

**NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION**

In the Matter of Interest Arbitration Between the

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**CITY OF TRENTON**

"Public Employer"

-and-

**INTEREST ARBITRATION  
DECISION AND  
AWARD**

**TRENTON FMBA LOCAL NO. 11**

"Union."

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Docket No. IA-2007-16

**Before  
James W. Mastriani  
Arbitrator**

**Appearances:**

**For the City:**

Stephen E. Trimboli, Esq.  
Molly S. Marmion, Esq., on the brief  
Knapp, Trimboli & Prusinowski, LLC

**For the Union:**

David I. Fox, Esq.  
Lynsey A. Stehling, Esq., on the brief  
Fox & Fox, LLP

The City of Trenton [the “City”] and FMBA Local 6 [the “FMBA”] reached an impasse in negotiations resulting in the FMBA’s filing a petition to initiate compulsory interest arbitration. The procedural developments that followed were somewhat unusual. The parties proceeded to informal mediation between March 23 and August 16, 2007 with the assistance of an originally-designated arbitrator. Because a voluntary settlement could not be achieved, a formal hearing was held before that arbitrator on March 18, 2008. Subsequent to this initial hearing date, the original arbitrator withdrew from the proceeding. By mutual agreement of the parties. I was designated to serve as interest arbitrator by the New Jersey Public Employment Relations Commission. The record of the March 18, 2008 hearing date centered on the FMBA’s proposal to convert to a 24/72 hour work schedule. A Power Point presentation with testimony from FMBA representative Robert Brower was submitted on behalf of this proposal. The evidence introduced on that date is included in this record. After my designation, I conducted formal hearings on the remaining issues in dispute on May 8 and August 11, 2008.

At the hearings, additional testimony was received from the City’s former Business Administrator, Jane Feigenbaum. The record also contains Certifications from City and Union representatives including Jane Feigenbaum, Business Administrator, Dennis Gonzalez, Acting Business Administrator, Mark Robotin, Officer of FMBA Local No. and member of negotiating committee, William Paradiso, President of FSOA and Battalion Chief, Charles West, Newark Firefighters Union, David Fox, Fox and Fox, and Robert Brower, 1<sup>st</sup> Vice

President of the NJ State FMBA. In addition, the City has submitted 171 exhibits and the FMBA has submitted over 200 exhibits.

During the course of this proceeding the City engaged in concurrent negotiations and interest arbitration proceedings with its other public safety bargaining units. An interest arbitration award was issued concerning the rank and file police officers unit represented by PBA Local No. 11 on December 30, 2008. An interest arbitration award also issued in a bargaining unit of police superior officers represented by the Trenton Superior Officers Association. In addition, a voluntary settlement was reached between the City and the Trenton Fire Officers Association (TFOA) on March 9, 2009 as shown by a Memorandum of Agreement. The awards and the MOA are included in this record.

The matters in dispute in this proceeding were fully briefed by the parties. Reply briefs were received from both parties on May 1, 2009. Subsequently, the City made a final submission containing a second Certification from Dennis Gonzalez, Acting Business Administrator, in response to the FMBA's post-hearing reply brief and certifications. All submissions have been received and reviewed.

An additional post-hearing development occurred concerning the FMBA's proposal to convert the work schedule of the firefighters to a 24-hour shift, followed by 72 hours off duty. The TFOA had originally proposed the 24/72 hour

work schedule as did FMBA Local 11. However, the aforementioned March 9, 2009 settlement between the City and the TFOA did not include a work schedule change for the fire superiors because this proposal was withdrawn by the TFOA. Thus, the officers remained on their existing work schedule that required two 10-hour days followed by 24 hours off and then two 14-hour nights followed by 72 hours off. This schedule is commonly referred to as a 10/14 work schedule. Because of the agreement to maintain the 10/14 hour work schedule for the fire superiors, the City, on March 31, 2009, filed a petition with PERC seeking a scope of negotiations determination that the FMBA's proposal to convert firefighters to a 24/72 hour work schedule was no longer mandatorily negotiable. Under the PERC rules and regulations, an interest arbitrator cannot render a determination on an issue that is the subject of a scope of negotiations petition. Thus, the proceedings in the instant matter were held in abeyance pending a determination by PERC. On September 24, 2009, PERC dismissed the City's petition by a finding that the FMBA's proposal for a 24/72 work schedule was mandatorily negotiable and may be submitted to interest arbitration. That decision was forwarded to this arbitrator towards the end of September 2009 by the parties. The record of this proceeding was officially closed as of that date.

As required by statute, each party submitted a last offer on the disputed issues. The respective offers are as follows:

## **FINAL OFFERS OF THE PARTIES**

### **The FMBA**

#### **1. Duration of Agreement**

The FMBA proposes a CBA to be effective January 1, 2006 through at least December 31, 2012.

#### **2. Salary Increases**

The FMBA proposes the following increases for the CBA:

5.5% effective January 1, 2006;  
5.5% effective January 1, 2007;  
5.5% effective January 1, 2008;  
4.75% effective January 1, 2009;  
4.75% effective January 1, 2010;  
4.75% effective January 1, 2011; and  
4.75% effective January 1, 2012;

The FMBA is seeking the above salary increases to be applied to all steps in the Firefighter salary guide as set forth in the Salary Schedule of the CBA. This proposed increase would also apply to all fire prevention specialists employed by the City.

#### **3. Parity Adjustment**

The FMBA is seeking to reach parity with its police counterparts. The sought after parity adjustment is \$2,566, plus any additional monies that would result from the inclusion of holiday pay in base pay for pension purposes.

#### **4. Compensation for Emergency Medical Service Special Work/First Responder Pay**

The FMBA is seeking a 3% base pay payment for maintaining training, including the First Responder Certification which is now held by Firefighters.

#### **5. Article XVIII, Compensation, Section 8, Shift Differential**

The shift differential payment is currently 1.25%. The FMBA is seeking a .5% increase to the shift differential effective January 1, 2006, and a .25% increase for each year of the contract thereafter.

6. Article XVIII, Compensation, Section 9, Hazmat

The hazmat payment is currently 1%. The FMBA is seeking a 1.5% increase for the Hazmat payment effective January 1, 2006, and a .5% increase for each year o the CBA thereafter.

7. Article XVIII, Compensation, Section 2, Driver's Pay

Driver's pay is currently 4.5%. The FMBA is seeking a 1.5% increase for the Driver's payment effective January 1, 2006 (totaling 6%), and a 1% increase for each year of the CBA thereafter (totaling  $6\% + 1\% = 7\% + 1\%$  per year, etc.). The FMBA is also seeking to incorporate language into the CBA that would require the City to make all Driver position appointments based solely on seniority.

8. Article XVIII, Compensation, Section 7, Diver's Pay

Diver's pay is currently 1%. The FMBA is seeking a 2% increase for the Diver's payment effective January 1, 2006. In addition to the above, the FMBA is seeking to clarify this language so that the language is similar to what is set forth in the language relating to Hazmat payments.

9. Article XVIII, Compensation, Section 3, Longevity

The FMBA is seeking a 1% increase in the longevity schedule to become effective on January 1, 2006.

10. Technical Rescue Pay

The FMBA is seeking to implement a 2.5% differential for those employees who perform technical rescue duties.

11. Sick Leave General and Sick Time Buy Back and Sick Leave Buy Back

There are three (3) issues pertaining to sick leave. The issues are as follows: 1. The FMBA contends that there is no need to implement restrictions on sick leave, as has been adopted by the Fire Superior Officers, but not by Trenton Police Officers. It should be noted that restrictions on sick leave was not awarded by Arbitrator Pierson in his December 31, 2008 Interest Arbitration award; 2. The sick leave buy back provision should be increased by

\$5,000; and 3. The FMBA is seeking to revise the sick leave buy back penalty from 15 sick days to 40 sick days.

12. Article XVII, Compensation, Section 6, College Degree Stipend

The FMBA is seeking to change the college degree stipend from a flat rate to a percentage, as set forth below. The FMBA is seeking to revise the above payment so that employees receive the following college credit payment:

Associate's Degree .33% per year  
Bachelor's Degree .67% per year  
Master's Degree 1% per year

13. Fire Related School Enrollment/Reimbursement/Fire Related School Days

The FMBA seeking to institute a FIRE related only school or class enrollment reimbursement program for each Firefighter, not to exceed \$100 annually per Firefighter. The FMBA is also seeking to institute a school day program to attend fire related courses. Specifically, the FMBA is seeking to obtain 208 hours a year, as time off, to be used to attend fire related

14. Vacation Days

The FMBA is seeking an increase in vacation days, pursuant to contractual steps/tiers, from 17, 19, 21, 23 and 26 to 21, 23, 25, 27 and 29. The FMBA is seeking to revise the current schedule in the following manner:

For employees hired after January 1, 1998, vacation shall be granted as follows:

After 1 year of service but less than  
3 years of service                           21 days

After 3 years of service but less than  
5 years of service                           23 days

After 5 years of service but less than  
8 years of service                           25 days

After 8 years of service                           27 days

After 10 years of service the employee is entitled to 29 vacation days as outlined in paragraph a.

