

STATE OF NEW JERSEY - PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration)	
)	
Between)	
)	
CITY OF RAHWAY (COUNTY OF UNION))	PERC DOCKET # 1A-95-147
Public Employer)	
)	
and)	
)	
RAHWAY SUPERIOR FIRE OFFICERS)	OPINION AND AWARD
ASSOCIATION (RSFOA))	
Employee Representative)	
)	

Before: **J.J.Pierson, Esq.**
 Arbitrator

Appearing for the City: James Burns, Esq.
 James Gillespie, Esq.

Appearing for the RSFOA David Fox, Esq.

The City of Rahway (hereinafter, the "City") and the Rahway Superior Fire Officers Association (hereinafter, the "RSFOA" or the "Union") are signatories to a Collective Bargaining Agreement (hereinafter, the "Agreement"), with effective dates January 1, 1991 through June 30, 1995. (see Joint Exhibit J-1).

By letter dated August 3, 1995 and pursuant to N.J.A.C. 19:16-5.6, the New Jersey Employment Relations Commission (hereinafter, "PERC") appointed the undersigned to act serve as Interest Arbitrator in the impasse between the herein named parties regarding the terms and conditions of a successor Agreement which was to commence on July 1, 1995. Insofar as the parties did not agree upon a terminal arbitration procedure, the interest arbitration was conducted in accordance with the compulsory statutory procedure set forth under N.J.S.A. 34:13a-16(d)(2).

Proceedings commenced October 6, 1995 with a mediation session wherein proposals were discussed. At the conclusion of the session, and upon determination that a negotiated settlement could not be reached, this Arbitrator instructed the parties to prepare for a "formal" hearing. Due notice was given to the parties.

A formal hearing was conducted on December 18, 1995 at the municipal offices, Rahway, New Jersey. The parties were afforded full opportunity to present witnesses and documents in support of their positions and both testimonial and (extensive) documentary evidence was introduced into the record. Upon completion of the hearing, the Arbitrator offered the parties an opportunity to modify their final positions and communicate their final offers. The hearing was concluded and the record declared closed upon receipt of the parties post-hearing briefs.

BACKGROUND:

The City of Rahway is located in Union County, comprises 3.99 square miles and has a population of approximately 28,000 people. The RSFOA is the exclusive bargaining representative of all Battalion Chiefs and Deputy Fire Chiefs employed within the City of Rahway Fire Department ("RFD"). Based on action taken by the City, the bargaining unit is comprised solely of five (5) Battalion Chiefs. There were no Deputy Fire Chiefs employed during the proceedings.¹

Within the context of the present proceedings, the RSFOA represents the five Battalion Chiefs for the purpose of negotiating rates of pay, hours of work, fringe benefits, working conditions, safety and procedures for adjustment of disputes and grievances, and all other related matters. (See Article I, Section 2 of the Agreement).

1. The record revealed that one (1) Acting Deputy Fire Chief was named on January 1, 1996

Despite efforts by the City and the RSFOA to reach a successor Agreement prior to expiration on June 30, 1995, the parties met on three (3) separate occasions May 1, May 24 and June 7, 1995). When terms satisfactory to the parties proved unacceptable and settlement attempts were unsuccessful, the City was prompted to file a "60-day Notice and/or Petition to Initiate Compulsory Interest Arbitration" through the Public Employment Relations Commission. (see PERC notice dated June 22, 1995). The City referenced the unit as "Battalion Chiefs within the Rahway Fire Department".

The City petitioned PERC with the following schedule of issues which have been regarded and identified as economic and non-economic within the meaning of N.J.A.C. 34:13-1 et seq., and considered mandatory items for negotiations:

Economic Issues:

- Overtime
- Vacation
- Holidays
- Sick Leave
- Terminal Leave
- Salaries
- Longevity
- Clothing Maintenance Allowance
- Salary While Receiving Workers Compensation Benefits
- Prescription Copayments

Non-Economic Issues:

- Preamble
- Performance of "Emergency Services"/"Law Enforcement Duties.
- Leaves of Absence
- Grievance and Arbitration Procedure
- Clothing and Equipment
- Management Rights

Further, the City indicated that a dispute existed as to the negotiability of the following unresolved issues:

- Minimum Manning Considerations
- Sick Leave Verification
- Assignment of Acting Personnel
- Hiring
- Providing of Clothing and Equipment

PERC subsequently appointed the undersigned Arbitrator and gave notice to the parties in accordance with N.J.A.C. 19:16- 5.6.(b). (See Appointment Letter dated August 3, 1995).

Compulsory Interest Arbitration

Compulsory Interest Arbitration is permitted in labor disputes for the public fire and police departments per N.J.S.A. 34:13A-14 et. seq. The statute provides that in the event the parties do not agree on any designated acceptable terminal procedures, or do not fashion one of their own, with the approval of PERC, the mandatory procedures of the statute shall be implemented. Pursuant to N.J.S.A. 34:13A-16(d)(2), the impasse in the negotiations herein must be resolved by "fair and final" arbitration.² Under the present procedure, final proposals are submitted as "fair and final" positions on economic items and the Arbitrator's discretion is limited to choosing between the "fair and final" economic package of proposals of the RSFOA or that of the City.

2. Note that recognition is given to the "Police and Fire Public Interest Arbitration Reform Act" pursuant to P.L. 1995, c.425, which was signed into law on January 10, 1996 and establishes "conventional arbitration as the terminal procedure to be utilized when ... unable to reach a new collective agreement (contract). In accordance with Section 11, the Act took immediate effect and "shall apply to all collective negotiations ... except those formal arbitration proceedings in which the arbitrator has, prior to the effective date of this act, taken testimony from the parties; ..." Since testimony was taken by this Arbitrator in the matter herein before January 10, 1996, the parties shall continue to use the terminal procedure ("fair and final offer") in effect prior to the January 10th date.

The parties have presented for determination economic issues where the choice of which will be confined to the last offer as a single package of the employer or the last offer as a single package of the employee representative. Because the parties in this matter did not agree upon any other alternative terminal procedure, this Arbitrator must determine the economic issues as a complete package. This Arbitrator is limited to finding either in favor of the public employer or in favor of the employee representative and on the entire economic issues therein.

Although select non-economic issues were outlined under the PERC petition, the parties submitted no non-economic issues for consideration.

At the time of hearing, and as indicated in their respective briefs, the parties significantly narrowed the scope of their dispute and limited their positions primarily to wages in the form of percentage increases per annum. The City also sought modifications with respect to terminal entitlements and an education incentive. Notably, the parties have stipulated to the time frame for the successor Agreement to be four (4) years.

N.J.S.A. 34:13A-16(g) provides that the Arbitrator "shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of this specific dispute:

1. The interests and welfare of the public.
2. Comparison of the wages, salaries, hours and conditions of employment of the employees involved in the arbitration proceedings with the wage, hours, and conditions of employment of other employees performing the same or similar service and with other employees generally:
 - (a) In public employment in the same or similar jurisdictions.
 - (b) In private employment in the same or similar comparable jurisdiction.
 - (c) In public and private employment in general.
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.
6. The financial impact of the governing unit, its residents and taxpayers.
7. The cost of living.
8. The opportunity and stability of employment including seniority factors not confined to the foregoing which are ordinarily or traditionally considered in the determination of wages, hours and conditions of employment through collective bargaining between the parties in the public service and in private employment."

(see N.J.S.A. 34:13A-16(g)).

FINAL ECONOMIC OFFERS

STIPULATION:

1. Contract Term

The parties agreed to a four (4) year contract duration, beginning July 1, 1995 through June 30, 1999.

FINAL OFFER OF THE CITY OF RAHWAY:

1. Salary Increases

4.00% effective July 1, 1995
4.00% effective July 1, 1996
3.75% effective July 1, 1997
3.75% effective July 1, 1998

2. Terminal Leave Benefit

The City seeks to pro-rate vacation days, holidays, and sick days on a monthly basis (1/12 earned per month) in the final year of employment beginning January 1, 1997.

3. Educational Incentive

The City seeks to maintain the educational incentive at the rate of one percent (1%) of current base salary (equivalent to \$605.64) for the duration of the successor Agreement.

FINAL OFFER OF THE RSFOA:

1. Salary Increases

4.50% effective July 1, 1995
4.50% effective July 1, 1996
4.50% effective July 1, 1997
4.50% effective July 1, 1998

2. Terminal Leave Benefit

The RSFOA seeks to retain the terminal leave benefits set forth under Article V and Article VII of the expired contract.

3. Educational Incentive

The RSFOA seeks to retain the educational incentives set forth under Article VII(e) of the expired contract.

Distinguishing the Parties' Positions

The parties have presented positions relating to Wages, Terminal Leave and Education Incentive. The distinctions in positions on Wages are relatively clear --- the differences in each year are .5%, .5%, .75% and .75%, respectively.

With respect to terminal leave, the City seeks to pro-rate the benefit payments by time in employment during the employee's final year of employment. While a Battalion Chief is presently entitled to full terminal benefits as of the 1st of the calendar year, the City now seeks to condition full payment on remaining in employment for the entire final year or, alternatively, limiting the payment to the pro-rated time in employment during the final year of employment (thus, reducing present payment by the corresponding months of employment/retirement). The RSFOA sought to retain the present contract language and method of terminal leave payments.

With respect to education incentive, the City seeks to retain the education incentive at a set amount during the successor Agreement. The current rate is \$605.00 per year. The City's intention is to retain a set dollar amount in lieu of (basing the incentive on) a percentage of base salary. In effect, a percentage (presently 1% of base salary) increases the actual incentive payment each year by the identical percentage increase in base wages. The RSFOA requested that the education incentive remain at 1% of base wages which would, in effect, result in an increase in payment each year by the identical increase in base wages.

The parties offered brief summaries which outline the factors they deem most critical to their respective positions.

Summary of the City's Position

The City submitted that its position was more reasonable under the statutory provisions of the Act and, alternatively, argued that the RSFOA's offer was neither reasonable nor within the best interests of the Rahway community. The City argued that the wage increase sought by the Union exceeded both the average 1995 wage increase for similar public sector protective services and the decreasing averages of private sector wage increases. Likewise, the City submitted that its offer to the RSFOA exceeded the wage increases and benefits received by all other Rahway employees except those represented by the PBA. In that regard, the City noted a longstanding and established compensation distinctions between the PBA and other Rahway employees.

Additionally, the City maintained that the continuity and stability of employment in Rahway mandated adoption of its offer. The City contended that its intention was to treat all firefighters (i.e., members of RSFOA and FMBA, Local No. 33) equally and, as a result, offered each bargaining unit similar economic packages. The City argued that awarding an economic increase different than the City's proposal would "disturb the continuity" in conditions of employment within the uniformed services and cause a disservice to the citizens of Rahway if the RSFOA economic proposal was awarded. Beyond relative wage concerns, the City maintained that the labor supply for the position of a Rahway firefighter was substantially greater than the demand for the position. The City argued that, similar to other Union County communities, the position of Battalion Chief could be readily filled with volunteers firefighters. Accordingly, the City intimated that the RSFOA members were not in a position to make demands for higher rates.

Finally, the City challenged the Union's projections regarding the fiscal condition of Rahway. In this regard, the City asserted that the financial condition of the City was not as promising as alleged by the testimony of the expert witness offered by the Union. The City submitted that its revenues would not be best allocated to fund the RSFOA salary increases.

Summary of the RSFOA's Arguments

The RSFOA's position was advanced primarily on the argument that, during the prior contract term, the City undercut the economic stability of RSFOA members by demoting those in the Deputy Chief position to Battalion Chief, reducing the wage levels of employees within the unit and unilaterally eliminating the rank of Deputy Chief.³ The Union asserted that the proposed salary increases were merely a means by which the unit could recoup a portion of the money lost through the City's demotion of Deputy Chiefs to the lower paid position of Battalion Chief. The Union argued that, despite the demotions, its members still carried the responsibilities and duties of the position previously held.

The RSFOA contended that, as a result of restructuring within the Fire Department, its members had entered the present contract negotiations with a reduction in pay. Furthermore, the RSFOA maintained that, while its proposals did not adequately compensate its members for the salaries lost through restructuring, the wage proposal sought to regain a portion of the wages lost during the previous contract.

