this Agreement, the Agreements' current sick leave schedule be modified so that Firefighters have unlimited sick leave. It argues that the Association's sick leave proposal is supported by evidence concerning the relevant statutory criteria and ought to be awarded.

The Association has proposed that effective January 1, 1996, the Agreement's vacation benefit be amended so that all employees with fifteen (15) years of service or more receive an additional two (2) vacations days per year. It argues that the Association's vacation proposal is reasonable and ought to be awarded.

The Association has proposed that effective January 1, 1996, the Agreement's clothing allowance be amended to include clothing maintenance and that it be increased from the current level of five hundred and twenty five dollars (\$525) to six hundred dollars (\$600) per year. It argues that the Association's clothing allowance proposal is supported by evidence concerning the relevant statutory criteria and ought to be awarded.

The Association opposes the City's proposal to institute random drug testing for the City's Firefighters. It asserts that the City has not presented any evidence supporting the need for random drug testing among its Firefighters. The Association points out the parties drug testing policy was recently awarded by me after an interest arbitration proceeding. It argues that there is no evidence which supports altering that drug testing policy with the "sweeping invasion of privacy for all firefighters" being proposed by the City. (Association Brief at pg. 12) Therefore, the Association insists that the City's drug testing proposal is unreasonable and should not be awarded.

The Association opposes the City's proposal to eliminate dependent health insurance coverage for new employees. It asserts that the City's health insurance proposal, if awarded, would result



in out-of-pocket costs of thousands of dollars for each new Firefighter. It further asserts that these are the Firefighters who can least afford such an expense for dependent health insurance coverage. The Association contends that there is no evidence in the record supporting the City's health insurance proposal. It maintains that this City proposal is not supported by evidence of comparability. The Association also argues that "[t]o eliminate dependent health insurance coverage for new employees which must make every penny count seems punitive, especially considering that the City has offered no evidence that such an increase will save a substantial, or any, amount of money." (Association Brief at pg. 18) Therefore, it argues that the City's health insurance proposal is unreasonable and should not be awarded.

In all, the Association submits that its final offer comports more closely than the City's with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16 (g). It asks that its final offer be awarded.

The City, on the other hand, maintains that its final offer is the more reasonable one. It contends that like the Association, it has proposed a three (3) year Agreement for the period January 1, 1996 through December 31, 1998.

The City has proposed a two and one-half percent (2.5%) wage increase effective January 1, 1996, a three percent (3%) wage increase effective January 1, 1997, and a three and one-half percent (3.5%) wage increase effective January 1, 1998.

Before specifically discussing the statutory criteria relevant

to the parties' wage proposals, the City insists that "the reality of the City's fiscal condition must not be lost in the technical submissions of the parties." (City Brief at pg. 5) It argues that "one need only drive through the municipality to understand the unfortunate conditions which have befallen the City including but not limited to a high crime rate, a clear decline in businesses and employment, a decaying infrastructure, a high level of vacant buildings and an overall systematic economic decline." (City Brief at pg. 5)

As to the criterion regarding the interests and welfare of the public, the City does not dispute that the services provided by its Firefighters are invaluable to the public and required by East Orange's urban layout. However, it insists that the fiscal health of East Orange and the general health of its workforce are also interests of the public which must be considered.

The City maintains that awarding the Association's wage proposal would practically guarantee a budget crisis. Thus, it insists that if the Association's proposed wage increase is awarded, other services would need to be cut and the public welfare would suffer. The City argues that "[t]he simple undeniable truth of the fiscal situation of the City is that there is a direct correlation between the obligations imposed with respect to its employees and the City's ability to provide services to its residents." (City Brief at pg. 6) Accordingly, it maintains that the City's wage proposal is supported by the evidence of record concerning the interests and welfare of the public criterion.