15. Demand Days

The FMBA is seeking an increase in Demand Days from 3 to 6 days.

16. Daily "A Days" Usage

The FMBA is seeking to increase the number of overtime replacements from 5 to 10 Firefighters per shift.

17. Vacation Buy Back

The FMBA is seeking to increase the buy back benefit to 12 hour days.

18. Military Leave Policy

The FMBA is seeking to change and clarify the current practice in connection with the manner in which Firefighters are allowed to utilized their time to attend required military duty.

19. Acting Officers

The FMBA is seeking to increase out of title pay by 4%.

20. Overtime

The FMBA is seeking to delete the last sentence of Article III, Hours of Work and Overtime, Section 3, Overtime.

21. Article VIII, The Grievance Procedure

A new provision should be incorporated into this article whereby the City would be required to reimburse the FMBA for all attorneys fees incurred by the FMBA when the FMBA is victorious in any legal proceeding brought against the City for violating the parties contract.

22. Work Schedule

The FMBA is seeking to implement the 24/72 hour shift.

23. Mutual Exchanges

The FMBA is seeking to clarify this benefit so that mutual exchanges, once authorized, cannot be denied if, for whatever reason, one of the employees involved in a mutual swap is unqualified for the job. The FMBA is also seeking to require the City to abide by the language of the contract which provides for unlimited mutual exchanges.

24. Union Days

The FMBA is seeking five (5) additional union days for FMBA Executive Board members, *i.e.*, President, Executive Vice-President, Central District Vice-President, Treasurer and Secretary. The FMBA is also seeking to clarify the language in the contract relating to members ability to attend conventions as set forth in New Jersey statutory law.

25. Drug and Alcohol Policy - The FMBA is seeking to modify and/or revise the current drug and alcohol policy.

26. Clothing

The FMBA is seeking to clarify the language pertaining to a clothing allowance. The parties previously agreed to eliminate clothing allowance pay. Instead, the parties agreed that the City would supply uniforms. The City has, on an ongoing basis, refused to supply Firefighters with adequate articles of clothing. As such, the FMBA is seeking to clarify and/or incorporate language into the CBA which would require the City to provide articles of clothing in a specific manner. In that regard, the City should be required to purchase clothing annually and Firefighters should be measured and clothing ordered in July for estimated delivery in January. Alternatively, the City should be required to provide, as it had done in the past, a clothing allowance payment to all members of the FMBA. That payment should, at the very least, be equivalent to purchasing two (2) pairs of pants and two (2) shirts. The FMBA is also requesting that the City pay for the FMBA members dress uniforms and station jackets.

27. Funeral Leave

Funeral leave should not affect vacation periods or members on vacation.

28. Holiday Pay

The current holiday pay benefit should be incorporated into the CBA.

29. Battalion Chief Aides

All references to Battalion Chief aides should be deleted from the contract and the term "adjunct position" should be inserted in its place to accurately portray the title.

30. Article XI, Miscellaneous

The FMBA is seeking to change the manner in which transfers are determined.

31. Article XI, Miscellaneous, Section 1

The FMBA is seeking to revise Section One to include "any City owned facilities or equipment" to the list of assignments/duties that Firefighters are not allowed to perform.

## **The City**

1. Term of Contract:

January 1, 2006 through December 31, 2010

2. Salaries:

Increase each rank's salary 3% per year effective April 1 of each year.

3. Medical/Dental/Prescription Drug Insurance:

a. Co-pay of medical insurance:

- i. From date of settlement through 12.31.09: \$19 per pay for single coverage, \$23 per pay for all others.
- ii. From January 1, 2010, and thereafter: \$21 per pay for single coverage, \$25 per pay for all others.

b. Prescription drug co-pays: Create three tier system: generic, preferred and brand name: \$10/\$20/\$35 for retail; \$3/\$10/\$15 for mail order.

4. Work Schedules: No change in work schedule.

5. Article II, Section 3 (Convention Leave):

Amend to be consistent with controlling statute, N.J.S.A. 11A:6-10, which, inter alia, limits convention leave only to the state and national conventions of the New Jersey Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc., and the Professional Fire Fighters Association of New Jersey.

6. Longevity:

Freeze longevity at each employee's current longevity dollar amount, eliminate longevity prospectively.

7. Drug and Alcohol Testing:

Incorporate drug/alcohol testing procedures recommended by labor-management task force.

8. Grievance Procedure:

- a. Grievances must be initiated within 15 days of the date on which the grievant learned or should have learned of its occurrence, or else will be deemed waived. Grievances must be appealed within 10 days of the date on which an employer response is due, or else will be deemed waived
- b. Eliminate arbitration of minor (five days or less) disciplinary disputes.

9. New Section – No Waiver Clause:

- a. Section 1: "Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof."
- b. Section 2: "No deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer shall be permitted except by the express, written permission of the Business Administrator. Any deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer that may occur in the absence of such express, written permission of the Business Administrator shall be deemed unauthorized, null and void. Under no circumstances shall any such unauthorized deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer give rise to any claim, right

or benefit in favor of the Union or any Employee other than the right to grieve same in accordance with the grievance procedure contained herein. All claims, rights and benefits accruing to the Union or any Employee shall only be as set forth herein by the express provisions of this Agreement."

10. On-the-Job Injury:

Limit pay to workers compensation benefit only.

11. Demand Days:

Convert to regular vacation days.

12. Drivers:

Eliminate drivers pay.

13. Sick Leave:

15 days per year. Abolish limitations on sick leave verification.

14. Red Circling:

"Any officer demoted or reduced in rank or title for any reason, including but not limited to layoff/demotion for reason of economy, efficiency or any related reason, shall thereupon be compensated at the salary level appropriate for the officer's demotional title. The officer will be placed on the salary step for the demotional job title that corresponds to the step on which the officer has been compensated for his/her previous title. Any contract provision, City policy or practice inconsistent with this provision is hereby deemed superseded, null and void."

## **BACKGROUND**

FMBA Local No. 6 represents rank-and-file uniformed firefighters and fire prevention specialists employed within the Fire Department. There are 175 employees in the unit whose base salaries amounted to \$10,694,072 at the time of hearing. The Department has seven engine companies, three ladder

companies and one rescue company. Each company consists of one captain and three to four firefighters.

The City is located in Mercer County and is one of 13 municipalities in the County. In 2005, there were 84,639 residents, a decrease of approximately 750 since 2000. The City is heavily dependent upon aid from the State of New Jersey. \$71,840,045 of the City's total revenues of \$165,376,997 or 43.4% represents State aid. The City operates under a fiscal year budget running from July 1 to June 30. The City is the State's capitol and the State of New Jersey employs 24,000 employees working in the City, although only 15% reside within the City. The socio-economic data reflects that the City ranks at the bottom of the 13 municipalities in the County with a per capita income of \$14,621, a median family income of \$36,681, and a median home value of \$65,500. The City is also the County seat for Mercer County and provides services for 1,625 County employees. The City also houses a Federal Courthouse. The presence of all of these government facilities presents the City with having to provide many essential services for entities who are either tax exempt or who make payments in lieu of taxes (PILOT) at values that are less than if such properties were taxed at regular rates.

The Fire Department is an active one in the areas of fire prevention, emergency medical services, and fire suppression. It has maintained its productivity notwithstanding a sharp reduction in manpower since 2000. Since

2000, there has been a reduction of 43 employees in the Department consisting of 27 firefighters, 13 captains, 1 battalion chief, and 2 deputy chiefs. During this general time framework, the City's real and personal property evaluations have decreased and the City has struggled to maintain gaps between the recurring revenues it can generate locally and its required municipal expenditures.

As is evident from review of the parties' final offers, the issues in dispute can be roughly broken down into the general categories of base pay, compensation related benefits, health insurance, work schedule and issues that generally fall into an administrative/operational category. In the latter category, some issues are non-economic and some have economic impact. Against this general overview, I will provide a brief summary of the parties' submissions and positions on the issues in dispute.