When comparing their compensation to other uniform public safety employees in the City, the

3. Repeated reference will be made through the Opinion to an **"agreement"** wherein the RSFOA purportedly "agreed" to a twelve (12) month wage freeze from January 1, 1991 to December 31, 1991 in exchange for the promotions of all Battalion Fire Chiefs to Deputy Fire Chiefs and the elimination of the rank of Battalion Chiefs. Those references to an **"agreement"** are distinct from references to the Collective Bargaining **"Agreement"**.

Union emphasized that (Fire Department) Captains, a rank lower than Battalion Chief, were capable of receiving compensation higher than Battalion Chiefs when considering total wages and stipends; and that salary increments given voluntarily to the PBA officers were higher than offered to the RSFOA. The Union argued that its economic package was less expensive than the PBA and did not include the \$700.00 physical fitness incentive extended to police superiors.

According to the RSFOA, its salary proposals were commensurate with the earnings of public employees with similar job demands and distinguishable from the job responsibilities of either the City's blue or white employees who recently finalized collective agreements with raises of 3% per annum. Additionally, the Union argued that, while the City had negotiated a wage package with the Rahway FMBA Local No. 33 (rank and file Firefighters and Captains) equivalent to the offer to the RSFOA, the contract had not been ratified by the FMBA bargaining unit. The RSFOA argued that its negotiating history was distinct from that of the FMBA Local.

Finally, with respect to the City's financial condition, the RSFOA contended that the City could well afford to pay it the relatively modest increases which it now sought.

References to Exhibits Submitted by the Parties

To specifically address all exhibits entered into the record would be cumbersome within this Opinion and burdensome to relevant discussion. However, to accommodate statutory criteria and reference, exhibits are listed in Addendum A (attached) and addressed herein where applicable.

The City's Objection to Certain Union Exhibits

Prior to addressing the submissions of the parties, the City's objection to certain exhibits offered by the Union is noted. The City objected⁴ to the RSFOA's comments relating to "an agreement" to eliminate the Deputy Chief position. The City argued that the Union's conclusions on and summaries of documents should not be admitted into evidence. In this regard, the City has identified forty (40) exhibits which it finds objectionable on these grounds.

The City emphatically objected to the RSFOA's "reference to a fictitious and unsubstantiated agreement wherein the RSFOA claims to have agreed to a 1/1/91-12/31/91 wage freeze in exchange for the City's alleged agreement to eliminate the rank of Battalion Fire Chief." The City contended that no reliable proof was offered to substantiate this allegation. Moreover, the City offered a certification of Fire Chief Edward Fritz which spoke against any such agreement. (See C-62). The City argued that, at best, the Union submitted only newspaper articles to indicate a restructuring of the ranks of fire officers. (See RSFOA 14).

4. The City's objections are set forth at length in its brief. At hearing, Counsel for the City argued that, in an effort to expedite the hearing and limit repeated objections raised while voluminous exhibits were being introduced, the City would reserve its right to object to the Union exhibits and address same in brief.

Finally, the City argued that the interest arbitration must be "supported by substantial credible evidence present in the record as a whole." PBA Local 207 v. Borough of Hillside, 137 N.J. 71, 82 (1994) (quoting N.J. State PBA, Local 29 v. Town of Irvington, 80 N.J. 271, 294 (1979)). Accordingly, the City contended that the Arbitrator may not rely upon comments and summaries which were not supported by proofs offered by the parties.

The RSFOA's Objection to Certain City Exhibits

Similarly, the RSFOA forwarded objection to the post-hearing brief submitted by the City, specifically, to Exhibit A which was a Supplemental Certification of Rahway Chief Financial Officer (CFO) Bernard A. Re.⁵ Counsel for the Union submitted that Mr. Re's supplemental certification (as distinct from the Certification submitted into evidence on December 18th and identified as City Exhibit C-14) was prepared in response to the certification of the RSFOA's financial expert (Ralph Caprio, Ph.D.) and the RSFOA's Exhibit 3. The Union objected to the City's introduction of the supplemental certificate with its post-hearing brief. The RSFOA contended that the supplemental certificate of Mr. Re should be ruled inadmissible and not be relied on in formulating an award in the present Interest Arbitration.

Ruling on Contested Exhibits

With respect to its objections to the entry of RSFOA exhibits, the City stated their specific comments through Addendum A of their post-hearing brief. This Arbitrator recognizes that the RSFOA has introduced various charts, summaries and allegations which are not supported by documentary or testimonial evidence and, without reliable proofs to substantiate those claims, must

5. See letter dated March 12, 1996.

be held inadmissible.

The RSFOA exhibits deemed inadmissible are #10 (only to the extent of reference of the "agreement"), #11, #14, #15, #17 (only to the extent of conclusions stated by the document), #23, #34 (to the extent of conclusions stated by the preparer), #35 (to the extent that conclusions were made without supplementation), #38 & #40 (only to the extent of reference to physical fitness calculations being applicable), #56, #62-74 (only where no documentation is available to substantiate the comparisons, although evidence presented by the City Exhibits C-30 through C-37 will be utilized), and #105.

Notwithstanding the inadmissibility of documents, the alleged "agreement" between the City and the RSFOA may be referenced relative to the RSFOA's submissions. However, there has been no definitive finding that an agreement was reached between the City and the RSFOA and (the "agreement") will not be considered or relied upon by this Arbitrator in formulating this Award.

With respect to the RSFOA's objections, this Arbitrator holds the Supplemental Certification of Mr. Re to be inadmissible. (see Exhibit A of the City's post-hearing brief). Mr. Re was present at the December 18, 1995 hearing, the date on which the parties were given the opportunity to present oral testimony. The Union presented Dr. Caprio and the City was given the opportunity to cross-examine the witness. The City chose by their own decision not to present the rebuttal of Mr. Re. While a supplemental certification was prepared and submitted in support of the City's final offer (in rebuttal to the testimony of Dr. Caprio), the RSFOA was not given the opportunity to cross-examine the "testimony" of Mr. Re. To permit its admission would prejudice the proceedings and afford the City an undue advantage. Accordingly, the Supplemental Certification of Mr. Re, attached to the City's post-hearing brief shall be held inadmissible in this Interest Arbitration proceeding.

The Parties' Arguments under the Statutory Criteria

N.J.S.A. 34:13-16(g)(1) requires consideration of the "interests and welfare of the public."

N.J.S.A. 34:13-16(g)(6) requires consideration of the "the financial impact on the governing unit, its residents and taxpayers".

Both parties addressed the above statutory criteria as a single point in their briefs.

The City's Argument

The City conceded that the dollar differential between the parties' economic proposals may be viewed as nominal when compared to the City's overall fiscal budget. However, it argued that the actual dollar figure is small because there are only five (5) members of the RSFOA. Moreover, the City submitted that a decision in favor of the RSFOA would impact a pending interest arbitration between the City and the Rahway FMBA which has fifty-five (55) members. Arguably, the consequences of the present decision will be more far reaching than small raise for five individuals.

The City also expressed its doubt that the public would be better served by higher paid the firefighters in the position of Battalion Chief. The City noted that many neighboring towns utilize volunteer firefighters (see Exhibit C-8)⁶ and, further, of all the uniformed protective services provided for by statute, fire service was one where volunteer service is permitted. See N.J.S.A. 40A:14-70.1. Additionally, the City questioned whether the retirement entitlements sought by the RSFOA would

6. C-8 is comprised of data from the 1992 N.J. Fire Department Directory, published by the N.J. Bureau of Fire Safety. The Exhibit charts the ratio of both paid and volunteer firefighters to the individual populations of Union County Municipalities. This document indicates that approximately three quarters of the municipalities in Union County utilize volunteer firefighters and that approximately one third of them operate with fire departments composed entirely of volunteers. However, the document also indicates that the Townships (and Cities) of Linden, Elizabeth, Hillside, Plainfield and Union, similar to Rahway, do not utilize volunteer fire services.

benefit the public. In this regard, the City maintained there was a potential for each bargaining unit Member to collect fifty-three (53) days of unearned entitlements if the (soon) retiring members' vacation, holiday and sick day entitlements were allowed to accrue on the first of the year and all five retired in January of the year. (emphasis added by the Arbitrator).

The City further maintained that the wages and salaries of the RFD have increased inordinately as compared with the overall compensation paid to other employees within the municipality. (See C-59 and C-60⁷).

As for the actual salary increases proposed, while admittedly exceeding the budget and local area rate of inflation, the City did not dispute its ability to fund RSFOA's proposal for the fiscal year 1995-1996. However, the City submitted that its proposal was more reasonable in light of its "Distressed City" status (see C-20)⁸ and recent decrease in Federal and State aid (see C-A and C-14)⁹. According to the City, the Revenues and Appropriations Expenditures of Schedule 1 also

7. Exhibits C-59 and C-60 indicate that the City's Pubic Works (Teamsters Local 469, IBT) employees and Clerical workers (Local 702, Public Employee Service Union) have agreed to a three percent (3%) annual wage increase from 1995 through 1999 with a separate wage guide for employees hired after July 1, 1995.

8. Exhibit C-20 is a reference from the 1994-1995 New Jersey Municipal Date Book which lists Rahway as one of fifty-two (52) distressed cities in New Jersey. "Distress" herein is apparently related to economic hardship of the citizenry. Rahway is listed number thirty-two (32).

9. Exhibit (City brief C-A) was the supplemental Certification of Bernard Re, the City's Chief Financial Officer and deemed inadmissible by this Arbitrator. However, C-14 (as opposed to Exhibit C-A), the Certification of Mr. Re was admitted (with the record of December 18th) and attaches Schedule 1 which is relied on. The schedule indicates budgetary information which is also included within the record. The documents reveal that the City will receive less State and Federal Aid in FY1996 (\$5,325,234.) than FY1995 (\$5,782,563.).

demonstrate decreasing revenues and increasing expenditures. (see C-14, Schedule 1)¹⁰.

With regard to projected finances, the City introduced the Certification of Bernard A. Re, its Chief Financial Officer. Mr. Re not only offered his own analysis of City finances (in support of the City's position) but also characterized the "delicate fiscal condition ... (which) demonstrate the City's inability to fund an offer in excess of its fair and final offer to the RSOFA".

Mr. Re's Certification was introduced to demonstrate that the City qualifies as a municipality eligible for receipt of Municipal Revitalization State Aid ("MRA") and Supplemental Discretionary Funds (formerly known as Distressed Cities State Aid) and has so qualified each year since 1987. To receive MRA, the City introduced evidence to demonstrate that its property tax rate was one of the highest in the County (\$2.87 in 1995) and, of its overall tax rate, 68% was comprised of school and County taxes. Thus over two-thirds of locally-generated revenues went to bodies other than the City.

Mr. Re also described the City's low-to-moderate income population and the high demand for governmental services (police, firefighting, community service and water and garbage removal). As a result of limited resources and the inability to raise funds locally, limited by the high property tax rate and the high percentage of senior citizen residents (29%), the City is heavily dependent on State Aid. Mr. Re testified that, per Schedule 1, 34.32% (or 1/3) of the City's 1996 municipal appropriations are comprised of Public Safety salaries and wages compared to approximately 28.59% in 1990 (an increase of over 5.7%). According to Mr. Re, by adding the employee benefit costs (contributions for health, prescription, dental and pension costs) and departmental costs, over 43% percent of the City's 1996 municipal budget is comprised of Public Safety costs.

10. Schedule 1 indicates a summary of revenues and costs relative to the City's budget in more recent years.

The Union's Argument

The Union submitted that the City was in "excellent" fiscal condition and could more than afford to pay RSFOA members the salary increases sought. The RSFOA offered both the testimony and written report of Dr. Raphael Caprio, its financial expert. (see Exhibits RSFOA 1-3).¹¹ Dr. Caprio testified that Rahway is a "conservatively managed municipality with increasing surpluses, revenues and intergovernmental assistance." And, in considering the impact of RSFOA's proposal on the interest and welfare of the City, the RSFOA noted:

1. Rahway has experienced an increase in state and county assistance.
2. Rahway has had a stable increase in revenue received from Union County as a host community for the siting of an incinerator.
3. Tax burdens were diminishing in Rahway and its economy was strong.
4. Rahway's overall tax rate was remarkably stable and increasing below the rate of inflation.
5. Rahway had experienced an improvement in tax collection rates.
6. Rahway had a surplus of funds which has increased each year since 1992 on a 45% annual average increase.
7. Rahway had received unanticipated miscellaneous revenues each year averaging \$400,000.00 over the past four years.
8. Delinquent tax collections were consistently more than anticipated.