As to the criterion regarding a comparison of the wages of other employees performing the same or similar services in public employment in comparable jurisdictions, it maintains that the municipalities relied upon by the Association are not appropriate comparables because "the underlying fiscal and economic situations of the various municipalities are completely dissimilar with that of the City of East Orange such that a proper comparison cannot be drawn." (City Brief at pg. 7)

The City does not maintain that all of the communities relied upon by the Association for comparison are inappropriate. However, it does allege that a large portion of the data submitted by the Association is "completely useless and misleading in that the municipalities selected have little or no relation to the economic situation of the City of East Orange." (City Brief at pg. 7)

The City maintains that the record shows that many of the jurisdictions relied upon by the Association as relevant comparables enjoy lower equalized taxes, lower percentage increases in their municipal tax levies and higher equalized property values than East Orange. With regard to truly similar jurisdictions, the City argues that it does not rank significantly from the average salary paid to firefighters by truly comparable communities.

For these reasons, the City insists that when the appropriate comparisons are made, the record evidence concerning comparability does not support awarding the Association's wage proposal.

As to the criterion regarding overall compensation, the City maintains that its Firefighters are well compensated when compared

to firefighters in truly comparable jurisdictions. It contends that the City ranks higher than several municipalities in benefits such as clothing maintenance allowance and vacation days, and is comparable with many municipalities with regard to benefits such as educational payments and personal days. (Association Exhibit Nos. 9-12) The City also maintains that the its Firefighters enjoy many benefits which are not available to the City's residents or either employees in the private sector. Thus, it argues that this criterion supports awarding the City's wage proposal.

As to the criterion regarding stipulations between the parties, the City contends that there have been none to date.

As to the criterion regarding the lawful authority of the City, it does not dispute that this criterion requires an evaluation of the City's authority to pay for the parties' proposals pursuant to the requirements of New Jersey's Cap Law. It also does not allege that New Jersey's Cap Law presents any impediment to my awarding either party's wage proposal.

As to the criterion regarding the financial impact on the governing unit, its residents and taxpayers, the City insists that this criterion clearly supports the awarding of the City's wage proposal. It relies primarily upon the Certification of its Finance Director, Linda D. Munro.

The City maintains that the record shows that it has many large and systematic problems that adversely affect the City's ongoing fiscal circumstances. It contends that "[t]hese problems include a shrinking population and a decreasing level of per capita

income for those residents remaining .... the unemployment rate is substantially higher than the statewide average." (City Brief at pg. 14) The City submits the following data in support of these assertions.

#### Employment and Unemployment Comparisons

For the years 1993 to 1997, the New Jersey Department of Labor reported the following annual average employment information for the City of East Orange, the County of Essex and the State of New Jersey:

##### **City of East Orange**

Year	Total Labor Force	Employed Labor Force	Total Unemployed	Unemployment Rate
1997	35,629	32,522	3,107	8.7
1996	35,673	31,994	3,679	10.3%
1995	35,941	32,194	3,747	10.4%
1994	35,587	31,716	3,871	10.9%
1993	35,707	31,459	4,248	11.9%

##### **County of Essex**

Year	Total Labor Force	Employed Labor Force	Total Unemployed	Unemployment Rate
1997	374,500	350,200	24,300	6.5
1996	373,293	344,497	28,796	7.7%
1995	376,000	346,700	29,300	7.8%
1994	371,800	341,500	30,300	8.1%
1993	372,000	338,700	33,300	8.9%

**State of New Jersey**

Year	Total Labor Force	Employed Labor Force	Total Unemployed	Unemployment Rate
1997	4,193,600	3,978,200	215,500	5.1
1996	4,124,000	3,869,000	255,000	6.2%
1995	4,066,000	3,805,000	261,000	6.4%
1994	4,991,000	3,719,000	272,000	6.8%
1993	3,954,000	3,662,000	292,000	7.4%

Source: New Jersey Department of Labor, Division of Planning & Research. Office of Demographic & Economic Analysis Bureau of Labor Force Statistics; Local Area Unemployment Statistics.

**Per Capita Income**

For the year ending December 31, 1996, the per capita income for the residents of the City was as follows:

Governmental Unit	\$0 - 14,999	\$15,000 - 24,999
City of East Orange	7,844	4,779
Governmental Unit	\$25,000 - 39,999	\$40,000 and over
City of East Orange	5,955	8,597

Source: East Orange Planning and Development Dept.