### **BASE PAY**

#### **Salary**

The FMBA seeks a 7-year contract effective January 1, 2006 through December 31, 2012 that would provide for the following across-the-board increases:

5.5% effective January 1, 2006;  
5.5% effective January 1, 2007;  
5.5% effective January 1, 2008;  
4.75% effective January 1, 2009;  
4.75% effective January 1, 2010;  
4.75% effective January 1, 2011;  
4.75% effective January 1, 2012;

In addition, it seeks a parity adjustment of \$2,566 that would cause parity with police officers, plus any additional pay that would result from the inclusion of holiday pay in base pay for pension purposes.

The FMBA relies upon the following arguments made in support of its evidentiary submissions:

The FMBA's salary proposal, which is higher than the City's Final Offer, is justified based on the record in this Interest Arbitration, including, *inter alia*, the following facts: (1) The FMBA's Financial Expert submitted a Financial Report and a soon to be submitted Supplemental Financial Report as well as Supplemental Financial Exhibits, regarding the City's sound fiscal condition and its ability to pay for the FMBA's proposals; (2) The "norm" in negotiated and/or awarded salary increases for Police and Fire employees inside and outside of Mercer County; (3) Trenton Firefighters perform comparable public safety functions to Trenton Police Officers and work more hours per year than Trenton Police Officers, yet Police Officers receive a salary that is substantially greater than the salary received by members of the FMBA; (4) The PBA received substantially greater salary increases than what is being offered by the City in its December 31, 2008 Interest Arbitration award; (5) The City's health benefits costs decreased by at least 5% in 2008; (6) The City is selling its water utility for an amount in excess of \$80,000,000; and (7) Huge additional items, including the City's ability to fund huge expenses to discipline, improperly, unions.

As demonstrated by the FMBA's Financial Expert, Mr. Foti, the City of Trenton is fiscally sound and can, in fact, provide the FMBA with the percentage increase requested, as well as the other increases in special payments that were requested in the FMBA's Final Offer.

The salary percentage increases offered by the City are considerably lower than the "norm" of recent Police and Fire CBA's which were voluntarily settled and those where and Interest Arbitration Awards were rendered. See FMBA Exhibits 128-136.

More importantly, however, the FMBA's Final Offer for annual salary increases is appropriate where as here the FMBA demonstrated that the Trenton Firefighters compensation is substantially behind Trenton Police Officers in terms of salaries and fringe benefits.

The maximum base salary for a Trenton Police Officer in 2005 was over \$2,000 more than the maximum salary for a Trenton Firefighter in 2005. The City's Final Offer, if awarded, will cause an even greater salary disparity between the Trenton Firefighters and Trenton Police Officer. This is especially true since, as noted above, the PBA's increments, as awarded in the December 31, 2009 Award, were substantially greater than what is now being offered to the FMBA. The City's Final Offer will also cause the Trenton Firefighters to lag even further behind other State of New Jersey paid Fire Departments in terms of salary and benefits.

In this instance, in order to close this gap, the Award must allow the FMBA to "close the gap" between it and the Trenton PBA. Peer parity must be restored. Trenton is one of the few municipalities that does not maintain peer parity in terms of salaries and benefits paid to its police and fire employees. The City's Final Offer will only cause the salary disparity between Police and Fire employees to continue to widen.

In addition to the across-the-board increases sought by the FMBA, it seeks a parity adjustment for the purpose of reaching parity with the City's police officers. As defined by the FMBA, the parity adjustment would be \$2,566 plus any additional monies that would result from the inclusion of holiday pay for pension purposes.

The City rejects the Union's salary proposals, including its parity proposal, as being unreasonably excessive, in conflict with the City's financial condition and "grossly inconsistent" with the City's internal pattern of settlement involving its police officers, police superiors, fire officers and the AFSCME unit which involves the majority of its non-law enforcement employees. The City refers to its alleged internal pattern of settlement as a "bedrock" principle and one that is mandated by PERC case law. The City quotes extensively from existing case law involving internal patterns of settlement:

"Pattern is an important labor relations concept that is relied upon by both labor and management ... deviation from a settlement pattern can affect the continuity and stability of employment by discouraging future settlements and undermining employee morale in other units." *County of Union*, P.E.R.C. No. 2003-33, 28 NJPER 459, 461 (Para. 33169, 2002). An internal pattern is relevant to the "comparability" criterion, N.J.S.A. 34:13A-16g(2)(c); N.J.A.C. 19:16-5.14(c)(5), and to the "continuity and stability of employment" criterion, N.J.S.A. 34:13A-16g(8). *County of Union*, 28 NJPER at 461. An interest arbitration award that does not give due weight to an internal pattern is subject to reversal and remand. *County of Union*, P.E.R.C. No. 2003-87, 29 NJPER 250, 253 (Para. 75, 2003).

The City also contests the FMBA's proposal to require parity with police officers. The City submits the following argument:

Equally unavailing are efforts to distinguish police from firefighters based on hours and days of work. Firefighters regularly complain that they work longer hours than police – overlooking the fact that the majority of the firefighters' work day involves waiting for emergencies to occur, including time they may spend asleep. Police officers complain that they report to work more days during a calendar year than do firefighters – overlooking the fact that this is offset by the fewer total hours they work per year. Arbitrators wisely disregard these arguments when confronted with an internal pattern of settlement.

The City further submits that the Union's proposed parity increase cannot withstand the test of law:

"Parity" is not a legal subject of bargaining in the New Jersey public sector. *Edison Township*, P.E.R.C. No. 98-15, 23 NJPER 490, 491 (Para. 28236, 1997); *City of Plainfield*, P.E.R.C. No. 78-87, 4 NJPER 255, 256 (Para. 4130 1978). Further, as discussed *supra*, when a pattern exists, "that pattern takes precedence over the perceived inequity in compensation." *County of Essex – and – PBA Local No. 157*, Docket No. IA-87-45, pages 17-8 (Scheinman, 1989)(Exhibit C-163 submitted herewith). Any perceived disparity in compensation is the result of the accumulated effect of prior

settlements, in which the unions agreed to forego certain benefits in exchange for other preferred improvements. Viewed from this perspective, the FMBA's demand for "parity" is also little more than a thinly-disguised attempt to undo years of collective negotiations in a single contract, contrary to controlling PERC precedent. *County of Union*, 28 NJPER at 462. The Arbitrator cannot undo the results of years of trade-offs made by the parties in earlier, long-forgotten rounds of negotiations, involving long-departed negotiators who responded to that they perceived to be their principal's best interests at the time. The Arbitrator must decline the FMBA's improper attempt to avoid the internal pattern of settlement by citing perceived disparities in compensation.

In addition to the above arguments, the City asserts that the Union has totally ignored the City's financial condition which the City terms "precarious." The City refers to the testimony of its Business Administrator Jane Feigenbaum. The City submits that Ms. Feigenbaum:

described in detail (a) the City's demographic condition, *id.* at paras. 8-14; (b) the City's structural deficit, its limited ability to generate revenue locally through the municipal-use property tax, and its need to rely on State assistance to meet its expenditure needs, assistance that historically been insufficient to meet the City's needs, *id.* at paras. 15-29; (c) the areas of uncontrollable increases in expenditures the City faced in its Fiscal Year 2008 budget, *id.* at paras. 30-48; (d) the measures the City was compelled to take to meet these areas of uncontrollable expenditure increases, including the acceptance of State assistance conditioned upon the City's agreement to draconian limitations on the expenditure of funds, *id.*; and (e) the challenges the City faced in its Fiscal Year 2009 budget, including layoffs *id.* at paras. 46-57.

Exhibit B to the Feigenbaum Certification projected a \$15.4 million decline in locally-generated revenue, and a \$20.6 million reduction in total revenue, for FY 2009. Even with a projected tax increase of \$2.89 million, the City anticipated a net reduction in revenue of \$17.7 million. Exhibit C to the Feigenbaum Certification projected a 11.05% decline in total City revenues, with total revenues dropping below what they had been in FY 2007.

It is noted that Feigenbaum Certification was drafted on August 10, 2008, prior to the onset of the current recession and the financial crisis.