In sum, the RSFOA submitted that the impact of its proposed salary increases upon the City and its residents would be slight, and not detrimental to public welfare, the governing unit, its

11. Exhibit RSFOA-3 is a detailed analysis of the City's fiscal condition prepared by Dr. Caprio and his colleague, Arthur Maurice. Exhibit RSFOA-1 is the Curriculum Vitae of Arthur Maurice and Exhibit RSFOA-2 is the Curriculum Vitae of Raphael Caprio. The City did not contest the qualifications or the Union's request to qualify Dr. Caprio as an expert witness in these proceedings.

residents or its taxpayers.

N.J.S.A. 34:13A-16(g)(2) requires "comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

- (a) In public employment in the same or similar comparable jurisdictions.**
- (b) In comparable private employment.**
- (c) In public and private employment in general.**

The City's Argument

The City submitted that, pursuant to the statutory criteria, the wages, longevity, uniform allowance, holidays, vacation days, personal leave, funeral leave, and terminal leave received by RSFOA members are comparable to those received by paid superior fire officers in other Union County municipalities. (See C-38 through C-45)¹². However, the City also produced evidence indicating that wage increases for RSFOA members had recently out paced increases to both local government workers in the "protective services" arena (including firefighters) by approximately one percent (1%) per year. This assertion similarly applied to employees working in the private sector in the same geographic region. (See C-54¹³ and C-46 through C-48). Additionally, the City

12. The City has documented 1994 figures for each Union County Municipality referencing said wages (C-38), longevity (C-39), uniform allowance (C-40), holidays (C-41), vacation days (C-42), personal leave (C-43), funeral leave (C-44), and terminal leave (C-45). The summaries relied upon collective bargaining agreements referenced in Exhibits C-30-37.

13. Exhibit C-54 is a BNA report dated 3/2/95 which indicates that, nationwide, the average wage increase for protective service employees in local governments was 3.1% in 1995.

14. Exhibit C-46 and C-47 consist of a bar graph and article published by the BNA indicating that during 1994-1995, the all-industries median first-year wage increases was approximately 3%. Exhibit C-48 is a graph comparison indicating an average private sector wage increase of 3.3% from 1990-

submitted that, in Union County, the 1992 average gross income was only \$40,218.00 whereas RSFOA members were receiving a 1992 base salary of \$54,934.70. (see C-17).¹⁵ Further, the City introduced a May 1995 article from the Northern Regional Labor Market Review which indicated that, on a statewide basis, Union County continues to have some of the lowest economic and labor market indicators. (See C-49).¹⁶

The City also argued that its final offer exceeded the percentage wage increase received by all Rahway management personnel and by three (3) of the other (4) unionized groups in Rahway. In this regard, the City introduced evidence that its management personnel only received a three percent (3%) wage increase for the fiscal year 1995-1996 and its clerical and public works employee likewise only received a three percent (3%) increase for each year from 1995 through 1999. (See C-59 and C-60).¹⁷ Additionally, the City proposed that the negotiating committee for FMBA local No. 33, which represents all of Rahway's firefighters and fire Captains, had agreed to a Memorandum of Understanding accepting the wage increase identical to the economic proposal now offered to the RSFOA. (See Exhibit C-6).¹⁸ Further, the City emphasized that the other bargaining units have

1995 (taken from BNA sources) and an average RSFOA wage increase of 4.2% for that same period.

15. Exhibit C-17 outlines this comparison and reveals the 1992 gross income figures for Union County was based upon the 1994 Annual Report of the New Jersey Department of the Treasury.

16. Exhibit C-49 is a copy of the article from the "Northern Regional Labor Market Review", May 1995.

17. Exhibit C-59 is the Memorandum of Agreement between the City and Local 702 (which represents the City clerical workers) dated August 24, 1995. Exhibit C-60 is the Memorandum of Agreement between the City and the Teamsters Local 469 dated February 23, 1996.

18. Exhibit C-6 is the Memorandum of Understanding referenced, which indicated that the wage increases of 4% on July 1, 1995; 4% on July 1, 1996; 3.75% on July 1, 1997; and 3.75% on July 1,

agreed to certain give backs (i.e., pro-rating paid time off entitlements in the final year of employment and decreased starting rates for new hires), the latter of which was not sought from the RSFOA. (See C-6; C-59 and C-60). Additionally, it noted that Local No. 33's negotiating committee agreed to freeze its educational incentive. (See C-6).¹⁹

Finally, the City submitted that the RSFOA has no legitimate reason to expect parity with the Rahway PBA or enjoy a percentage wage increase similar to the PBA. In this regard, the City outlined the percentage increases extended to the PBA for the years 1989 through 1998. The figures outlined thereunder were supported by copies of the relevant contracts. (see City brief, Exhibits C-B through C-E). The City claimed that the RSFOA has consistently received a lower percentage increase than the PBA --- an averages of approximately .8% per year.

The Union's Argument

The RSFOA agreed that there is a disparity in the salary and benefits received by Rahway's uniformed, public safety employees. However, the Union argued that Battalion Fire Chiefs are the functional equivalents to Police Captains or Lieutenants in terms of responsibilities and, therefore, should be comparably compensated.

The RSFOA asserted that there existed a pattern of peer parity or wage comparability among

1998 were offered to and accepted by the FMBA negotiating committee. It must be noted that Counsel for the RSFOA vehemently opposed entry of this document and further opposed any reference to the negotiated understanding since the Memorandum had not been ratified by the bargaining unit. While this Arbitrator sees no relevance in the authority of the document, it is nevertheless apparent that the City has attempted to conform its offers in a uniform percentage.

19. Note: There is no evidence that the other bargaining units (Local 702 and Local 469) receive an educational incentive. Local 33 has not ratified the agreement to freeze the education incentive.

municipal police and fire employees in virtually all municipalities with paid police and fire departments. In support of this contention, the Union offered a document (see RSFOA-35) as a written outline of this position and listed ten municipalities in which parity allegedly existed.²⁰

The Union also introduced a comparison of salaries (see RSFOA-34) for Rahway's fire and police superiors for the 1994 term.²¹ The document indicated that Battalion Chiefs earned an annual salary of \$60,564. in comparison to the annual salaries of \$62,305. of Police Lieutenants and \$70,392. of Police Captains. Additionally, the RSFOA submitted that its members work 14.2% more hours per year than their counterparts in the Rahway Police Department. (See RSFOA-100).²² Accordingly, the RSFOA maintained that, while it should receive pay greater than the PBA unit members, the RSFOA members sought only an identical salary increase. Furthermore, the RSFOA noted that it was not seeking the annual \$700. physical fitness bonus paid to Rahway police employees. (See RSFOA-36).²³

20. The City objected to the admission of the document and, to the extent that portions could not be substantiated with other exhibits (including the City's submission of the Linden, Union, Newark and Elizabeth agreements), this Arbitrator held the information inadmissible.

21. Exhibit RSFOA-34 lists figures set forth under Municipal Ordinance No. A-36-94. The Ordinance merely sets forth salaries, without reference to the job responsibilities of the respective positions.

22. Exhibit RSFOA-100 references Article XI, Section 2A of the current Agreement between the City and the PBA, which provides that police employees work on a weekly basis of four (4) 10.5 hour shifts over an eight (8) day work cycle.

23. Exhibit RSFOA-36 is a copy of the Collective Bargaining Agreement between the City and the PBA for the contract term of July 1, 1995 through June 30, 1999 in which Article X, section F which provides that all PBA members are eligible for a \$700 annual physical fitness bonus. Counsel for the City represented that the physical fitness bonus was not a new benefit, but merely a re-instated benefit which had been held in abeyance (and the payment waived) during the recent past. Accordingly, the City requested that the physical fitness benefit not be considered by this Arbitrator in formulating the economic package.

Upon further comparison of the RSFOA proposals with the PBA entitlements, the Union noted that the City voluntarily agreed to give the PBA salary increases in the amount of 4.5% per year plus a physical fitness incentive and without give backs. (see RSFOA-37).²⁴ In this connection, the RSFOA claimed that if Battalion Chiefs were to receive a settlement on the same terms as the PBA (4.5% raise per annum with physical fitness incentives) the average increase (for the entire unit) would only be \$5,723 per year more than it would under the City's present proposal. (See RSFOA-38²⁵ and RSFOA-39²⁶). The Union argued that, since it was not seeking the physical fitness incentive, the difference between its proposal and the proposal of the City amounted to only \$8,320. for the entire contract term. (See RSFOA-40²⁷ and RSFOA-41²⁸). Referencing the documents, the RSFOA claimed that the difference in the cost of their proposal on wage increases (\$58,055.), compared to

24. Exhibit RSFOA-37 describes the salary increases set forth in the 1995-1998 Agreement between the City and the PBA which is duplicated, in its entirety, at RSFOA-38.

25. Exhibit RSFOA-38 is the calculated cost of the contract increase based upon the PBA settlement which includes an increase of 4.5% for each contract year beginning July 1, 1995 and ending July 1, 1998, together with the annual physical fitness incentive of \$700. per member. The additional overall increase in cost to the City over four (4) years would be \$72,625., which amounts to an average annual increase in costs of \$18,156. for the entire RSFOA unit.

26. Exhibit RSFOA-39 calculates the cost of the City's final proposal to the RSFOA, which amounts to a total increase cost (in salary only) of \$49,735 for the entire unit during four (4) year contract term. The document reveals that when the total cost increase (\$49,735.) of the City's proposal to the RSFOA is compared to (subtracted from) the total cost of the salary settlement with PBA Local 31 (\$72,625), indicated is a total cost savings of \$22,890 for the entire contract term. That figure was then divided by four (4) to arrive at the difference in proposed increases at an average cost of \$5,723 per year.

27. Exhibit RSFOA-40 calculated the cost of its proposal, based upon a 4.5% increase in salary per year, without the physical fitness incentive, to be an average additional cost to the City of \$14,573.

28. Exhibit RSFOA-41 again calculated the total cost of the City's proposal (similar to that found in Exhibit RSFOA-39) and subtracted that figure from the total cost of the RSFOA's proposal based upon the PBA contract without the physical fitness stipend.

the proposal of the City (\$49,735.), amounted to \$8,320.

The RSFOA additionally compared its status with that of other City employees. In this regard, the Union argued that its members work five percent (5%) more hours per year than their blue-collar counterparts (represented by Teamsters Local Union 469) and twenty (20%) more hours per year than their white-collar counterparts (represented by PESU Local 702). In support of this contention, the Union offered RSFOA-99 and RSFOA-101, which set forth the figures upon which these comparisons were made.

Additionally, the RSFOA argued that the non-uniformed municipal employees enjoy more personal days, greater education stipends and higher shift differential payments than its members. In support of this contention, the Union offered RSFOA-102 and RSFOA 103. The RSFOA maintained that the alleged work week and benefit disparity, together with the job related hazard involved in the firefighting position (which is not encountered by non-uniform municipal employees), justifies a higher salary increase for RSFOA Members.

The Union further asserted that, in a 1995 County wide comparison of Battalion Chiefs Salaries, RSFOA Members did compare favorably. Offering Exhibit RSFOA-62²⁹, the Union charted the four Union County fire departments which maintain the rank of Battalion Chief and provided respective base salaries. The Union maintained that Rahway ranks the lowest in comparison of base salary, with an average of \$4,021. less per year than the other municipal Battalion Chiefs. The Union also offered Exhibit RSFOA-63 which charted the same salary references, together with additional entitlements. The Union similarly maintained that Rahway Battalion Chiefs rank last in terms of total

29. Exhibit RSFOA-62 charts the 1995 base salaries of Battalion Chiefs in Union, Elizabeth, Summit and Rahway.

compensation for area Battalion Chiefs (about \$10,000. less than Battalion Chiefs in the Township of Union , but only about an average of \$725. less than Summit and Elizabeth Battalion Chiefs).