(Munro Certification at Exhibit A)

The City contends that during this same period there has been a substantial decrease in the City's ratables with no reasonable prospect that the City's ability to raise money through property

taxation will increase. It further maintains that the City's municipal tax levy has increased 82.85% over the last ten (10) years. (Munro Certification at Exhibit B) The City argues that this evidence shows that the City is becoming more dependent on an ever shrinking source of revenue.

The City insists that its fiscal and budget situation is even bleaker than suggested by the economic trends discussed above. It asserts that "[b]eginning with the fiscal year 1994, the City has suffered consistent budget deficits ranging from \$2,280,165.00 in 1994 to as much as \$14,768,811.00 in fiscal year 1995. Despite aggressive attempts at recovery during 1996, the City still suffered a deficit in the amount of \$1,386,385.00 in fiscal year 1997." (City Brief at pg. 15)

The City maintains that the record also shows that various external situations have added to the City's financial woes. It asserts that when Upsala College defaulted on bonds guaranteed by the City, it (the City) was required to assume debt service on those bonds in the amount of three hundred and fifty five thousand dollars (\$355,000) per year, plus interest. The City further asserts that it must repay approximately six million dollars (\$6,000,000) in state aide. It also alleges that it is without resources to deal with any claims which may result from the City's self-insured status.

The City contends that none of the evidence submitted by the Association through its financial expert, Raphael Caprio, shows that the City can afford the wage increases requested by the

Association.

For all of these reasons, the City argues that pursuant to this criterion, its wage proposal is clearly the more reasonable and ought to be awarded.

As to the criterion concerning the cost of living, the City maintains that its wage proposal adequately addresses the recent increases in the cost of living. Thus, it argues that this statutory criterion also supports awarding the City's wage proposal.

As to the criterion regarding the continuity and stability of employment, the City contends that it offers continuous and stable employment for its Firefighters. It asserts that the record shows that most of the City's Firefighters have been employed by the City long enough to earn the longevity benefits provided by the Agreement. Thus, the City argues that pursuant to this criterion, its wage proposal is clearly the more reasonable and ought to be awarded.

The City has proposed amending the parties' current drug testing procedures to include random testing of City Firefighters for substance abuse, specifically including drugs and or alcohol. It maintains that "it is patently obvious that the functions of the members of [it Fire Department] are such that the public clearly has an interest in guaranteeing a drug-free workplace." (City Brief at pg. 7) Thus, the City argues that its drug testing proposal is supported by the relevant statutory criteria and ought to be awarded.



The City has proposed amending the parties' Agreement with regard to health insurance so that the City is responsible for payment of health insurance premiums for Firefighters only and not for their family members. It insists that the evidence concerning the city's financial circumstances supports the awarding of the City's health insurance proposal.

The City has proposed amending the parties' Agreement so that it prohibits the filing of claims by Firefighters against the City for uninsured motorist benefits and Workers' Compensation benefits for auto-related accidents that occur during employment. It argues that this proposal is reasonable and ought to be awarded.

The City opposes all of the Associations' other economic and non-economic proposals. It insists that they are neither supported by evidence regarding comparability nor evidence concerning the City's financial circumstances. Therefore, the City argues that the Association's economic and non-economic proposals should not be awarded.

In all, the City maintains that its final offer best comports with all of the relevant statutory criteria set forth in N.J.S.A. 34:13A-16(g). It asks that its final offer be awarded.

## OPINION

Several introductory comments are appropriate here. In the absence of an agreement to the contrary by the parties, the procedure to be used in this matter is conventional interest arbitration. As Interest Arbitrator, I must adhere, as follows, to the statutory criteria set forth in N.J.S.A. 34:13A-16(g).

[The Interest Arbitrator must] decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor:

(1) The interests and the welfare of the public. Among the items the arbitrator 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) Comparisons of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (b) In public employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.
- (c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with sections 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, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received.

(4) Stipulation of the parties.

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

(7) The cost of living.

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

Accordingly, and with these principles in mind, I now turn to the facts of this dispute.

The Association has proposed a three (3) year Agreement for

the period January 1, 1996 through December 31, 1998. It also has argued against a three and one-half (3-1/2) year (i.e., forty two (42) month) Agreement, it claims was part of the City's final offer. In its Brief, however, the City, like the Association, also requested a three (3) year Agreement covering the period January 1, 1996 through December 31, 1998.