The Feigenbaum Certification is incorporated herein by reference. The Arbitrator is urged to review that document in considering his Award. It is nonetheless instructive to summarize the key, critical points she raised:

- *Fifty percent (50%) of all property in the City of Trenton is property tax exempt or tax reduced, such as federal and State-owned property.*
- State payments in lieu of taxes do not make up for value that would be collected if exempt properties were taxed at regular rates. 80% of the revenue that the City would receive on such properties if they were taxed at full rate is lost every year.
- In FY 2008, the shortfall amounted to approximately \$60 million.
- Trenton provides services to 24,000 State employees, 85% of whom live outside of the City.
- *The City therefore faces a structural deficit between the amounts it can raise through taxation and the expenditures it must meet.*
- *The City must rely on one-time expenditures and State assistance to bridge its structural deficit, neither of which are reliable long-term solutions.*
- The City's ability to raise revenue by attracting new development has been handicapped by the current downturn in the property market.
- State assistance during this fiscal year was conditioned upon the City's agreement to a highly-draconian Memorandum of Understanding with the State, which imposes severe limitations on expenditures.
- The City's second-largest employer, Capital Health Systems, (3,000 employees), is moving significant portions of its operations out of the City.

- ***Ninety percent (90%) of the budget increase in FY 2008 is due to factors over which the City has no control.***
- **Pension costs and health care costs have been factors which have greatly driven up expenditures for the City.**
- **48% of this FY 2008 budget will be funded by State aid, compared to 47% in the previous budget year.**

### **COMPENSATION RELATED BENEFITS**

In addition to the salary and parity proposals of the FMBA, the Union submits a host of proposals that I have categorized as “compensation related benefits.” I set forth each as follows.

#### **Compensation for Emergency Medical Service Special Work/ First Responder Pay**

The FMBA proposes that each firefighter receive a 3% stipend for performing EMS special work/First Responder service. The FMBA contends that around July 2008, the City implemented a First Responder/EMS Special Work program requiring all firefighters to be trained in such work. The FMBA submits that the Department will respond to over 7,000 such calls during its first year of service. The Union submits extensive argument on behalf of this proposal.

On or about September 5, 2007, the City and then Acting Fire Director Richard Laird announced that the Trenton Fire Department would be provided a new name, namely “Trenton Department of Fire and Emergency Services”. As set forth a September 27, 2008 news release, the entire 236-member force was scheduled to complete first responder training in September of 2007. See FMBA Exhibit No. 57

Then Acting Director Laird made the following statement about the role of the Trenton Fire Department:

"No longer do fire departments in the United States or around the world only extinguish fires," Director Laird said. "Our services in Trenton have expanded to include Hazardous Materials Response and Mitigation, Response to Weapons of Mass Destruction Incidents, Underwater Search and Recovery, Swift Waste Rescue, Auto Extrication, Structural Collapse, Trench Rescue, Confined Space Rescue, High and Low Angle Rope Rescue, and De-watering Assignments due to Flooding Conditions. Now, beginning in the early winter of 2007, we will be enhancing the existing Emergency Medical Service by providing EMS First Responder level care and service to our City."

As set forth above, it appears that the Fire Department will respond to more than 7,000 additional emergency calls in the first 12-months of the First Responder program. Engines are equipped with the essential equipment, such as a trauma kit, defibrillator, oxygen and other equipment. Approximately eight thousand additional calls represent a huge increase in current work duties and coverage, as well as increased training and dangers in responses. Trenton has become one of the most, if not the most, active emergency services Fire Department in the State, surpassing EMS calls of even those communities, such as Clifton, Roselle, Hillside or Ocean City, which provide full-time ambulance services and receive special pay for that purpose. As set forth below, the above municipalities provide Firefighters with EMS related payments that are well in excess of the 3% sought for performing these huge additional duties.

A recent January 28, 2008 memorandum to "All Fire Department Personnel" from Richard J. Laird, Jr., Director, Fire & Emergency Services addressed the First Responder skills, again emphasizing this important not necessarily fire-related Emergency Services activity.

The memorandum, a copy of which was submitted with the supplemental submissions, emphasizes the need for everyone in non-Engine Companies to get on-the-job training on an Engine Company. The purpose of this is for Emergency Medical Services work and cross-training. This is called additional "First Responder (on the job) Continuing Training." This memorandum further demonstrates that all members of the FMBA must be compensated for performing these First Responder related duties.

As a result of these duties, just as Police receive special detective pay and other pay, and Fire Departments should receive special pay of at least a 3% base pay payment.

The FMBA asserts that it is entitled to special consideration in the area of wages, First Responder/EMS work related payment, and other important payments because of the difference in pay between the FMBA and other large, urban Fire Departments throughout New Jersey for the performance of these First Responder/EMS related duties. As set forth in numerous FMBA's Exhibits, and as is set forth throughout this Post-Hearing Brief, the Trenton Fire Department responds to and handles an exceptionally large amount of emergency medical service related calls. The amount of work performed during these medical calls comprises a significant percentage of fire runs.

As it is clearly set forth in the chart provided below, a large number of municipalities provide payment for responding to medical calls. Many of these municipalities, as set forth in the charts submitted by the FMBA, perform minimal EMS duties and receive substantial stipends nonetheless. This alone demonstrates that the FMBA should be provided the requested stipend. The following municipalities receive compensation for performing EMS related duties, while arguably responding to fewer calls than the Trenton Fire Department:

Municipality	EMT Pay/Stipend
West Orange	2% stipend added to base pay
Teaneck	2% stipend added to base pay
Clifton	\$2,700 added to base pay
Linden	8% stipend added to base pay
Hillside	6% stipend added to base pay
Ocean City	\$3,486
New Brunswick	1.25%

Maplewood	\$1,444 added to base pay
Belleville	\$2,650 for both the maintenance of EMT certification and for firefighters assigned to 1 <sup>st</sup> line ambulance duty
Ventor City	\$1,500 added to base pay
Roselle	5% + \$1,000 (Ambulance Providers at 3%)
South Orange	\$1,250 added to base pay
Westfield	\$1,500 (Firefighters) \$1,633 (Fire Officers)
Springfield	\$750 in base for EMT; \$750 in base salary for first responder duties
Wildwood	\$1,000 added to base pay
North Wildwood	\$1,000 added to base pay
Ridgewood	\$3,471 added to base pay
Bergenfield	\$1,526.62 added to base pay
Hackensack	\$1,250 added to base pay

See FMBA Exhibit 59.

It should be noted that a large number, if not all of these municipalities, incorporate this payment into base pay for pension purposes. See FMBA Exhibit No. 60.

The City opposes the FMBA demand for a 3% stipend primarily on grounds that the costs of such proposal would increase the total net economic change caused by the award to be unreasonable. Contending that this proposal is unreasonable on its face, the City argues that it is also inconsistent with the

internal pattern of settlement and the financial condition of the City. The City argues extensively that cost items such as this would be inconsistent with the public interest, would cause adverse financial impact and be inconsistent with the City's statutory spending and taxing limitations.

#### **Article XVIII, Compensation, Section 8, Shift Differential**

The FMBA seeks a .5% increase to the shift differential effective January 1, 2006 and a .25% increase for each year of the contract thereafter. Noting that the contract currently provides for a 1.25% shift differential payment, the FMBA argues that other large municipalities such as Newark provide shift differential payments well in excess of what the City of Trenton Firefighters currently receive.

The City urges rejection of this proposal asserting that the current shift differential payment is adequate and should not be disturbed. The City also contends that the cost of the proposal has not been justified and that it deviates from the pattern of internal settlement.

#### **Article XVIII, Compensation, Section 9, Hazmat**

Eligible unit members currently receive a 1% hazmat payment. The Union seeks a 1.5% increase effective January 1, 2006 and a 1.5% in each contract year thereafter. In support of this proposal, the FMBA explains the basis for the awarding of this proposal:

The FMBA currently receives a HAZMAT payment in the amount of 1%. There are currently 52 members that receive HAZMAT pay. The FMBA is seeking the following increases to the Hazmat payment in the manner set forth above.

These increases should apply to Firefighters and all members not assigned to the Task Force that have obtained the Hazmat certification(s)/qualification(s). Several of these members have been specifically assigned to the Task Force on an as needed basis, or out of turn due to manpower considerations.

The payment sought would be consistent with such increases in large Fire Departments such as Newark and Elizabeth. See FMBA Exhibit Nos. 79 and 80. It is critical to note that Trenton Firefighters are designated Hazmat responders for the County. Accordingly, these Firefighters respond to Hazmat situations throughout the County, and in some situations, respond to incidents in Pennsylvania.

A December 13, 2008 article addresses an incident that recently occurred in Trenton involving a potential hazardous material situation. More specifically, in Trenton, Senate President Richard Codey received a letter containing a "powdery substance", which was believed to contain hazardous material. The Trenton Fire Department hazardous material team responded to this incident. As noted in the article, there were a number of hazardous material responses in 2001. This article demonstrates the substantial dangers faced by the Fire Department, and more specifically, those Firefighters with hazmat training, on a daily basis. The above requested payment is necessary because of the substantial dangers faced by those members assigned to these units.