The RSFOA likewise maintained that its members ranked last in a statewide comparison of 1995 base salaries and total compensation for Battalion Chiefs. (see RSFOA-64 and RSFOA-65).³⁰ The RSFOA alleged that, in the municipalities that maintain rank of Battalion Chief, bargaining unit members rank last with a base salary of \$60,564. as compared to an average base salary of \$67,270. Similarly, the RSFOA charts indicated that the total compensation package of \$72,624 for Rahway Battalion Chiefs, when compared to other municipalities which total compensation ranging from \$73,060. (Elizabeth) to \$84,844. (Jersey City) places the bargaining unit members last in comparison.

Finally, the RSFOA took exception with the City's argument and exhibits C-8 through C-10 wherein Rahway referenced the comparative use of volunteer firefighters in other jurisdictions.³¹ In this regard, the RSFOA maintained that the City's choices of comparable communities was misplaced and exaggerated as it focused on smaller suburban communities. The Union asserted that Rahway is a more industrialized, urban community of approximately 28,000 people. Additionally, the RSFOA noted that Rahway was not only more populated than those municipalities which rely upon volunteer services, but that it is also larger in terms of size.³² Finally, the Union submitted that Rahway was more comparable with the urban and industrial municipalities which do not utilize volunteer services and where firefighters of equivalent rank earn greater salaries and benefits when compared with

30. Exhibit RSFOA-64 and RSFOA-65 compare Rahway with the municipalities of Jersey City, Weehawken, Union, Hackensack, Newark, Millburn, Elizabeth and Summit.

31. As permitted (and previously referenced herein) under reference to N.J.S.A. 34:13A-16(g)(1&6).

32. The RSFOA noted that its source as The New Jersey Municipal Data Book, 1994 Edition.

RSFOA members.

N.J.S.A. 34:13A-16(g)(3) requires consideration of the "overall compensation presently received by the employees, inclusive of direct wages, salary, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received."

Neither party directly referenced this statutory criteria, but discussed the issues in the criteria above.

N.J.S.A. 34:13A-16(g)(4) requires consideration of "stipulations of the parties."

Negotiations between the parties and review of their fair and final proposals revealed only one stipulation --- that the City and the RSFOA agreed to a four (4) year duration of the successor Agreement to be effective July 1, 1995 through June 30, 1999.

N.J.S.A. 34:13A-16(g)(5) requires consideration of the "lawful authority of the employer."

The City's Argument

The City did not present a specific argument under this statutory criteria. However, the Certification of Bernard Re outlines the criteria for receipt of Municipal Revitalization Aid,

... population, income level, the existence of a budget deficit, a comparatively high property tax rate, a comparatively low rate of tax collection, and other evidence of need such as abnormally severe changes in the municipal tax base.

The following criteria apply to the City of Rahway:

A. The City's property tax rate is one of the highest in Union County, amounting to \$2.87 in 1995. Based on a county equalized basis, the City has the fifth (5th) highest tax rate of the 21 municipalities within Union County.

B. Of the City's overall tax rate, (\$2.88 in 1995), approximately 68% is comprised of school and County taxes. Thus, over two-thirds (2/3) of locally-generated revenues go to bodies other than the City. This is up 6% over the 1992 percentages.

Mr. Re's certification and comments must be given due credit. The present Award must acknowledge that the City is dependent on aid programs. Moreover, this Arbitrator accepts the testimony that the actual and anticipated "host community revenues" derived from the Union County Utilities Authority (and its solid waste incinerator) are utilized to off-set the increasing costs of public safety and provide funding for certain capital projects in the area where the incinerator is located. While the City's brief makes reference to the intentions of the agreement for allowing the incinerator complex within the limits of the municipality, there is no proof that the "City agreed to host the incinerator strictly as a means to provide its residents with tax relief -- an objective which has been addressed by residents at municipal budget hearings..."

Mr. Re further noted that the budget expenditures in 1996 have increased "\$4.97 million more ... than the total expenditures in the calendar year 1990".

The Union's Argument

The RSFOA submitted that Cap Law considerations, under N.J.S.A. 40A:4-45.14(b), should not be a deterrent to awarding its fair and final proposal. In this regard, the RSFOA's expert, Dr. Caprio, articulated that Rahway can increase payroll spending because it does not have a "cap problem". Additionally, the RSFOA noted that "recent amendments to the Cap Law and restrictions imposed by lowering the Cap Index Rate have not been dispositive in recent police and fire negotiations and interest arbitrations as well as prior negotiations involving the City and RSFOA."

(See Exhibits RSFOA-95 through 98).³³

N.J.S.A. 34:13A-16(g)(7) requires consideration of the "cost of living".

The City's Argument

The City does not set forth a specific argument under this statutory criteria, but clearly addresses considerations of increases under other criteria *infra*.

The Union's Argument

The RSFOA submitted that, in light of all relevant factors, the salary increases to the bargaining unit over the past four years have been nominal and lagged behind the CPI. In this regard, the Union introduced various exhibits in support of its position that, over a twenty-two year period (1972 through 1994), the average salary percentage increase for Rahway Battalion Chiefs was slightly above or the same level of the CPI. (see RSFOA-90 through 94).³⁴ And, the Union further offered

33. Exhibit RSFOA-95 through RSFOA-98 indicate that the Cap for 1995 is only nominally limited to 2.5%, but may be readily increased to 5% under N.J.S.A. 40A:4-45.14(b). RSFOA-95 simply sets forth this statement. RSFOA-96 includes a copy of the model Ordinance by which the Cap Rate may be raised. RSFOA-97 includes a recent decision by Arbitrator Hammer in an interest arbitration in the municipality of Montclair wherein Arbitrator Hammer noted that "[t]he governing body...by resolution and without voter approval, may opt to increase the budget by 5.0%." RSFOA-98 included documentation indicating that the Division of Local Government Services likewise recognizes that the Cap Rate may be increased to 5%. Note: This Arbitrator does not necessarily agree with the Union's conclusions that many recent interest arbitrations have resulted in awards which extend beyond the Cap Rate (2.5%) and that the Cap has never been dispositive in Rahway's negotiating history with police and fire employees.

34. Exhibit RSFOA-91 charts a comparison of the Fire officers salaries to the cost of living increases for all urban consumers in the United States over the given time frame. Exhibit RSFOA-92 charts the average gain in purchasing power for Rahway Fire Officers which demonstrates a gain of only 0.6% during the twenty-two year time frame. Exhibit RSFOA-93 charts a comparison of Rahway police superior officer salaries to the cost of living increase for all urban consumers in the U.S. for the given time period. Exhibit RSFOA-94 is a claim of the Union that the Rahway Fire Officers' total compensation package over the past four years lags behind the CPI. Reference offered for the figures

that a fire officer's salary has increased an average of only 2.44%, in terms of real purchasing power, over this twenty-two year period. (See Id.). Moreover, the RSFOA argued that members' salaries were even more diluted in light of the three Deputy Chief demotions effective February 2, 1993, and the commensurate 5.25% pay cut.

Finally, the RSFOA argued that cost of living considerations did not impact the City's voluntary contract settlement with the PBA.

N.J.S.A. 34:13A-16(g)(8) requires consideration of 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.

The City's Argument

The City argued that the labor supply for the positions held by the RSFOA members does not justify a wage increase as great as that sought by the Union. In this regard the City offered evidence of negative growth in Union County, with a steady decline in employment over the period of 1983 through 1993. (See C-49).³⁵ Additionally, the City contended that there are a surplus of applicants for the position of firefighter. (See C-24).³⁶ According to the City, the New Jersey Department of

cited and utilized in these exhibits is the Collective Bargaining, Negotiations & Contracts (BNA) 10:117.

35. Exhibit C-49 is the May 1995 article from the Northern Regional Labor Market Review.

36. Exhibit C-24 indicates that there were 133 applicants for the 1992 (New Jersey Department of Personnel) examination with 62 eligible applicants. Note: the document actually reads that there were 133 applications; 132 admitted to the exam; 67 examined; 59 passed; 8 failed; 65 failed to appear; and therefore, there were **59 named individuals eligible for the position of firefighter.**

Labor estimated that openings in state for the occupation of firefighter (superior officer) will increase by only 8.5% between the years of 1990 to 2005. (See C-25).³⁷

According to the City, these factors indicate that there is no shortage of Rahway residents who are ready, willing and able to become firefighters with the Rahway Fire Department. As a result of the statistics, the City concluded that the market should dictate the wages and , therefore, the supply of interested persons should dictate salaries lower than the requests of the RSFOA.

The Union's Argument

Here, the RSFOA's primary focus fell upon the three midcontract demotions of Deputy Chiefs to the rank of Battalion Chief and elimination of the Deputy Chief position. According to the Union, the City's maneuver changed the bargaining unit solely composed of Deputy Chiefs to a unit composed only of Battalion Chiefs. The Union contended that the demotions resulted in a 5.25% pay cut per year for certain employees through the course of the contract (June 30, 1995).

In this regard, the RSFOA submitted that this Arbitrator must consider how this maneuver impacted the career aspirations of the three (3) veteran officers.

The RSFOA additionally submitted that workload of its members encompasses enormous risks, dangers of the workplace are unique to firefighters and, together, these factors should be considered in the determinations.

Finally, the Union requested that this Arbitrator consider the fact that manpower has declined in the Rahway Fire Department since 1984, whereas the number of fire incidents and emergencies

37. Exhibit C-25 is an "Occupational and Demographic Research" report prepared by the New Jersey Department of Labor which estimates average annual openings for new jobs between the years 1990 and 2005.

have increased. (See RSFOA-107 through 110).³⁸

OPINION:

While the positions and proofs were analyzed above, this Arbitrator will further address those positions pursuant to the statutory criteria, identifying and commenting on those criteria found relevant. In this regard, the parties provided a record of pertinent evidence and, in this Arbitrator's opinion, met their obligations imposed in Fox v. Morris County Policemen's Association, PBA 151, 266 N.J.Super. 501, 517 (App.Div.1993), cert.denied, 137 N.J. 311 (1994).

Having considered the exhibits offered in the context of the relevant statutory criteria, this Arbitrator is convinced that the fair and final proposal of the RSFOA is supported by substantial credible evidence present in the record as a whole and will serve as a more reasonable basis for the successor Agreement in effect from July 1, 1995 through June 30, 1999 between the parties. Accordingly, this Arbitrator finds in favor of the RSFOA's "fair and final offer".

A review of relevant statutory criteria supports this finding:

Interests and Welfare of the Public
N.J.S.A. 34:13-16(g)(1)

Financial Impact on the Governing Unit,
its Residents and Taxpayers
N.J.S.A. 34:13-16(g)(6)

This Arbitrator is well advised that the public is a "silent party" to the interest arbitration process. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 82-83 (1994). Accordingly,

38. Exhibits RSFOA-107 through 110 consist of charts which graph the allegations of the Union. The source of the figures however is not revealed, nor does the RSFOA attach documentary evidence which supports the figures.

the interest of the taxpayers and the economic health of the community was closely considered in analyzing the positions and arguments of the parties. To that end, the interests and welfare of the public is not adversely effected by the RSFOA offer

Considerations must go beyond the simple percentage or dollar figure attributed to the proposed increases and the number of employees affected over the life of the Agreement. At the time that the previous Agreement was negotiated (effective January 1, 1991), the salary for the position of Deputy Chief was \$52,449. with raises of five (5%) per cent in each year beginning January 1, 1992 and continuing through the term of the Agreement. There were three Deputy Chiefs. At the time of contract expiration (June 30, 1995), the salary rate for Deputy Chief reached \$63,752. However, there were no Deputy Chiefs.

Similarly, in January 1991, the salary for the position of Battalion Chief was established at "5% less than that established for Deputy Chief". Thus, those holding the Battalion Chief position were to be paid an annual salary of \$49,827., with salaries remaining five (5%) per cent less than Deputy Chiefs in each subsequent year through the expiration of the Agreement.