Regardless of which party proposed a three (3) year Agreement, and which party proposed a three and one-half (3-1/2) year Agreement, I find that in the circumstances of this case, a three (3) year Agreement is of insufficient duration. It would require that negotiations between the parties begin immediately for their next agreement. This would be unduly burdensome on both the City and the Association. It also would run counter to the interests and welfare of the public. In addition, a three and one-half year (3-1/2) year Agreement makes good sense. It would enable the parties involved in this proceeding to at least have a limited period of time to resume their relationship free from the interruptions of collective bargaining. Thus, I have formulated this Award based upon a contract term of a three and one-half (3-1/2) years (i.e., forty two (42) months).

I now turn to the remaining components of the parties' wage proposals.

The Association has proposed across the board wage increases of three percent (3%) effective on January 1, 1996, three percent (3%) effective on July 1, 1996, four and three-quarters percent (4.75%) effective on January 1, 1997, and four and nine-tenths

percent (4.9%) effective on January 1, 1998.

The City has proposed a two and one-half percent (2.5%) wage increase effective January 1, 1996, a three percent (3%) wage increase effective January 1, 1997, and a three and one-half percent (3.5%) wage increase effective January 1, 1998.

I find both the Association's and the City's proposals to be unacceptable. Clearly, given the financial circumstances of the City, there can be no justification for a salary increase of the magnitude being proposed by the Association. Under no circumstances can this level of increase be justified in light of the relevant statutory criteria.

On the other hand, the City's wage proposal also is not totally justified. It does not take any steps towards bringing the salaries of East Orange's Firefighters in line with those of their counterparts in comparable jurisdictions. As explained below, the financial circumstances of the City can be taken into account while awarding the City's Firefighters a wage increase richer than the increase proposed by the City and closer to the wages paid to firefighters in comparable jurisdictions. Thus, the City's wage proposal also cannot be justified when all of the relevant statutory criteria are taken into account.

Instead, I am persuaded that a wage increase between the Association's proposal and the City's proposal is appropriate here. In order to determine with specificity the appropriate economic package, it is necessary to analyze each of the statutory criteria in relation to the positions proffered by the parties.

As to the interests and welfare of the public, I agree with the City that its citizens are not benefitted by a salary increase which the City cannot afford and which results in reductions in other needed services. Therefore, logically, the City's proposal, which is lower than the Association's, is preferred when evaluating the economic interests and welfare of the public.

However, the public's interests and welfare are also served by a Fire Department that is stable and whose morale is high. This is especially so in a high density, urban community such as East Orange.

Thus, I am persuaded that a wage package which unnecessarily deviated from the type of salary increases provided to other firefighters in comparable communities, would not serve the interests and welfare of the citizens of the City. After all, the interests and welfare of the public criterion is not limited solely to the public's financial interests and welfare. By necessity, it also must involve the community's interest and welfare in having its Fire Department continue to serve its essential needs and provide essential services.

Therefore, I find that the statutory criterion concerning the interest and welfare of the public favors awarding a wage increase between the increases proposed by the parties.

The second criterion requires a comparison of the wages, salaries, hours and conditions of employment of East Orange Firefighters with those of other employees performing the same or similar services in the public sector in comparable jurisdictions,

in comparable private employment and in public and private employment in general.

The Association presented evidence that the wages of the City's Firefighters did not compare well to the wages paid to their counterparts in a broad cross section of New Jersey municipalities. The City has argued that the Association's comparisons with certain communities are inappropriate because of demographic differences between those municipalities and East Orange. Comparability, however, rather than identity of communities, is all that is required by the statute. Differences in degrees of comparability can be taken into account when evaluating evidence drawn from jurisdictions with different degrees of comparability to the City. Thus, I find that comparisons drawn by the Association between the City's Firefighters and their counterparts in comparable communities with somewhat different demographics are relevant to this dispute.

Thus, I find that the evidence of comparability presented by both the City and the Association support the awarding of a wage increase greater than the increase proposed by the City.