Accordingly, the FMBA's proposal is reasonable and should be awarded.

The City urges rejection of this proposal asserting that the current hazmat payment is adequate and should not be disturbed. The City also contends that the cost of the proposal has not been justified and that it deviates from the pattern of internal settlement.

## **Article XVIII, Compensation, Section 2, Driver's Pay**

Those eligible for drivers pay currently receive 4.5%. The FMBA seeks an additional 1.5% increase effective January 1, 2006 and a 1% increase additionally for each year of the contract thereafter. The Union further proposes that the City be required to make all driver position appointments solely upon seniority. The FMBA offers the following arguments in support of its proposal:

The above-requested increases are necessary when reviewing the salary schedule for Trenton Sergeants in the Police Department. The Driver-Tillerman position is considered an equivalent rank to the Sergeant rank in the Police Department. The Sergeant rank is comprised of a three tier system. A Driver-Tillerman's base salary for the 2005 calendar year was approximately \$66,430.58. The Sergeants received the following base salary beginning 7/1/05: Yr 1: \$69,508; Yr 2: \$71,321; Yr 3: 78,168. The difference in salary, prior to the inclusion of holiday pay in base, between the Driver-Tillermans and Sergeants are as follows when reviewing the tier structure: \$3,077.42, \$4,890.42, \$11,737.58.

The negotiating history demonstrates that, as noted above, Driver's pay was instituted to provide a Trenton rank comparable to Police Sergeants. The first level of supervision in the Fire Department is Captain. The Police Department provides promotional opportunity ranks of Sergeant, Lieutenant, Captain, Deputy Chief.

It is also important to emphasize that Driver-Tillerman's are being held accountable for any accidents they are involved in while driving Fire Department Apparatus. More specifically, there have been instances where Firefighters are required to forfeit portions of their salary to reimburse the City for damage to the Fire Department apparatus. See FMBA Exhibit No. 76-77 ...The City should be required to make all appointments to the Driver position based solely on seniority. This has been in effect since the inception of the above provision in the CBA. Accordingly, this language should be placed in the parties' contract.

The City urges rejection of the FMBA proposal and proposes to eliminate drivers pay as being a payment that is unwarranted.

### **Article XVIII, Compensation, Section 7, Diver's Pay**

The FMBA seeks an increase in the existing 1% payment allotted for diver's pay. It seeks a 2% increase effective January 1, 2006 and that the language in the Agreement be clarified so that it is similar to the contract language that relates to Hazmat payments. It argues as follows:

Currently, the FMBA receives the following Divers payment pursuant to Article XVII, Section 7, Divers:

Effective January 1, 1994, members certified as divers and assigned duties as divers shall be paid an additional 1% of their bi-weekly base rate. Pay as an addition to base salary for eligible employees, but exclude from the calculation of contractual TO and differentials.

As noted above, the FMBA is seeking a 2% increase effective January 1, 2006. In a comparable City, such as Newark, diver pay (Scuba Pay) is equivalent to 3%, and as such, the FMBA should receive a comparable stipend. See FMBA Exhibit No. 83. These individuals perform an extremely dangerous additional duty for the City which requires them to render aid to individuals in distress, respond to boating issues and search for weapons and/or corpses, among other things.

It is also critical to note that this payment has remained unchanged for fourteen (14) years. It is, therefore, reasonable to seek an increase in the Diver payment.

As noted above, the above language should be clarified so that all members that have obtained the requisite certification(s)/qualification(s) are compensated for being trained in this specialized area of fire services. The City has, in the recent past, kept certified/qualified diver's on the task force, but moved them to a different fire station which does not provide for the payment set

forth above. This practice should be immediately stopped and clarified in the contract so that all qualified/certified individuals receive this pay regardless of where the firefighter is assigned. Firefighters with these qualifications could, at the present time, be called upon to perform these critical functions without being compensated for performing the same.

The City urges rejection of this proposal asserting that the current payment for diver's pay is adequate and should not be disturbed. The City also contends that the cost of the proposal has not been justified and that it deviates from the pattern of internal settlement.

### **Article XVIII, Compensation, Section 3, Longevity**

The FMBA seeks a 1% increase in the longevity schedule effective on January 1, 2006. It submits the following arguments in support of its proposal:

Currently, Article XVII, Compensation, Section 3, Longevity, of the FMBA CBA provides for the following longevity payments:

<u>Years of Continuous Service</u>	<u>Longevity</u>
5 years but less than 10 years	2.0% of Base Salary
10 years but less than 15 years	4.0% of Base Salary
15 years but less than 20 years	8.0% of Base Salary
20 years but less than 24 years	10.0% of Base Salary
24 years but less than 29 years (Effective 7/1/98)	12.0% of Base Salary
29 years and over (Effective 7/1/98)	13.0% of Base Salary

The FMBA is requesting the following changes in the longevity pay schedule:

<u>Years of Continuous Service</u>	<u>Longevity</u>
5 years but less than 10 years	3.0% of Base Salary
10 years but less than 15 years	5.0% of Base Salary
15 years but less than 20 years	9.0% of Base Salary
20 years but less than 24 years	11.0% of Base Salary

24 years but less than 29 years (Effective 7/1/98)	13.0% of Base Salary
29 years and over (Effective 7/1/98)	14.0% of Base Salary

As is clear from the longevity provisions that are set forth below, a large majority of municipal employers provide their employees with longevity increments that are much greater than what is received by the FMBA.

MUNICIPALITIES	LONGEVITY PAYMENT
Paterson	2% 5 years to 18% 24 years
Hoboken	2% 5 years up to 18% 24 years
East Orange	2% 5 years up to 16% 24 years
Jersey City	2% 5 years up to 16% 24 years
Carteret	2% 5 years up to 15% 24 years
Harrison	2% 3 years up to 14% 24 years
Hackensack	1% every 2 years of service for those hired prior to 1985, i.e. 15% after 30 years of service.
Newark	2% 5 years up to 14% 30 years
Hillside	2% 5 years up to 14% at Start of 23 <sup>rd</sup> year
Passaic	2% 5 years up to 14% 24 years

The City urges rejection of the FMBA proposal and offers its own. It proposes to freeze longevity at each employee's current longevity dollar amount, eliminate longevity prospectively. In support of its proposal, the City offers the following argument:

The City acknowledges that the TFOA settlement contained modest longevity increases for senior officers. Effective January 1, 2010,

longevity will be increased from 12% to 13% for officers after 24 years of service, and from 13% to 14% for officers after 29 years of service. (Exhibit C-158, items 3-4)<sup>1</sup>. Under no circumstances should even this modest longevity increase be awarded to the FMBA unless the Arbitrator applies the entirety of the TFOA economic settlement, including the TFOA salary increases, to the FMBA. To do otherwise would be to "cherry-pick" from the terms of the TFOA settlement, which is not consistent with the internal pattern of settlement. The Arbitrator should award the City proposal on longevity if he does not apply the TFOA settlement to the FMBA.

### **Technical Rescue Pay**

The FMBA proposes that a new stipend be created for employees that perform technical rescue duties. The payment it seeks is 2.5%. Its argument for this new stipend states that:

Technical rescue duties include, but are not limited to, extrication, high angle, collapse, and trench rescue. This payment is sought for all members of Engine 10, Ladder 4 and Rescue 1. These members of the FMBA currently do not currently receive a stipend for performing technical rescue duties. This payment is especially important because Trenton Firefighters are designated technical rescue responders for the County. Accordingly, these Firefighters respond to technical rescue situations throughout the County, and in some situations respond to incidents in Pennsylvania.

The Elizabeth FMBA Interest Arbitration Award which was rendered on May 5, 2008 provided for the following Tech Rescue payment: Effective July 1, 2007 - \$1,200; and Effective July 1, 2008 - \$1,500. The payment was included in base pay. The background of the Elizabeth Tech Rescue team is set forth on pages 10-11 of the Interest Arbitration award. See FMBA Exhibit No. 87.

It should be noted that the Elizabeth FMBA received salary increases of 3% for each year of the CBA, a percentage increase, that is well below the norm, because 13 other unions within the City agreed to the implementation of a 3% increase for the life of the contract. However, when reviewing the award and/or increases in

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<sup>1</sup>The PBA award contains no longevity increase.

the following stipends, the salary increase is well above 4% annually: EMT, HAZMAT, First Responder and Tech Rescue Stipend. Id.