There are presently five Battalion Fire Chiefs in the bargaining unit, each earning a salary of \$60,564. as of July 1, 1994 (through June 30, 1995, the date of expiration). Two of the five members (together with present Fire Chief, Edward Fritz) previously held the position of Deputy Chief. However, in February 1993, the three Deputy Chiefs were demoted to the rank of Battalion Chiefs and their salaries were similarly reduced. Later, three (3) Fire Captains were promoted to the rank of Battalion Chief.

In this Arbitrator's opinion, there is no basis for the Union to argue that the three former Fire Captains suffered or experienced pay cuts. The facts show that the three were given salary rates

equivalent to their position of Battalion Chief and paid rates greater than their previous positions. Likewise, Edward Fritz, at some time during the contract term, was promoted to Fire Chief and, presumably, granted an equivalent salary. This is not suffering.

However, there is little question that two (2) Battalion Chiefs (Kreisberg and Hummel) experienced pay cuts of approximately 2.18% in 1993, 5% in 1994 and 5% in 1995 when the City, without explanation offered in the present hearing, demoted them in rank and reduced them in salary. The salary reductions, taken together, amount to approximately **\$15,086**.³⁹ This is suffering.

The testimony of the expert witness presented by the Union further supports this decision, although his final conclusion is clearly postured.⁴⁰ While rarely definitive, experts differ in their opinion on whether a community is economically healthy and able to bear the increase of salaries for its civil servants. In this regard, the City submitted a recent study of the City's fiscal affairs and its expert (Bernard Re) addressed present and future economic hurdles with persuasive arguments. Arguably, the City's financial condition is bleaker than that offered by Dr. Caprio. However, while the City's financial outlook may not be as bright as the Union would assert, there is no evidence to indicate that the City would have difficulty in meeting the wage increases proposed by RSFOA in

39. Calculated by this Arbitrator as follows: the difference of the Deputy Chief salary of \$63,752. and the Battalion Chief salary of \$60,564. between July 1, 1994 and June 30, 1995 ($\$3,188. \times 2 = \$6,376.$); plus the difference of the Deputy Chief salary of \$60,716. and the Battalion Chief salary of \$57,681. between July 1, 1993 and June 30, 1994 ($\$3,035. \times 2 = \$6,070.$); and the difference between the Deputy Chief salary of \$57,825. and the Battalion Chief salary of \$54,934. between February 3, 1993 and June 30, 1993 ($\$1,320. \times 2 = \$2,640.$) or approximately **\$15,086**.

40. Dr. Caprio reached a well reasoned, but somewhat questionably, conclusion that "Rahway was in excellent fiscal condition". This Arbitrator gives credit to Dr. Caprio's opinion that Rahway is conservatively managed and to his explanation that the increase of the RSFOA position can be absorbed into the budget without negative impact. But his conclusion regarding the "excellent" financial condition of the City is not shared by this Arbitrator.

light of the savings in the salaries of the two (2) prior Deputy, now Battalion, Chiefs.

At the same time, this Arbitrator views the allocation of the anticipated Host Community revenue as fueled by overall budgetary considerations. While it may have been utilized to fund public safety in recent years, there is no requirement to appropriate those funds for increases in salaries. Those conclusions are aided by the certification of Mr. Re. (See C-14 at paragraph 10). Needless to add, the host revenues have a significant impact on financial considerations.⁴¹

With respect to the City's argument that firefighters' wage increases are comparatively higher than other public sector positions, this Arbitrator notes that under N.J.S.A. 34:13a-16(g)(2), the comparison is more appropriately made with employees performing similar services.

The City also argued that the public welfare is impacted beyond the raises extended to the five RSFOA members, as the present decision will affect pending interest arbitrations of the FMBA. This Arbitrator does not agree. Each interest arbitration is distinguishable on its own facts and circumstances and, while there has been grave concern expressed by the City that the RSFOA decision would have great impact on the FMBA unit, the decision is clearly distinct. The RSFOA is a unit of only five members, with a minimum financial impact resulting from the wage increase. Considering previous decisions of the City, and the demotions and resulting savings from the reductions in salaries, the economic impact herein will be slight.

With regard to the City's argument concerning retirement entitlements, the record is want of evidence. This Arbitrator concludes that the projections regarding retiring officers abusing terminal leave entitlements is not supported by the record and, at best, are speculative.

41. The Host Community revenue also has significant public welfare considerations. The residents of Rahway evidently anticipated that this revenue would be used for tax relief. (See C-A at paragraph 2). Indeed, the public perception of the allocation of funds were voiced.

This Arbitrator is likewise unpersuaded by the City's arguments concerning the use of volunteer firefighters. While the observation of neighboring towns using volunteer firefighters is attractive, the thought of volunteers responding to a city the size and density of Rahway, with the population and age of buildings, reveals the concept as unrealistic. The City also overlooks its own proofs --- the more urban areas of Union County do not utilize volunteer services for their fire departments. (See C-8). In addition, the RSFOA members are seasoned specialists, experienced in the work of an organized firefighting force. Certainly, these factors dilute the City's implications that the public would likely benefit if the RSFOA positions were filled by volunteer workers.

The evidence indicates that the public welfare of Rahway is best served by a permanent force of supervisory firefighting.

Comparison with Other Employees both Public and Private
N.J.S.A. 34:13A-16(g)(2)(a-c)

The record indicates a current statewide trend of wage advancements averaging little more than 3% per year for protective service workers in both public and private sectors. (See C-54 and C-46 through C-48). Indeed, the record also indicates that this percentage equates to the wage advancements extended to the City's unionized management, secretarial and public work employees, (See C-59 and C-60). Rahway's firefighters (in both the RSFOA and FMBA) have been offered higher increases, with annual wage increases of 4% for the first two years of their contract and 3.75% increases for the last two years of the Agreement.

The City emphasized that other bargaining units have agreed to certain "give backs", i.e., pro-rating paid time off entitlements in the final year of employment and decreased starting rates for new hires, the latter which was not sought from the RSFOA. (See C-6; C-59 and C-60). Additionally, the

City noted that Local No. 33's negotiating committee "agreed" to freeze its educational incentive (See C-6).⁴²

With regard to fire superiors in local municipalities, ⁴³ both parties have offered divergent and unsubstantiated information. The RSFOA has introduced submissions which indicate that its firefighters salaries and benefits lag behind their fellow firefighters in neighboring communities. However, these submissions are not necessarily supported by any documentary evidence. (See RSFOA-62 through 74). Additionally, the Union has introduced evidence indicating that recent salary increases extended to Elizabeth and Newark firefighters are much higher than the RSFOA proposals. However, the proofs indicate that firefighters in these jurisdictions earn lower base salaries than RSFOA members. (See RSFOA-51 through RSFOA-55; see also RSFOA-56 through RSFOA-58⁴⁴).

Similarly, the City offered submissions, questionably supported by documents, to conclude that the wages and benefits extended to Rahway's fire superiors are comparable to other Union County municipalities. (See C-38 through C-45).⁴⁵ Moreover, while not addressed in brief, the City introduced copies of the recent collective bargaining agreements between the several neighboring

42. There is no indication that the non-uniformed bargaining units receive an educational incentive.

43. In the Preamble to the parties' prior Agreement, they agreed to maintain salaries commensurate with comparable fire departments in neighboring areas. (See RSFOA-59).

44. The RSFOA has also submitted evidence indicating comparatively higher wage increases in Irvington and Roselle, but there is no indication of the base salaries in those jurisdictions. The Union has also included an illegible copy of an agreement entered between the City of Paterson and its firefighters' Union. These documents determined unreliable and, therefore, not relied upon.

45. While the City noted that these submissions are based upon 1994 figures, it has not indicated any further source reference or attached any documentary proof.

towns (Plainfield,⁴⁶ Elizabeth,⁴⁷ Westfield, Cranford, Union, Linden, Springfield, and Summit⁵³) and their Fire Officers. These exhibits indicate that RSFOA members are currently earning

46. Exhibit C-30 is the CBA for the 1/93-1/95 term. It reflects salary increases of 5% for the first two years and 6% for the last year of the contract. (p. 25). It references the following salary schedule as of 1/1/95:

Lieutenants ranging from \$34,823. - \$53,979.
Captains ranging from \$40,117. through \$62,162.
Deputy Chiefs ranging from \$46,262. through \$71,691.

47. This CBA has not yet been executed.

48. Exhibit C-32 is a copy of the 1/95 through 12/97 CBA between Westfield and its fire officers. This indicates the following salary schedule for fire superiors.

	1995
Fire Captain	\$57,870.
Fire Lieutenant	\$53,016.

	1996
Fire Captain	\$60,590.
Fire Lieutenant	\$55,058.

	1997
Fire Captain	\$63,195.
Fire Lieutenant	\$57,894.

49. Exhibit C-33 indicates a base salary of \$58,448. for Fire Captains in Cranford as of 1/1/95.

50. Exhibit C-34 indicates a salary of \$50,395. for first class firefighters in the Township of Union as of 1/1/95.

51. Exhibit C-35 indicates that, as of 1994, the salary for Fire Captains and Fire Lieutenants in Linden were \$61,867. and \$55,239., respectively.

52. Exhibit C-36 indicates that, as of 1/95, Fire Captains in Springfield earned a base salary of \$64,280. per year, plus stipends, and that as of 1/96 their base annual salary was increased to \$67,172.

53. Exhibit C-37 indicates that, as of July 1, 1994, Battalion Chiefs in Summit were earning between \$56,499. and \$61,413. per year and Summit Fire Lieutenants were earning between \$49,437. and \$53,734. per year.

salaries which are fairly comparable to their fellow officers in neighboring communities. However, they are not indicative of future advancements.

On closer analysis of the wages extended to Rahway's own public employees, this Arbitrator is aware that the City has extended greater (percentage and dollar) increases to the uniform employees than non-uniformed workers.⁵⁴

Viewing the offer of the City, it is recognized that it is identical to the percentage rate increase offered by the City and agreed to (without ratification of members) by the FMBA. Notwithstanding, this Arbitrator is of the opinion that the effect of the offer to the RSFOA may be less glowing in comparison to Fire Captains stipends are factored in. There is indication that Battalion Chiefs have a lower earning capacity than the City's Fire Captains. (See RSFOA-24).

It is also apparent that fire officers hold duties and responsibilities more akin to police officers than other public servants. Therefore a comparison with the PBA officers may be more beneficial and, indeed, such parity is a concept well recognized by fellow arbitrators. (See RSFOA-47 through 49).⁵⁵ No doubt there are similarities between police and firefighters --- most evident is that both occupations entail a high risk of job related fatalities, injuries and illnesses. And the RSFOA offered evidence which indicates that job related fatalities are higher for firefighters than for police officers.

54. The RSFOA indicated that if other factors were examined (such as hours worked and benefits extended), the RSFOA's position would be less ample. (See RSFOA- 99 through 104). However, insufficient evidence was offered to develop this argument.

55. The RSFOA argued that there are ten neighboring municipalities which have a pattern of peer parity or wage comparability among municipal firefighters and police. (See RSFOA-35). However, this submission is not fully supported by evidence herein and, therefore, was not utilized in formulating this award.

(See RSFOA-113⁵⁶; see also RSFOA-115 through 120⁵⁷).

There is no question that the RSFOA has fewer members in its bargaining unit, with members having base salaries lower than comparable PBA officers. The RSFOA's economic package will cost the City less than its voluntary agreement of pay municipal police officers for their current contract term.

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

Although neither party directly referenced this statutory criteria, it has been implicated and considered relevant to this Arbitrator. While it is argued that the parties dispute only a few selected items in their proposals, the "overall compensation presently received by the employees" is not insignificant. There are meaningful benefits afforded the Members of the RSFOA, including medical benefits, vacations, paid holidays, longevity, clothing allowance and sick day allowances. Moreover, upon decision to retire, terminal leave benefits are afforded members. These benefits have a value to the recipient and a cost to the City.