The next criterion deals with the overall compensation received by the City's Firefighters. I agree with the City that the overall compensation received by its Firefighters is good. I also agree with the City that the benefits received by its Firefighters tend to be similar to the benefits received by Firefighters in comparable jurisdictions. However, the overall compensation of the City's Firefighters would not fare relatively

well with the overall compensation received by other Firefighters in comparable jurisdictions, if I were to award the wage proposal and the benefit reductions being proposed by the City. Under those contract terms, the City's Firefighters would fall behind their counterparts in comparable jurisdictions in terms of overall compensation and benefits. Thus, I find that this criterion also demonstrates the appropriateness of awarding a wage increase greater than the increase being proposed by the City.

As to the criterion concerning the stipulations of the parties, I find that there are no stipulations by the City and the Association which are relevant to this dispute.

As to the lawful authority of the employer, I note the existence of New Jersey's Cap Law. I agree with the parties that this criterion requires an evaluation of the City's authority, pursuant to the requirements of New Jersey's Cap Law, to pay for the wage increases being proposed by the parties. The Association has persuasively argued that the City has the budgetary flexibility to pay for the Association's wage proposal within the framework of New Jersey's Cap Law. The City has not presented any persuasive evidence to the contrary. This is not to say that the City has failed to present a compelling case that it is not flush with money and that it cannot afford to pay for the wage increases proposed by the Association without over-burdening its residents and taxpayers. However, that type of evidence is more appropriately considered when evaluating the financial impact on the governing unit, its residents and taxpayers. Thus, there can be no dispute that the



City has the lawful authority to pay for the wage increases awarded herein, which fall between the increases proposed by the City and those proposed by the Association

The statutory criteria concerning the financial impact of the parties' proposals on the governing unit, its residents and taxpayers, essentially asks for an analysis of the City's ability to pay for the parties' proposals.

The City has made a compelling case that its financial condition is tenuous. That is, any substantial increase in Firefighter wages will necessarily result in either the cost of that increase being shifted to the City's residential taxpayers or a reduction in other important municipal services. The record shows that the City's municipal tax levy has increased 82.85% over the last ten (10) years. (Munro Certification at Exhibit B) The record also shows that during this same period there has been a substantial decrease in the City's ratables with no reasonable prospect that the City's ability to raise money through property taxation will increase in the future. Moreover, the record shows that the City has suffered consistent budget deficits since 1994.

Given the record evidence concerning the current economic climate in East Orange, this statutory criterion requires that I not award the magnitude of the wage increases being sought by the Association. Instead, the wage increase awarded must be more modest. Otherwise, there will be an unnecessary burden upon the governing unit and its residents and taxpayers. For this reason, I conclude that while a weighing of all of the relevant statutory

criteria entitles the City's Firefighters to a wage increase higher than the average annual rate increase of three percent (3%) being proposed by the City, the financial circumstances of the City necessitate moderating the cost of such an increase to the City. Thus, primarily because of the financial impact upon the governing unit and its residents and taxpayers, the salary increases awarded below are less than what would be justified if the other statutory criteria were emphasized.

For all of these reasons, I have determined that the appropriate wage increase is a three percent (3%) across-the-board increase effective January 1, 1996, a three percent (3%) across-the-board increase effective January 1, 1997, a three percent (3%) across-the-board increase effective January 1, 1998, and a three and one-quarter percent (3.25%) across-the-board increase effective January 1, 1999. This results in a twelve and one-quarter (12-1/4%) percent rate increase over three and one-half (3-1/2) years, for an average annual rate increase of three and one-half percent (3-1/2%). This is substantially less than the increase requested by the Association. However this increase is also greater than the average annual rate increase of three percent (3%) proposed by the City.

This increase also is far less than awards issued recently in New Jersey by interest arbitrators. In fact, other Awards I issued are significantly more. However, those communities, on the whole, do not face the economic circumstances in existence in East Orange.

Thus, the financial circumstances of the City and its

residents and taxpayers have been taken into account and the wages of the City's Firefighters have moved toward closing the wage gap with firefighters in comparable communities.