Accordingly, the FMBA's proposal relating to Technical Rescue pay is reasonable and should be awarded.

The City urges rejection of this proposal that would establish a new stipend. The City also contends that the cost of the proposal has not been justified and that it deviates from the pattern of internal settlement.

### **Sick Leave General and Sick Time Buy Back and Sick Leave Buy Back**

The issues relating to sick leave cause the FMBA to take the following three positions with respect to this issue.

1. The FMBA contends that there is no need to implement restrictions on sick leave, as has been adopted by the Fire Superior Officers, but not by Trenton Police Officers. It should be noted that restrictions on sick leave was not awarded by Arbitrator Pierson in his December 31, 2008 Interest Arbitration award.

In support of the above position, Union offers further justification:

At the mediation meeting before Arbitrator Glasson on May 11, 2007, the FMBA presented Exhibits on sick leave demonstrating that sick leave concerns raised by the City and by the FMBA could be addressed best by the adoption and implementation by the City of existing standards and policies with regard to sick leave. Exhibit No. 13, (from May 11, 2007), demonstrates that sick leave could be reduced by the simple implementation of a standard operating procedure of the former Director Keenan, by adoption of the 24/72-hour shift, by implementation of the Labor Management Committee on Sick Leave, and by cooperation with the FMBA. This cooperation should include implementation and expansion of other

economic incentives involving sick leave, including payment of unused sick leave upon retirement and limitations on the use of sick leave in the last twelve months prior to retirement. There is no need to implement restrictions on sick leave, such as have been adopted by the Fire Superior Officers, but not by the Police Patrolmen. [underline in original]

2. The sick leave buy back provision should be increased by \$5,000.

In support of the above position, Union offers the following explanation:

Currently, Article VI, Leave of Absence and Leaves without Pay, Section 4, Sick Leave Buy Back, Section A, provides for a buy back not to exceed \$20,000. The FMBA is seeking to increase the above-referenced sick time buyback to \$25,000. A substantial amount of Firefighters retire with a large amount of unused sick time. Since the cap is set at \$20,000, most Firefighters forfeit a substantial portion of their accrued sick time. The increase sought is a minor increase and should, therefore, be awarded. The FMBA is also seeking to include further stipulations to be set up by the Sick Leave Committee, which was established in prior negotiations.

3. The FMBA is seeking to revise the sick leave buy back penalty from 15 sick days to 40 sick days.

In support of the above position, Union offers the following explanation:

Currently, Article VI, Leave of Absence and Leaves without Pay, Section 4, Sick Leave Buy Back, Section A, sets forth the manner in which sick time is calculated and paid out 12 months prior to retirement. This system provides for a penalty system so that 12 months prior to retirement, a Firefighter must have less than 16 sick days in order to receive a full daily rate for their sick time buy back. The current schedule is as follows:

In the last 12 months prior to retirement the following will prevail:

1<sup>st</sup> 15 sick days: no penalty  
16 to 45 days: 50% of daily rate will be deducted from buy back

46 to 60 days: 75% of daily rate will be deducted from buy back  
61+ days: 100% of daily rate will be deducted from buy back.

The FMBA is seeking to increase the 15 day sick time schedule from 15 to 30 days. If this request is awarded the penalty for "16 to 45 days" should be changed to "31 to 45 days".

The City rejects the Union's proposal to maintain and improve the sick leave provision. Instead, the City proposes to eliminate the current sick leave benefit, which allows firefighters up to one year of paid sick leave per illness or injury. The City asserts that the awarding of the City's proposal would place the FMBA on the same sick leave benefit as the TFOA, who receive 15 sick days per year. The City points out that the TFOA surrendered unlimited sick leave in 2000 in favor of 15 days' allotment per year. The City further seeks to abolish existing contract limitations on its ability to verify the taking of sick leave.

#### **Article XVII, Compensation, Section 6, College Degree Stipend**

The FMBA proposes to change the college degree stipend currently received under the Agreement from a flat rate to a percentage. Under the proposal, employees would receive the following college credit payment:

Associate's Degree	.33% per year
Bachelor's Degree	.67% per year
Master's Degree	1% per year

This proposal would revise the benefit currently received under Article XVII, Compensation, Section 6, College Credits:

Associate's Degree	\$200.00 per year
Bachelor's Degree	\$400.00 per year
Master's Degree	\$600.00 per year

The FMBA contends that the current education benefit is substantially lower than other municipalities within the State of New Jersey and should be revised consistent with its proposal.

The City urges rejection of this proposal asserting that the current college degree stipend is adequate and should not be disturbed. The City also contends that the cost of the proposal has not been justified.

### **Vacation Days**

The FMBA is seeking an increase in vacation days. Currently, Article IV, Vacations, Section 1, Subsection b, of the FMBA contract provides for the following vacation benefit:

For employees hired after January 1, 1998, vacation shall be granted as follows:

After 1 year of service but less than 3 years of service	17 days
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After 3 years of service but less than 5 years of service	19 days
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After 5 years of service but less than 8 years of service	21 days
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After 8 years of service	23 days
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After 10 years of service the employee is entitled to 26 vacation days as outlined in paragraph a.

The FMBA is seeking to revise the above schedule in the following manner:

For employees hired after January 1, 1998, vacation shall be granted as follows:

After 1 year of service but less than  
3 years of service                    21 days

After 3 years of service but less than  
5 years of service                    23 days

After 5 years of service but less than  
8 years of service                    25 days

After 8 years of service                    27 days

After 10 years of service the employee is entitled to 29 vacation days as outlined in paragraph a.

The FMBA justifies its proposal by pointing to contracts in evidence which purportedly show that Trenton receives a lesser amount of vacation days than a number of other municipalities within the State of New Jersey.

The City urges rejection of this proposal as unjustified, costly and inconsistent with the internal pattern of settlement.

## **Vacation Buy Back**

The FMBA is seeking to increase the buy back benefit from 8 hour days to 12 hour days. In support of its proposal the FMBA offers the following explanation:

Currently, the City's buy back rate at retirement is based on an 8 hour work day. This buy back rate should be increased from 8 hours to 12 hours since members of the FMBA work a 10/14 shift, meaning their average work day is 12 hours. As such, the FMBA should receive a buy back rate that is consistent with the number of hours worked a shift.

The City seeks the denial of this proposal citing cost and inconsistency with established practices.

## **Acting Officers**

The FMBA is seeking to increase out of title pay by 4%. In support of its proposal the FMBA offers the following justification:

Article XIV, Acting Officer, provides as follows as it relates to acting officer pay: "Effective July 1, 1999, working out of title pay 32% of the maximum base salary rate of a firefighter will be reduced to 30%.

Under the Union's proposal, out of title pay would increase from 30% of the maximum base salary rate of a Firefighter as set forth in Article XIV to 34% of the maximum base salary rate of a Firefighter. The FMBA argues that acting officers are required to perform substantial additional duties and claims that members of

the FMBA are not currently compensated adequately for performing these additional duties. The FMBA argues that the City has not justified the rejection of this proposal.

The City urges the denial of this proposal. It contends that it should not be the City's burden to justify the existing contract terms. Instead, the City asserts that it is the FMBA's obligation to justify a proposed change. The City states that the FMBA has not met its burden to justify the basis for a change that was agreed to in 1999.

### **Holiday Pay**

The FMBA proposes to incorporate the current holiday pay benefit into the Agreement. The FMBA offers the following argument in support of its proposal:

The FMBA currently receives pay for 13 holidays based on a City Ordinance. That City Ordinance is not set forth in the parties CBA. This makes it difficult for members of the FMBA to know what the bargained for benefit is since it requires the member to obtain a copy of the City Ordinance through the union or City Hall. More specifically, the member would have to review the Ordinance to determine that holiday hours are based on a 12 hour day. Based on the foregoing, that language should be incorporated into the parties CBA. This proposal will not impose any financial impact on the City and helps ensure that members are apprised of their contractual benefits. The City has failed to submit any evidence which would demonstrate that would demonstrate why this proposal should not be awarded to the FMBA.

The City urges rejection of this proposal. The City argues the following:

The FMBA contract entitles firefighters to such holidays as are designated for all City employees. (City Exhibit C-1, page 8). Currently, City employees receive thirteen holidays. The FMBA now demands that the ordinance be incorporated into the contract.

The FMBA misstates matters. The City and FMBA have agreed that firefighters will match those holidays unilaterally established by the City for all of its employees. It does not guarantee the FMBA a fixed number or fixed identity of holidays. The FMBA proposal would have the effect of locking in the holidays that currently exist, changing inherently the nature of the holiday provision. As such, this is truly an economic item that is not justified by the internal pattern of settlement or by the City's economic condition.