Despite these recognitions, the RSFOA correctly submitted that their advancement potential was curtailed by the City's decision to demote and reduce salaries during the previous Agreement. Indeed, this job and salary realignment indicates that the earning capacity will be curtailed. (See

56. A copy of Parade magazine, dated January 1989, in which an article listed firefighters as the fifth highest occupation with job related fatalities. (Police were listed as 24th).

57. Recent surveys (1988-1994) published by the International Association of Firefighters indicate that firefighters consistently suffer more job related fatalities, injuries and illnesses than private sector workers. The RSFOA also submitted a December 1991 survey by the IAFF which indicates a job related increase in the mortality rate of firefighters.

RSFOA 11-RSFOA 23).⁵⁸ This Award will replace a portion of that loss.

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

A review of the fair and final proposals of the City and the RSFOA reveals that the parties have stipulated to a four (4) year contract effective July 1, 1995 through June 30, 1999.

Lawful Authority of the Employer
N.J.S.A. 34:13A-16(g)(5)

There is no dispute that the current Cap Law would permit the wage advancements offered by either party. Moreover, N.J.S.A. 40A:4-45.14(b) would allow the City to increase its cap rate from 2.5% to 5.0%, under statutory conditions. The City offers no conflict in this regard.

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

The record indicates that the cost of living has not out paced the wage advancements extended to RSFOA members over past years. (RSFOA-90 through 94). However, it is the Union's position that its members have barely gained any "real purchasing power" over the past years. (See Id.).

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

The City and the Union offer unrelated arguments under this statutory criteria. Basically, the

58. Notwithstanding these conclusions, as stated above, there was insufficient evidence of an "agreement" to retain the rank of Deputy Chief on the condition of a wage freeze. This Arbitrator has not relied upon the exhibits other than by reference nor relied upon these submission.

City submitted that the RSFOA can not rightfully demand a wage increase greater than other uniformed employees. Again, this argument appears to be based on a ready supply of individuals prepared to step into the shoes of RSFOA Members. No doubt, applicants offer an ample supply of individuals for the position of firefighter.

However, this Arbitrator does not agree that wage increases in this context relate to an abundance of individuals seeking the position of fire fighter. The Union does not address this argument but, rather, focuses upon the demotions addressed by this Arbitrator under N.J.S.A. 34:13A-16(g)(2&3).

Conclusion

Having considered the exhibits offered in the context of the relevant statutory criteria, this Arbitrator is convinced that the fair and final proposal of the RSFOA is supported by substantial credible evidence present in the record as a whole and will serve as a more reasonable basis for the successor Agreement in effect from July 1, 1995 through June 30, 1999 between the parties.

The evidence clearly and convincingly demonstrated that the bargaining unit was adversely effected by an decision implemented by the City during the 1991-1995 Agreement. Notwithstanding a lack of evidence to support the Union's allegation that an "agreement" was made, the proofs revealed that three members of the unit were reduced in rank from Deputy Chief to Battalion Chief with their salaries reduced in a parallel manner. There is no dispute that the implementation in the reductions in rank depreciated the salaries paid to the present RSFOA members, reduced the amount of their overall compensation (i.e., benefits based on base wages) and, perhaps most notably, saved the City an amount of money which narrows the difference in the two final offers presented herein.

Moreover, it is evident to this Arbitrator that the economic proposal offered to the City

firefighters places the FMBA in an economic position relatively better than the RSFOA in light of the previous ranks reductions and resulting salary reductions. The continuity and stability of a high level of individuals employed by Rahway further mandates adoption of the RSFOA offer. While contending that it intended to treat all firefighters (i.e., members of RSFOA and FMBA, Local No. 33) equally and evenly, the City offered each bargaining unit similar economic packages. However, despite the City's argument that awarding an economic increase different than the City's proposal would "disturb the continuity" in conditions of employment within the uniformed services and cause a disservice to the citizens of Rahway if the RSFOA economic proposal was awarded, this Arbitrator is not of the same opinion.

During the prior contract term, the City influenced the economic stability of RSFOA members by demoting those in the Deputy Chief position to Battalion Chief, reducing the wage levels of employees within the unit and unilaterally eliminating the rank of Deputy Chief. This Arbitrator accepts the Union's assertion that the proposed salary increases will serve as a means by which the unit recoups a portion of the monetary loss. As noted above, the RSFOA entered the present contract negotiations with a reduction in their wage package.

When comparing the compensation of RSFOA Members to other uniform public safety employees in the City, the salary increments given voluntarily to the PBA officers were higher than those offered to the RSFOA. The RSFOA salary proposals were commensurate with the earnings of public employees with similar job demands and clearly distinguishable from the job responsibilities of either the City's blue or white employees who recently finalized collective agreements with raises of 3% per annum. The RSFOA convincingly argued that its negotiating history was distinct from that of the non-uniformed employees.

Based on a review of the evidence submitted, inclusive of testimony, documents and post-hearing briefs and after due consideration of the parties' offers taken together with the statutory criteria of N.J.S.A. 34:13a-16, this Arbitrator hereby renders the following:

AWARD

1. Article XV, Section 1. of the Collective Bargaining Agreement shall be amended to read:

"The term of this Agreement shall commence July 1, 1995 and extend through June 30, 1999. ..."

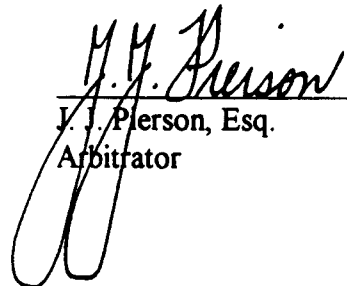
2. Article VIII, Salaries of the Collective Bargaining Agreement shall be amended to reflect:

a four and one-half (4.5%) percent across the board increase on base salaries effective July 1, 1995; a four and one-half (4.5%) percent across the board increase on base salaries effective July 1, 1996; a four and one-half (4.5%) percent across the board increase on base salaries effective July 1, 1997; and a four and one-half (4.5%) percent across the board increase on base salaries effective July 1, 1998. The salary increases shall be effective as of the date of this Award and effective retroactively to July 1, 1995. Retroactive payments shall be determined and paid to employees within a reasonable period of time.

3. All other terms and conditions of the Collective Bargaining Agreement which expired on June 30, 1995 shall remain in full force and effect, without modification or amendment.

Dated: March 24, 1996

State of New Jersey)
) :ss
County of Morris)



J. J. Pierson, Esq.
Arbitrator

On the 24th day of March, 1996, before me personally came and appeared J.J. Pierson, Esq., to me known and known to me to be the person described herein who executed the foregoing instrument, and he acknowledged to me that he executed the same.



NANNETTE PIERSON
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Mar 5, 2001

City of Rahway -and- Rahway Superior Fire Officers Association
Docket No. IA-95-147

INDEX OF EXHIBITS

I. BACKGROUND INFORMATION

- C-1 Memorandum of Law on Interest Arbitration after the Fox, Hillsdale, and Washington Township decisions.
- C-2 New Jersey's Public Fire and Police Compulsory Arbitration Statute, N.J.S.A. 34:13A-16.
- C-3 Unit Roster of Rahway SFOA members; name, rank, date of hire, and base salary.
 - Average base salary is \$60,564.
 - Average seniority is 19 years.
- C-4 Collective Negotiations Agreement between the City of Rahway and Rahway SFOA from January 1, 1991 through June 30, 1995.
- C-5 Memorandum of Understanding pertaining to the January 1, 1991, through June 30, 1995, Agreement between the City of Rahway and Rahway SFOA, executed June 24, 1992.
- C-6 Memorandum of Agreement pertaining to the July 1, 1995, through June 30, 1995, Agreement between the City of Rahway and Rahway FMBA, Local No. 33, executed June 20, 1995.
- C-7 Proposals submitted to Rahway FMBA, Local No. 33, dated June 14, 1995.
- C-8 Ratios of Firefighters (paid and volunteer) to Population in Union County Municipalities.
 - Average ratio of Union County residents to paid firefighters - **573.87/1**
 - Ratio of Rahway residents to firefighters - **491.23/1**
- C-9 Number of Volunteer Police Departments in Union County.

II. POSITIONS OF THE PARTIES

- C-10 The City's proposals.
- C-11 City proposals agreed to prior to impasse (N.J.S.A. 34:13A-16g (4)).

C-12 Rahway SFOA's proposals.

C-13 Rahway SFOA proposals agreed to prior to impasse (N.J.S.A. 34:13A-16g(4)).

III. FINANCIAL IMPACT ON THE CITY OF RAHWAY, ITS RESIDENTS, AND TAXPAYERS (N.J.S.A. 34:13A-16g(6))

C-14 Certification of Bernard A. Re, Chief Financial Officer.

C-15 Fiscal year 1996 Annual Budget.

- Fire safety accounts for 14% of the 1996 total Budget appropriations.

C-16 1993 tax rates for Union County Municipalities.

- Rahway's tax rate ranks fifth (5th) highest of the twenty-one (21) municipalities.

C-17 1992 Average Gross Income

- Union County - **\$40,218**
- Rahway SFOA member base salary - **\$54,934.70**

C-18 Analysis of certain demographics of Union County Municipalities

- Population
- Per Capita Income
- Net Valuation
- Net Valuation Per Capita
- Tax Rate Per \$100
- Number of Persons Below the Poverty Line
- Percentage of Persons Below the Poverty Line

C-19 N.J. Municipalities engaging in the Municipal Revitalization Program.

C-20 Analysis of certain demographics of Distressed Cities

- Population
- Per Capita Income
- Net Valuation
- Net Valuation Per Capita
- Tax Rate Per \$100
- Number of Persons Below the Poverty Line
- Percentage of Persons Below the Poverty Line

C-21 "What Area Towns . . . Spend On Health Benefits," The Home News & Tribune, November 5, 1995.

- Average percentage of municipal budget spent on employee health benefits, 7.6%.

- Percentage of Rahway's budget spent on employee health benefits, 8.3%.
- C-22 "Employee Health-Benefit Burdens Have Shifted Dramatically Over The Years," The Home News & Tribune, November 5, 1995.

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

- C-23 Rahway's decreasing population.
- C-24 Supply of available labor for positions with the Rahway Fire Department.
 - N.J. Dept. of Personnel eligible list for title of "Firefighter" in the jurisdiction of Rahway (expiration date 8/18/96).
 - 133 applicants for 1992 examination.
 - 62 eligible applicants.
- C-25 Employment projections by occupation, 1990-2005 for the State of New Jersey.
 - Openings for the occupation of superior, firefighter will increase by only 8.5%.

B. Overall Compensation Presently received by Rahway SFOA members (N.J.S.A. 34:13A16g(3)) as compared with that received by the members of other Union County fire departments. (N.J.S.A. 34:13A-16g2(a))

- C-26 Cost of base salary, longevity, holiday pay, uniform allowance, vacation days, and personal days paid Rahway SFOA members.
 - Total - \$409,123
- C-27 Seniority of Rahway SFOA members.
 - Average seniority - 19 years
- C-28-37 Most current Collective Negotiations Agreements between Union County Municipalities and the Fire Unions.
- C-28 Collective Negotiations Agreement between the Borough of Roselle -and- FMBA, Local No. 55, effective 1/1/93 through 12/31/95.
- C-29 Collective Negotiations Agreement between the Township of Hillside -and- Hillside FSOA, effective 1/1/93 through 6/30/96.