As to the cost of living, I recognize that the increases awarded herein, like both parties' wage proposals, are slightly higher than current increases in the cost of living. However, I also recognize that in the past firefighters did not receive wage increases equal to the cost of living when the increase in the cost of living was running in the double digits or close to the double digits. Under those circumstances, common sense required that salary increases be less than the cost of living.

This is not surprising. It is ordinarily the case that in periods of very high inflation, salary increases tend to lag behind the rate of inflation. Conversely, in times of low inflation, when the cost of living is quite moderate, wage adjustments somewhat exceed the cost of living. Pursuant to historic trends in the cost of living and firefighter wage rates, I find that the wage increases awarded herein to be the appropriate result. The awarded increases slightly exceed recent increases in the cost of living, but reflect the long term historic trends in the cost of living.

Thus, I have incorporated relevant evidence concerning the cost of living into this Award. Stated otherwise, the increases awarded herein reflect and take into account the declining cost of living.

The final criterion concerns the continuity and stability of the employment of East Orange's Firefighters. The evidence

establishes that the present complement of Firefighters in East Orange have a high level of continuity and stability in their employment. That is, there is no evidence to suggest that the City's Firefighters face the imminent threat that their positions will be eliminated or that the number of Firefighters will be reduced. As a result, this criterion favors a more moderate increase than the one sought by the Association.

In summary, in light of all of the statutory criteria, as described in detail above, I award the following wage increases to the City's Firefighters:

January 1, 1996	3% across-the-board
January 1, 1997	3% across-the-board
January 1, 1998	3% across-the-board
January 1, 1999	3-1/4% across-the-board

These increases balance the legitimate right of the City's Firefighters to be compensated appropriately without unduly burdening the residents and taxpayers of East Orange. In addition, the wage increases awarded herein intentionally cushion the impact of the those increases on the City's financial circumstances by awarding the largest wage increase during the last half year of the Agreement. I now turn to the parties other economic and non-economic proposals.

The Association has proposed that effective upon execution of this Agreement, the parties' current work schedule be changed to a "24/72" schedule. The City opposes that proposal.

The Association has made a compelling case that implementation

of a 24/72 work schedule for firefighters in comparable communities has resulted in reduced sick leave and overtime in several municipalities. It also has made a strong case that implementation of a 24/72 work schedule among the City's Firefighters could improve the lives of those Firefighters while producing savings for the City in its sick leave and overtime expenditures. (Association Exhibit No. 1)

The City, however, can ill-afford, at this point in time, to be stuck with a costly new work schedule. That would not be in the interest of the City or its Firefighters.

Thus, given the City's financial circumstances, I find that the record evidence concerning the statutory criteria supports implementing the Association's 24/72 work schedule on a one (1) year trial basis in order to evaluate its effectiveness. After this one (1) year trial period, if the City believes that there has not been sufficient progress in meeting the objectives discussed above, the City may petition me to eliminate the 24/72 work schedule and return to the status quo. I shall retain jurisdiction to address any such petition which may be filed by the City.

The Association has proposed that effective upon execution of this Agreement, retiree health benefits be paid for by the City. The City opposes this proposal.

The Association's retiree health insurance proposal is not supported by compelling evidence regarding comparability. Given the City's financial circumstances, it cannot afford to be introducing a new benefit for the City's retired Firefighters.

Thus, the Association's retiree health insurance proposal shall not be awarded.

The Association has proposed that effective upon execution of this Agreement, the Agreements' current sick leave schedule be modified so that Firefighters have unlimited sick leave. It also has proposed that effective January 1, 1996, the Agreement's vacation benefit be amended so that all employees with fifteen (15) years of service or more receive an additional two (2) vacations days per year. The Association also has proposed that effective January 1, 1996, the Agreement's clothing allowance be increased from the current level of five hundred and twenty five dollars (\$525) to six hundred dollars (\$600) per year. The City opposes each of these benefit improvements proposed by the Association for active Firefighters.

The Association's various benefit improvement proposals for active City Firefighters are not supported by compelling evidence regarding comparability. Given the City's financial circumstances, it also cannot afford to be a leader among comparable communities in these costly benefit areas. Thus, the Association's sick leave, vacation and clothing allowance proposals shall not be awarded.