### **Overtime**

The FMBA is seeking to delete the last sentence of Article III, Hours of Work and Overtime, Section 3, Overtime. In explanation and support of this proposal the FMBA offers the following:

Article III, Hours of Work and Overtime, Section 3, Overtime of the parties' agreement provides for the manner in which overtime is paid and calculated. In that regard, the last sentence of Article III, Hours of Work and Overtime, Section 3, Overtime provides as follows: "Holiday pay, diver, shift differential, degree money and HAZMAT adjustments shall not be included in contractual overtime. The FMBA is seeking to remove that provision of this article. As noted above, the FMBA's salary lags substantially behind their police counterparts and most Fire Departments throughout the State of New Jersey.

The City submits that the FMBA has not justified a change to the status quo on the calculation of overtime pay.

## **HEALTH INSURANCE**

### **Medical/Dental/Prescription Drug Insurance**

The City seeks to modify terms that concern medical, dental and prescription insurance and co-pays to be borne by unit employees. The City proposes the following:

#### **Medical/Dental/Prescription Drug Insurance:**

- a. Co-pay of medical insurance:
  - i. From date of settlement through 12.31.09: \$19 per pay for single coverage, \$23 per pay for all others.
  - ii. From January 1, 2010, and thereafter: \$21 per pay for single coverage, \$25 per pay for all others.
- b. Prescription drug co-pays: Create three tier system: generic, preferred and brand name: \$10/\$20/\$35 for retail; \$3/\$10/\$15 for mail order.

In support of its proposal, the City offers the following argument:

The City proposal is *identical* to the concessions awarded by Arbitrator Pierson in his award to the PBA, (*City of Trenton – and – N.J. Policemen's Benevolent Association*, Docket No. IA-2007-60, Exhibit C-157, page 28, item 3), and to the concessions voluntarily accepted by the Fire Superiors in their settlement. (Exhibit C-158, page 3). The City's proposal is also consistent with the concessions on health care and prescription co-payments included in the City's settlement with AFSCME Local 2286, the City's largest bargaining unit. (Exhibit C-107).

Thus, as the matter sits before this Arbitrator, the City's largest bargaining unit, the City's largest uniformed bargaining unit, and the bargaining unit of Fire Superiors – the unit most comparable to the FMBA in terms of working conditions, work duties and responsibilities – have all accepted concessions on health care and prescription drug co-payments. The City's proposal to the FMBA in this regard is *identical* to that accepted by the PBA and Fire Superiors. There is no

basis for exempting these employees from the same reasonable concessions accepted by their fellow uniformed officers, including their own supervisors. The internal pattern of settlement criterion requires the Arbitrator to include the City's proposed concessions on health care and prescription drug co-payments in his award.

The FMBA urges rejection of the City's proposals on health insurance and offers the following explanation:

First and foremost, it is critical to address the fact that Arbitrator Pierson awarded the City's health benefits proposals as set forth below. Notwithstanding the fact that Arbitrator Pierson awarded these health benefits proposal to the City, the City's health benefits proposals should not be awarded in this situation because, as noted above, there is, among other things, a discrepancy in the salaries and number of hours worked by Firefighters and Police Officers within the City of Trenton. Similarly, any reference to a settlement agreement reached between the City and non-public safety City employees is wholly irrelevant due to the obvious differences in the work duties, pension system, salary and other important benefits provided to members of the FMBA as compared to other non-public safety City employees.

It is also significant to address the City's documentary evidence it submitted in support of its Final Offer pertaining to health benefits. See City Exhibit Nos. 82-99. Exhibit Nos. 82-99 address public sector awards and settlements that contain health insurance concessions. For the following reasons, the City's exhibits fail to demonstrate that a contribution should be awarded in this matter.

1. Exhibit No. 82. State of New Jersey and CWA, 2007. The FMBA asserts that this Exhibit is wholly inapplicable to this interest arbitration. More specifically, CWA employees do not perform comparable work. In that regard, firefighters, like police officers, work in highly dangerous situations, unlike CWA employees. Police and Fire have a pension system separate from CWA employees, who are in the PERS pension system, not the PFRS system. Also, CWA, unlike police and fire groups, are unable to use the compulsory interest arbitration system when the parties reach impasse. It should be noted that the co-pay sought by the City of Trenton is substantially higher than what was agreed upon in the CWA deal.
2. Exhibit No. 83, Borough of Keyport - and Keyport PBA Local 223, 2006. There is a substantial discrepancy in the rate of pay

between the Keyport PBA and the Trenton FMBA. In that regard, in 2005, the base pay for a top grade firefighter was \$63,569.93. A Keyport top pay patrolman received a base pay of \$75,796 in 2005. The difference in base pay is more than \$12,000. This does not include all the additional payments Keyport PBA employees receive. It should also be noted that Keyport, unlike Trenton, has a population of under 8,000.

3. Exhibit No. 84, County of Burlington - and - PBA Local 249, 2007. As set forth in previously submitted exhibits, none of the collective bargaining agreements relied on by the FMBA in the presentation of this interest arbitration provide for a prescription co-pay in the amount awarded in this Interest Arbitration Award.
4. Exhibit No. 85, Brookdale Community College - and - FOP Lodge 79, 2007. As set forth in previously submitted exhibits, none of the collective bargaining agreements relied on by the FMBA in the presentation of this interest arbitration provide for a cap in health benefits. Regardless, Brookdale Community College has a much smaller population than that of Trenton. In addition, the crime rate, in comparison to that of Trenton, is basically non-existent. It should be noted that the employees do not pay a contribution to health care benefits. Also, the percentage increases awarded are much higher than what is being offered in this matter.
5. Exhibit No. 86, County of Essex - and- PBA Local 183. As set forth in previously submitted exhibits, none of the collective bargaining agreements relied on by the FMBA in the presentation of this interest arbitration provide for the prescription co-pay awarded in that matter. It should be noted that these individuals do not pay a contribution toward their health benefits. It should also be noted that the percentage increases are substantially higher than what is being offered to the Trenton FMBA.
6. Exhibit No. 87, Borough of Ringwood - and - Ringwood PBA Local 247, 2006. The prior contract between the parties were submitted in this Interest Arbitration. As demonstrated by that contract, the 2005 salary of a top pay Ringwood police officer in 2004 was \$82,246. Based on the award, as attached as City Exhibit No. 87, PBA members received a 3.8% increase in 2005. As such, base pay at top pay for a police officer was \$85,371. Trenton Firefighters received top pay of \$63,569.93. The total difference of base salary was over \$21,000. It should be noted that the award does not provide for a contribution to benefits. It only requires a contribution if an employee elects a

plan different from the Aetna plan. It should also be noted that the population is less than 13,000 in Ringwood.

7. Exhibit No. 88, Borough of Lakewood - and - Lakewood Township SOA, 2007. As set forth in previously submitted exhibits, none of the collective bargaining agreements relied on by the FMBA in the presentation of this interest arbitration provide for the prescription co-pay awarded in that matter. It is important to note that the Arbitrator awarded 4% across-the-board increases for the length of the contract, in addition to an increase in the detective stipend. More importantly, however, no health care contribution was awarded in this Award.
8. Exhibit No. 89, City of Long Branch - and - FMBA Local No. 68. First and foremost, a contribution was not awarded in this matter. Instead, Firefighters had to pay a monthly contribution if they remained in the Traditional plan. There is no such plan available for the Trenton FMBA since the SHBP eliminated that plan. Regardless, Long Branch Firefighters were not required to make a contribution if they remained, or alternatively, switched into the POS or HMO plan.

It is critical to note that the difference in base pay between a Long Branch Firefighter and a Trenton Firefighter was approximately \$9,000 in 2005. The difference in population is approximately 50,000.
9. Exhibit No. 90, Township of Moorestown - and - FOP Lodge 109 and 109 SOA, 2007. First and foremost, a contribution was not awarded in this matter. Instead, Firefighters have to pay a monthly contribution if they remained in the Traditional plan. There is no such plan available for the Trenton FMBA since the SHBP eliminated that plan. Regardless, Moorestown police officers were not required to make a contribution if they remained into the POS or HMO plan.

It is critical to note that the difference in base pay between a Moorestown police officer and a Trenton Firefighter was approximately \$5,000 in 2005. The difference in population is approximately 60,000.
10. Exhibit No. 91, City of East Orange -and- East Orange FOP, 2008. East Orange police and fire employees receive a top longevity payment in the amount of 16%. This is 3% higher than what Trenton FMBA members receive as a final longevity increment. Please also note that the awarded salary increases are substantially higher than what is being offered to the Trenton FMBA, which will further increase the gap in salary.