City of Rahway -and- Rahway Superior Fire Officers Association
Docket No. IA-95-147

INDEX OF EXHIBITS

- C-30 Collective Negotiations Agreement between the City of Plainfield -and- the Fire Officers Association, effective 1/1/93 through 1/31/95.
- C-31 Collective Negotiations Agreement between the City of Elizabeth -and- Elizabeth FSOA, IAFF, Local 2040, AFL-CIO, effective 1/1/94 through 12/31/96 (Draft Agreement based on parties agreement; not yet executed.)
- C-32 Collective Negotiations Agreement between the Town of Westfield -and- FMBA, Branch No. 30, effective 1/1/95 through 12/31/97.
- C-33 Collective Negotiations Agreement between the Township of Cranford -and- Cranford FOA, effective 1/1/93 through 12/31/95.
- C-34 Collective Negotiations Agreement between the Township of Union -and- FMBA, Local No. 46, effective 1/1/93 through 12/31/95.
- C-35 Collective Negotiations Agreement between the City of Linden -and- Linden Deputy Fire Chiefs Association, FMBA, Local No. 34-A, effective 1/1/93 through 12/31/94.
- C-36 Collective Negotiations Agreement between the Township of Springfield -and- FMBA, Local 57-A, effective 1994 through 1996.
- C-37 Collective Negotiations Agreement between the City of Summit -and- FMBA, Local No. 54, effective 1/1/92 through 12/31/94.
- C-38 Base Salary
 - Average - \$60,129
 - Rahway SFOA members average base salary - \$60,564
- C-39 Longevity
- C-40 Uniform Allowance
- C-41 Holidays
- C-42 Vacation Days
- C-43 Personal Leave

C-44 Funeral Leave

C-45 Terminal Leave

C. Comparisons With Private Sector Employment (N.J.S.A. 34:13A-16g(2)(b) and (c)).

C-46 Median first-year wage increases by geographic region, 1994-1995.

- 3.0% median wages increases for the North Central region.

C-47 "Median First-Year Wage Pay Hike Same As Prior Years," 149 (BNA) Labor Relations Reporter 336 (July 17, 1995).

C-48 Comparison between Rahway FSOA increases and private sector increases, 1990-1995.

- Average private sector increase, 3.3%
- Average Rahway FSOA increase, 4.2%

C-49 New Jersey Department of Labor's Regional Labor Market Review for Union County, May 1995.

- EMPLOYMENT DEVELOPMENTS BY INDUSTRY
 - Employment in Union County has decreased steadily from 1984 to 1993.
 - Private sector employment: Union County - 13.3%
State-wide + 27.5%
 - Manufacturing industry employment: Union County - 35.2%
State-wide + 27.5%
 - Construction industry payrolls: Union County - 9.4%
State-wide + 3.0%
 - Service-producing industry employment: Union County - 2.2%
State-wide + 26.3%
 - Wholesale/Retail industry employment: Union County - 16.8%
State-wide + 10.6%
 - Transportation/Communication, Public Utilities industry employment:

Union County - 1.3%
State-wide + 15.5%

- Finance/Insurance/Real Estate industry employment: Union County - 13.5%
State-wide + 30.8%

- CENSUS AND OTHER ECONOMIC/LABOR MARKET INDICATORS

- The population of Union County decreased by 2%, compared with a state-wide increase of 5.0%. (1980-1990).
- "The county's rate of growth between 1990 and 1994 [.5%] was among the slowest in the State."
- All but four (4) Union County municipalities increased their supply of housing. Rahway is one of those four.
- "From 1982 to 1992, total personal income grew at a slower rate in Union County (72.6%) than in the nation (91.1%) and the State (95.4%)."
- "Per capita personal income in Union County was \$27,910 in 1992, up by 76.7% from 1982, compared with an increase of 85.7% for the State and 73.6% for the nation."
- Union County's 1992-1993 average private-sector wage of \$34,920 was the fourth (4th) highest among New Jersey's twenty-two (22) counties.
- Between 1990 and 2005, Union County's wage and salary employment is projected to increase by only 2.2%, compared with a state-wide project increase of 14.0%.
- From 1990 to 2005, Union County's annual growth rate is projected to increase by only 0.1%, among the lowest in the State.
- Approximately 80.0% of the average number of annual job openings projected between 1990 and 2005 are expected to be replacements rather than new jobs.
- "Of the eight major occupational categories for which data were prepared, four categories in Union County were projected to decline as opposed to only one state-wide."

- OUTLOOK

- "Government payrolls will be increasingly vulnerable in 1995 as budgetary short falls appear likely."

- C-50 Union County Industry Employment Projections, 1990-2005 (chart).
- C-51 Population characteristics for Union County (chart).
- C-52 Newark Labor Area Nonagricultural Wage and Salary Employment Trends (chart).
- C-53 "N.J. Calls Itself A Kind Boss," The News Tribune, August 6, 1995, (with accompanying chart comparing employee benefits in State government with those in the private sector).

D. Comparisons with Public Sector Employment (N.J.S.A. 34:13A-16g (2)(a) and (c)).

- C-54 BNA's State and Local Government 1995 Bargaining Preview
 - Average wage increase in local government contracts immediately prior to 1995, 2.4%
 - Average wage increase in local government contracts with the "protective services", 3.1%
- C-55 "Arbitration Keeps Morris Wage Hike Low," The Star Ledger
 - Morris County Sheriff's Officers awarded 1992 to 1995 increases ranging from 2.9% to 3.75%.
- C-56 "Plainfield Unveils Salary Guides For 2 Unions," The Star Ledger, August 15, 1995.
 - Plainfield Municipal employees:
2%(1995), 3%(1996), 3%(1997)
 - Plainfield Municipal Management:
2%(1995), 3%(1996), 3%(1997)
- C-57 "Perth Amboy Workers Accept 3-Year Contract," The Star Ledger, December 1, 1994
 - Initial 18 month salary freezes, 4% thereafter.
- C-58 "Morristown Firefighters OK 1-Year Wage Freeze," Daily Record

E. Internal Comparisons With All Other Bargaining Unit Within The City of Rahway. (N.J.S.A. 34:13A-16g2(a))

- C-59 Memorandum of Agreement between the City of Rahway -and- Local 702, Public Employee Service Union.
 - Wage Increases: 1995-1996 - 3 %
1996-1997 - 3 %
1997-1998 - 3 %

1998-1999 - 3 %

C-60 Final offer made to Teamsters, Local 469 (representing Rahway's Public Works employees).

- Wage Increases: 1995-1996 - 3 %
1996-1997 - 3 %
1997-1998 - 3 %
1998-1999 - 3 %

C-61 1995-1999 Collective Negotiations Agreement between the City of Rahway -and- PBA, Local 51.

- Wage increases: 1995-1996 - 4.5 %
1996-1997 - 4.5 %
1997-1998 - 4.5 %
1998-1999 - 4.5 %

IV RESPONSE TO CLAIMS MADE BY UNION DURING MEDIATION SESSION.

C-62 Certification of Fire Chief Edward Fritz concerning prior promotions and demotions of Rahway SFOA members.

C-63 1992-1995 Collective Negotiations Agreement between Rahway -and- PBA Local No. 31.

- The physical fitness incentive bonus addressed in Article X, Section G was suspended in the years 1992/1993, 1993/1994, and carried-over into the parties 1995-1995 CNA.

Exhibits Submitted by RFSOA

(Financial Impact Data)

1. Curriculum Vitae of RFSOA's Financial Expert, Arthur Maurice.
2. Curriculum Vitae of RFSOA's Financial Expert, Ralph J. Caprio.
3. Analysis of the City's Economic and Fiscal Conditions, together with Experts' Exhibits.
4. Calculated Cost of 1 percentage point of the members' base salary.
5. Fire Officers payroll as of June 30, 1995.

(Negotiations and Bargaining History)

6. 60 day notice of compulsory interest arbitration filed by the City of Rahway on June 23, 1995.
7. Original Contract Proposals of the RFSOA.
8. Original Contract Proposals of the City.
9. Expired Collective Bargaining Agreement Between the RFSOA and the City of Rahway effective from January 1, 1991 through June 30, 1995.
10. Prior Memorandum of Agreement Between City of Rahway and RFSOA effective January 1, 1991 through June 30, 1995.
11. Comparison of Recent Salary Increases to Fire Employees.
12. Prior Memorandum of Agreement Between the City of Rahway and FMBA Local No. 33 for the Contract Period of January 1, 1992 through June 30, 1995.

(Exhibits Analyzing Elimination of Deputy Fire Chief's Position and Unilateral 5.25% Pay Cut to RFSOA)

13. Current Description of the Bargaining Unit.
14. Newspaper articles indicating restructuring in the fire department for cost savings, together with submission by RFSOA that it agreed to a 12 month freeze in the contract based upon continuation of combined ranks.
15. RFSOA's submission that despite assurances to the contrary, in November of 1992 the Rahway Fire Department was restructured and the position of Deputy Chief was eliminated. There are no supporting documents attached.

16. RFSOA's submission that demotions of the three Deputy Chiefs in 1992 resulted in a 5.25% cut to RFSOA members in addition to the 12 month wage freeze.
17. RFSOA's outline of promotions/demotions in the ranks of Battalion Chief and Deputy Chief in the Rahway Fire Department from 1991 through 1994.

Under this exhibit the RFSOA also submits that based upon the City's promises, three fire captains should have been promoted to Deputy Chief and not Battalion Chief. The Arbitrator finds no proof of any such promise and has not relied upon this submission for purposes of rendering this award.

18. A chart compiled by the RFSOA which compares the 1993-1995 salaries paid to Deputy Chiefs and Battalion Chiefs.
19. A Table compiled by the RFSOA which outlines the salaries, ranks and number of employees in the Rahway Fire Department for the year 1995, together with a calculation of savings from elimination of the Deputy Chief position. A computer printout is annexed indicating the information set forth in the table.
20. Submission by the RFSOA that demotions of deputy chiefs and elimination of this position was, according to Mayor Kennedy, "not a money issue," but rather a decision to eliminate excess chiefs. Annexed is a November 9, 1992 article in The News Tribune wherein the Mayor is so quoted.
21. Submission by the RFSOA that its expired contract provides for Battalion Chief salary to be 5% less than the Deputy Chief Salary. Annexed is a copy of Article VIII(d) which so provides.
22. RFSOA's calculation of the cost of three Battalion Chief promotions during the life of the expired RFSOA contract.
23. Notation that during the life of the expired RFSOA contract the City promoted three Captains to the rank of Battalion Chief.
24. RFSOA's charted comparison of the 1995 salaries and stipends paid to Fire Captains and Battalion Chiefs. In this Exhibit the RFSOA further notes that Captains, who rank lower than Battalion Chiefs) nonetheless have a greater earning capacity if they take advantage of stipends which are uniquely available to them.
25. RFSOA's charted comparison of percentage differentials of 1995 base salary paid to fire employees.
26. RFSOA's charted comparison of total compensation and percentage differentials of Rahway's fire employees. The RFSOA notes that the Battalion Chiefs were paid less, in terms of total compensation, than their subordinate officers, the Fire Captains.

27. RFSOA's submission that the City is able to manipulate and break its promises, as the City proposed to re-establish the Deputy Chief position as of Jan. 1, 1996.

(Exhibits Analyzing the Duties and Functions of Superior Fire Officers)

28. Job description of Battalion Fire Chief as promulgated by the State of New Jersey Department of Personnel together with the RFSOA's comments regarding same. A copy of said job description is attached.
29. Job description of Deputy Fire Chief as promulgated by the State of New Jersey Department of Personnel together with the RFSOA's comments regarding same. A copy of said job description is attached.
30. RFSOA's detailed submission that its Battalion Chiefs perform duties commensurate with the titles of both Battalion Chief and Deputy Fire Chief. No supporting documentation or testimony was offered in this regard.
31. October 12, 1993 Desk Audit Decision of the Department of Personnel that the City indicating the David Hummel, although demoted to the rank of Battalion Chief upon elimination of the Deputy Fire Chief position, was nonetheless performing a significant amount of the duties commensurate with the title of Deputy Fire Chief, as well as his duties as Battalion Chief.
32. A copy of Rahway Fire Department's Reorganization Plan effective January 1, 1996. The plan introduces the position of Administrative Deputy Chief.
33. City of Rahway Fire Department Reorganization 1/1/96. The reorganization includes the position of Administrative Deputy Chief. The document is offered for purposes of demonstrating that the Deputy Chief position responsibilities are currently being performed by the "Acting Deputy Chief" and RFSOA Battalion Chiefs.

(Recognition of Peer Parity between Police and Fire Employees)

34. Copy of Municipal Ordinance No. A-36-94 which establishes offices and positions in the City and providing for employee compensation. The Ordinance sets forth the following salaries for police superiors: Sergeant (\$55,150); Lieutenant (\$62,305); and Captain (\$70,392). The Ordinance sets forth the following salaries for fire superiors: Fire Captain (\$54,340) and Battalion Chief (\$60,564).
35. List of ten municipalities which allegedly have a pattern of peer parity or wage comparability among municipal police and fire employees. No documentary proof of these submissions or source therefor is indicated.