The City has proposed amending the parties' current drug testing procedures to include random testing of City Firefighters for substance abuse, specifically, drugs and or alcohol. The Association opposes the City's proposal to institute random drug testing for the City's Firefighters.

The Association is correct in pointing out that the parties'

drug testing program was recently awarded by me after an interest arbitration proceeding. That fact, however, does not create any presumption against altering the parties' drug testing program to include random drug testing for City Firefighters. Clearly, the public has a substantial interest in guaranteeing that its Firefighters are not performing their essential life and property saving functions under the influence of prohibited drugs or alcohol. The City's Firefighters, who regularly depend upon one another in life threatening situations, also have a substantial interest in guaranteeing that their colleagues are not performing their jobs under the influence of prohibited drugs or alcohol. Thus, I find that the City's random drug testing proposal is supported by the record concerning the statutory criteria and shall be awarded. As agreed, I shall retain jurisdiction over any disputes regarding establishing the procedures for random testing.

The City has proposed amending the parties' Agreement with regard to health insurance so that the City is responsible for payment of health insurance premiums for Firefighters only and not for their family members. The Association opposes this proposal.

This proposed drastic reduction in such an important benefit area as family health insurance coverage is not supported by evidence concerning comparability. It also is not necessitated by the City's financial circumstances, since those circumstances have been adequately addressed throughout this Opinion and Award with an eye towards sustaining the current level of City Firefighter benefits. Therefore, the City's health insurance proposal shall

not awarded.

The City has proposed amending the parties' Agreement so that it prohibits the filing of claims by Firefighters against the City for uninsured motorist benefits and Workers' Compensation benefits for auto-related accidents that occur during employment. The Association opposes this proposal. The City's auto accident proposal is not persuasively supported by evidence concerning the statutory criteria. Therefore, it too shall not be awarded.

In summary, I have carefully considered all of the relevant statutory criteria, as well as the type of standards normally evaluated in interest arbitrations of this kind, in reaching my findings above. In my view, they balance the rights of the members of the bargaining unit to fair improvements in their terms and conditions of employment with the legitimate needs of the City to budget its economic resources.

Accordingly, the changes herein are awarded to the extent indicated in this Opinion.



## **AWARD**

### **1. TERM**

The Agreement shall have a term of forty-two (42) months, from January 1, 1996 to June 30, 1999.

### **2. WAGE INCREASES**

January 1, 1996	3% across-the-board
January 1, 1997	3% across-the-board
January 1, 1998	3% across-the-board
January 1, 1999	3-1/4% across-the-board

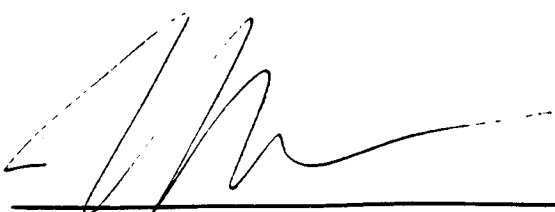
### **3. 24/72 WORK SCHEDULE**

Thirty days after the execution of this Opinion and Award, the Association's 24/72 work schedule shall be implemented by the parties on a one (1) year trial basis in order to evaluate its effectiveness. After this one (1) year trial period, if the City believes that there has not been sufficient progress in meeting the parties' objectives for this work schedule, the City may petition to eliminate the 24/72 work schedule and return to the status quo. I shall retain jurisdiction to address any such petition which may be filed by the City.


### **4. DRUG TESTING**

Effective upon the date of this Opinion and Award, the parties' current drug testing procedures shall be amended to permit random testing of City Firefighters for abuse of drugs and or alcohol. As agreed, I shall retain jurisdiction over any disputes regarding establishing the procedures for random testing.

August 21, 1998.

  
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Martin F. Scheinman, Esq.,  
Interest Arbitrator

On this 21 day of August 1998, before me personally came and appeared MARTIN F. SCHEINMAN, ESQ., to me known and known to me to be the individual described herein and who executed the foregoing instrument and he acknowledged to me that he executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Diane M. Falzon  
Registration No. 01FA5073646  
County of Nassau  
Expires March 3, 1999