36. Collective Bargaining Agreement between the City of Rahway and PBA Local 31 effective from July 1, 1995 through June 30, 1999. The Agreement reflects a per annum increase of 4.5% for the contract term, together with an annual physical fitness incentive bonus of \$700.00.
37. Submission by the RFSOA, based upon information found in the above exhibit, that there were no give backs or economic concessions from the Rahway PBA. Notably, the Union does not provide any evidence of the PBA's prior agreement for "give- back" or "economic concession" comparison.
38. RFSOA calculations relative to the cost of a proposal for its members based upon the PBA settlement (4.5% per annum increase plus the annual \$700 physical fitness incentive).
39. RFSOA calculations relative to the cost of the City's anticipated salary proposal with comparison to an RFSOA proposal based on the PBA contract (including the physical fitness stipend).
40. RFSOA calculations relative to the cost of its final proposal, which does not include the physical fitness stipend.
41. RFSOA calculations relative to the cost of the City's anticipated salary proposal with comparison to the final RFSOA proposal (with the 4.5%/year increase, but no stipend).
42. Copy of Article VII of the expired contract, which provides for terminal leave benefits.
43. Copy of Article V, Section 5 of the expired contract, which provides for "allowances in lieu of vacation and holiday pay". The provision permits retiring RFSOA employees to collect their full annual entitlements even if they retire early in the year.
44. RFSOA calculation of the cost of the City's proposed give-back regarding final year sick leave/vacation/holiday incentive based upon a fire officer retiring on February 1st.
45. RFSOA calculation of the cost of the educational incentive (based upon 1% of the current battalion chiefs salary of \$60,564).
46. RFSOA calculation relative to the cost of the City's proposed give back regarding the educational incentive. The calculation indicates a cost of \$24 for the year beginning 7/1/95 with a cost of \$25 for the remaining years of the contract.
47. Copy of the interest arbitration award for the township of Union and Union FMBA for the years 1989-1991. Therein Arbitrator Wildebush's specifically recognizes the concept of peer parity between firefighters and police officers in the same municipality.

48. Copy of the interest arbitration award dated August 7, 1989 for the town of Belleville and Belleville Fire Officers Association. Therein Arbitrator Paul Kell granted the Belleville fire officers a wage adjustment in order to remedy the disparity caused by prior, higher increases extended to police officers. He likewise noted that the evidence confirmed a traditional and historical parity between police and fire officers.
49. Copy of the interest arbitration award for the township of Maplewood FMBA Local No. 25. Therein Arbitrator Jeffrey B. Tener likewise recognized and accepted the concept of peer parity advanced by the RFSOA.

(Recent Contract Settlements and/or Interest Arbitration Awards
for Police and Fire Employees)

50. RFSOA's submission with regard to a three year contract settlement between the Town of West Orange and the PBA indicating the following salary increases:

Jan. 1, 1995	3.5%
July 1, 1995	3.5%
Jan. 1, 1996	3.5%
July 1, 1996	3.5%
Jan. 1, 1997	3.5%
July 1, 1997	3.5%

51. Copy of the Memorandum of Agreement between the City of Newark and IAFF Local 1846 (Union for Newark's rank and file firefighters) dated May 31, 1995 and covering the four year period from Jan. 1, 1995 through Dec. 31, 1998. This contract indicates the following salary increases:

Jan. 1, 1995	5.0%
Jan. 1, 1996	5.5%
Jan. 1, 1997	5.5%
Jan. 1, 1998	4.5%

The exhibit also indicates the RFSOA's submission that these firefighters received a percentage increase in benefits each year. The contract likewise indicates increasing stipends extended to firefighters engaged in hazardous materials work and for shift differentials.

52. Copy of the Memorandum of Agreement between the City of Newark and IAFF Local 1860 (Union for Newark's Fire Captains and Battalion Chiefs) dated Dec. 5, 1995 and covering the four year period from Jan. 1, 1995 through Dec. 31, 1998. The contract indicates the following salary increases:

Jan. 1, 1995	4.5%
Jan. 1, 1996	5.5%
Jan. 1, 1997	5.5%

Jan. 1, 1998 4.5%

53. Copy of the Agreement between the City of Elizabeth and FMBA Local 9 (Union for Elizabeth's rank and file firefighters) dated February 6, 1995. The contract indicates annual salary increases of 6.0% for the years 1994 through 1996. The contract likewise provides for annual clothing allowances (\$100), annual EMT stipends (\$300), holiday benefits and a 24 hour shift schedule.
54. RFSOA's submission that the City of Elizabeth and FMBA Local 9 are currently negotiating a two year extension of the above noted contract and are close to agreeing upon an annual salary increase of 5% for each upcoming year. The submission is not supported by any documentary evidence nor is a source reference cited.
55. Copy of the January 19, 1993 interest arbitration award of Newark Firemen's Union, IAFF Local 1846. The award indicates the following wage increases:

Jan. 1, 1992	6.2%
Jan. 1, 1993	7.3%
Jan. 1, 1994	7.3%

The RFSOA further emphasized that this Union was able to negotiate accommodating increases for the contract following this award (see RFSOA 51).

56. Copy of the Consent Interest Arbitration Award between FMBA Local No. 44 and the City of Roselle dated March 22, 1994. The award provides for the following salary increases for firefighters:

Jan. 1, 1993	5.75%
Jan. 1, 1994	5.75%
Jan. 1, 1995	3.00%
July 1, 1995	3.00%

The award likewise provided for the differentials extended to officers and EMT's, as well as educational stipends.

57. Copy of the Agreement entered between the City of Irvington and IAFF Local No. 2004 (Union for rank and file firefighters) dated January 13, 1995 and covering the period of January 1, 1994 through June 30, 1997. This Agreement provides for the following salary increases:

Jan. 1, 1994	2.00%
July 1, 1994	2.00%
Jan. 1, 1995	3.00%
July 1, 1995	3.00%

Jan. 1, 1996	3.25%
July 1, 1996	3.25%
Jan. 1, 1997	3.5%

(This was a corrected version of the original exhibit).

58. Copy (supplemental) of the Memorandum of Agreement between the City of Paterson and its firefighters union. The Agreement reflects the following wage increases:

July 1, 1993	4.5%
July 1, 1994	4.5%

The document references an agreement to implement a June 1992 arbitration award, however, a copy of that award was not included.

(Comparison with Comparable Fire Departments)

59. Reference to the Preamble of the expired Collective Agreement between the parties. Thereunder the parties agree that the RFSOA salaries will be maintained at standards commensurate with those of comparable Fire Departments in the surrounding area.
60. Current description of the Rahway Fire Department.
61. Map highlighting the proximity of other jurisdictions.
62. RFSOA's submission relative to the 1995 Countywide comparison of Battalion Chief's salaries, indicating Rahway to be the lowest among the four Union County Departments which maintain this rank. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
63. RFSOA's submission charting a 1995 countywide comparison of total compensation paid to battalion fire chiefs. The chart indicates Rahway to rank the last in this comparison. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
64. RFSOA's submission charting a 1995 statewide comparison of Battalion Chief's salaries. Again, the chart indicates Rahway to rank last in the comparison. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
65. RFSOA's submission charting a 1995 statewide comparison of total compensation paid to Battalion Chiefs. Again the chart indicated Rahway to rank last in the comparison. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.

66. RFSOA's submission charting a 1994 comparison of clothing allowance benefits in Essex and Union County Fire Departments. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
67. RFSOA's submission charting a 1994 comparison of longevity benefits in Essex and Union County Fire Departments. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
68. RFSOA's submission charting a 1994 comparison of personal day benefits in Essex and Union County Fire Departments. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
69. RFSOA's submission charting a 1994 statewide comparison of maximum fire prevention bureau inspector stipends. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
70. RFSOA's submission charting a 1994 comparison of vacation benefits in Union and Essex County Fire Departments. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
71. RFSOA's submission charting a 1994 statewide comparison of EMT stipends. No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
72. RFSOA's submission charting "Battalion Chief Salary Comparison". No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
73. RFSOA's submission charting "Shift Commanders in Union County". No source reference is provided for the information referenced, nor is any documentary proof offered in support thereof.
74. RFSOA submission allegedly demonstrating that Union Township pays its Battalion Chiefs significantly more than Rahway. No source reference is provided for the information referenced, nor is any supporting documentary evidence annexed thereto.

(Fiscal Condition of the City of Rahway)

75. RFSOA's chart of 1995 revenues to City of Rahway pursuant to the Host Community Agreement.
76. RFSOA's chart of 1994 revenues to City of Rahway pursuant to the Host Community Agreement.

77. RFSOA's chart of 1991 countywide comparison of per capita income. The exhibit indicates that Rahway ranks 6th among Union County municipalities in terms of per capita income. The source reference for this data is The New Jersey Municipal Data Book, 1994-1995 edition.
78. RFSOA's chart of 1989 countywide comparison of median family income of Union County municipalities. The exhibit indicates that Rahway ranks 8th among the municipalities in terms of median family income. The source reference for this data is The New Jersey Municipal Data Book, 1994-1995 edition.
79. RFSOA's chart of 1989 countywide comparison of median household income of Union County municipalities. The exhibit indicates that Rahway ranks 7th among the municipalities in terms of median household income. The source reference for this data is The New Jersey Municipal Data Book, 1994-1995 edition.
80. Newspaper article from the Rahway Progress dated Jan. 7, 1993 entitled "Mayor: 1993 Looks Good, Kennedy: City's Finances in Excellent Shape."
81. Newspaper article from the Rahway Progress dated May 6, 1993 indicating that the City received \$739,000 in federal funding.
82. Newspaper article from the Rahway Progress dated July 29, 1993 indicating that the City received approximately \$600,000 from the Township of Clark.
83. Newspaper article from the Rahway Progress dated Jan. 14, 1993 indicating that Rahway saved \$621,067 in Garbage Waste Disposal Fees.
84. Newspaper article from the Rahway News Record dated January 7, 1993 indicating the Mayor's representations that the City was doing well fiscally.
85. RFSOA's submission with regard to benefits anticipated by Host Community project.

(Current Economic Trends)

86. RFSOA's submission that the New Jersey Unemployment rate is on the decline with source reference to New Jersey Economic Indicators, July 1994. (A copy of the reference was not provided).
87. RFSOA's submission that there have been positive comparative economic indicators for New Jersey with source reference to New Jersey Economic Indicators, July 1994. (A copy of the reference was not provided).
88. RFSOA's submission that the weekly earnings of manufacturing production workers has increased over 7% from December 1992 to December 1993 with source reference to New Jersey Economic Indicators, July 1994. (A copy of the reference was provided.)

(Consumer Price Index)

89-93 Reference to consumer price index (no documentary support)

Submission that when cost of living increases are factored in, the average gain in purchasing power for RFSOA members in the past 22 years is slight and it is comparatively less than the police.

94. Submission that for the past four years, the RFSOA salaries have lagged behind the PBA.

95-99. Submissions and documentary support that Cap Law can readily be increased to 5.0%.

100-103. Comparison of RFSOA with other unionized City workers. Argument RFSOA work more hours and others have better benefits.

104. CBA between City and its white collar workers.

111-112, 114. Reference to firefighters/Oklahoma City bombing.

113. Parade magazine article dated January 1989 itemizing firefighters as fifth on the list of job related fatalities (with police listed at number 24).

115-119. Recent (1988-1994) surveys published by the International Association of Firefighters (IAFF) comparing job related fatalities/injuries/illness of various types of employment. Firefighters consistently rank much higher than private industry workers.

120. Dec. 24, 1991 survey by IAFF indicating a job related increase of the mortality rate of firefighters.

121. Statutory criteria for interest arbitration.

122. Case law.

123. Arbitration award (salary increases) addressed in 122.

124. Case law

125. Salary increases addressed in 124.

126. RFSOA submission that City settlement discussions with FMBA are not relevant to this case.