11. Exhibit 92, City of East Orange -and - East Orange FMBA, 2008. See above.
12. Exhibit 93. See above 2 responses.
13. Exhibit 94. City of North Wildwood -and- FMBA Local 56, 2008. The population in Wildwood is less than 5,000. There is a difference in population in the amount of 80,000. Notwithstanding this, the base salaries of both fire groups is almost identical.
14. Exhibit 95, Borough of Mountainside -and - PBA Local 126, 2007. The salary difference between the PBA and the Trenton FMBA is substantial. In that regard, PBA top pay employees received a base salary in the amount of \$76,747 in 2005. FMBA members, on the other hand, at top pay in 2005, received a salary in the amount of \$63,569.93. The difference in salary is more than \$13,000. The difference in population is almost 80,000.

It is critical to note that the Borough's offer to eliminate longevity for new hires was specifically denied by the Arbitrator.
15. Exhibit 96, Paulsboro Borough and PBA Local 122, 2007. A contribution was not awarded in this matter. Instead, police officers had to pay the difference between the HMO and the PPO premiums if the employee wished to remain in the PPO. Regardless, police officers were not required to make a contribution if they remained, or alternatively, switched into the HMO plan.
16. Exhibit 97, Rutgers University and FOP Lodge 164, Superiors, 2008. The population is substantially different at the Rutgers campus when compared to the City of Trenton.
17. Exhibit 98, Mahwah Township and PBA Local 143, 2007. While it is true that the parties voluntarily reached an agreement whereby police officers would pay a bi-weekly health care contribution, there is a substantial discrepancy in salary between the Mahwah PBA and the Trenton FMBA. A top pay Mahwah police officer received a base payment in the amount of \$94,695 in 2005. Members of the FMBA at top pay in 2005 received a base payment in the amount of \$63,569.93. The difference in salary is more than \$30,000 a year. The difference in population is more than 60,000.
18. Exhibit No. 99, Camden County and FOP Lodge 76, 2008. This contribution is unlike any other police or fire contribution in the State of New Jersey.

NJFMBA First Vice President, Robert E. Brower, who has been handling Statewide negotiations meetings for more than nine (9) years, provided the following statement in a certification pertaining to City proposals pertaining to health benefits:

Public safety employees, namely Police and Fire employees particularly in municipalities, have always been treated in virtually all major respects as unique and different from civilian employees employed by a municipality, such as public works and white collar employees. There is, particularly, parity in certain basic salary and benefit concepts which are distinguishable from non-police and fire employees. For instance, in this regard, in a recent arbitration in Union Township, Police and Fire groups proceeded, basically, simultaneously, in presenting their positions to the Arbitrator. The Arbitration Award was basically similar as to basic economic issues with regard to both groups and reflected differences from other groups. That Arbitration Award, it should be noted, did not have in it any contribution towards premiums as to health benefits. In addition, in another Arbitration Award in the City of Elizabeth, the parity concept was again observed between Police and Fire employees, although in this situation, the concept resulted in percentages which Police received being awarded to Fire employees which were lower than the norm! In that situation, however, the distinct difference of Fire public safety employees from others was recognized by virtue of payments being made for Fire employees in Elizabeth resulting from their special duties known as First Responder duties, EMS-EMT duties, Hazardous Materials duties and Tech Rescue duties, all of which have their counterparts in New Brunswick. These Interest Arbitration Awards are being attached as Exhibits in this proceeding. These uniformed employees, in their duties as is set forth in the Exhibits, are uniformed 24 hours, 7 days a week, which are employees who are exposed daily, particularly after 9/11 to dangerous, life-threatening and sometimes deadly or longstanding injuries and illnesses. Particularly in the case of Fire employees who perform major and regular EMS work as is documented in the Exhibits of the Locals, this exposure is extraordinary. This is in addition to the horrible exposures to injury or death and long lasting illnesses resulting from fire fighting activities. Added to these exposures of public safety employees and Firefighters are the training and exposures for hazardous materials and for hazardous

rescue, all of which are mandatory training for Fire Departments in the State. The 9/11 tragedies are not an isolated event, but are a continuing threat. Exposure to hazardous materials is a daily event. Exposure to infectious diseases, which lingers and shows up after retirement, is common. Firefighters and EMS workers apart from exposure in the normal course to hazardous materials, smoke inhalation, burns and serious injuries, all of which frequently appear retirement and need medical treatment, are exposed in other EMS work to lingering infectious diseases, such as tuberculosis, MRSA (untreatable virus) and other horrible diseases, since they do not pick and choose the sick and disabled civilians to whom they provide emergency treatment. These diseases frequently appear only after retirement and then more than ten years after retirement. For instance, heart conditions among retired Firefighters, which are debilitating, appear more than any other occupation after retirement for long periods of time when they need treatment medically. In other situations, these conditions include many other illnesses other than heart disease. Most commonly, symptoms lay dormant until later in life when Firefighters will need to be treated for numerous illnesses other than heart disease, which either continue from active duty after retirement or first show up after retirement. This kind of critical need applies primarily, if not only, to public safety employees.

Civilian employees in Trenton (in or about May 2008) entered into an agreement which resulted in percentage increases over a 5-year period which were extremely low. (See Exhibit 164). These raises, percentage-wise, for civilian employees, are frequently 1% lower than in the Fire Department or Police Department, such as in a recent settlement in Rahway. Further, in a recent settlement in Springfield, where there was a major limitation for payment of premiums on health benefits for retirees who are civilians, there was no such limitation in a Police settlement. I further note that this new contract for civilian employees in Trenton state a contribution towards health benefits, in paragraph 3, beginning the effective date of the settlement to December 31, 2009 of \$19 per pay (biweekly pay) toward single coverage, \$22 per pay toward all other coverage. Effective January 1, 2010, and thereafter, employees will be assessed a contribution toward the cost of health insurance in the amount of \$21 per pay toward single coverage and \$22 per pay for all other coverage. There should be no such payment for Police employees during their contract, and

there should be no such payment for Fire employees. FMBA Local No. 17, in its Exhibits, has consistently shown the basis for this position of parity among Police and Fire and, of course, my Certification supports this position. On the other hand, the City is hard-pressed, so to speak, to argue on the one hand that what is good for civilian employees should be given to Fire employees without adopting the FMBA's position that there should be parity in the major areas sought by the FMBA with Police, as to base pay. As to other things where there need not be exact parity, such as the vast difference in hours of work between Police and Fire (37-1/2 hours per week vs. 42 hours per week), there is a traditional basis of differences between Firefighters and Police. However, parity in such things as basic wage payments, health benefits, wages, and holiday pay, should exist.

There are even greater reasons for this. Firefighters in particular have the incentive to perform their duties, which result in more deaths annually than in any other profession, because of a spirit of brotherhood and comradery which is based upon all Firefighters having an expectancy and understanding and knowledge that they will receive basically the same pay and, more importantly, the same health benefits. Based upon these concepts, Firefighters as a matter of policy in arbitration awards, do not have a pattern of agreeing to or having the amount awarded provide for different benefits for newly hired employees, whether in the area of longevity or health benefits or otherwise. For instance, in another Arbitration Award for the City of Elizabeth, also an Exhibit, where the primary issue was the limitation of longevity for new hires. The Arbitrator determined that this should not take place based upon these concepts, and the situation with Firefighters. What is true for longevity is also true, but more so, for health benefits and other issues where there is or should be parity among police and fire employees but not for other employees.

Currently, Firefighters are not required to pay a contribution towards their health benefits. This is consistent with most Fire Departments and Police Departments throughout the State of New Jersey. The chart set forth immediately below demonstrates that a large number of large urban municipalities do not require employees to pay a contribution. It is critical to note that all of the municipalities set forth in the attached chart provide their fire employees with greater compensation than that in which the FMBA receives.

**MUNICIPALITIES THAT DO NOT REQUIRE FIRE EMPLOYEES  
TO PAY A HEALTH CARE CONTRIBUTION**

Newark
Jersey City
Elizabeth
Camden
Clifton
East Orange
Passaic
Irvington
Bloomfield
West Orange
Hillside
Hoboken
New Brunswick
Springfield
Maplewood
Kearny
Linden
Union

The FMBA also urges denial of the City's proposal to increase prescription co-pays:

Currently, Firefighters pay the following co-payment: \$0 for generic drugs and \$5.00 for name-brand drugs. The City, as noted above, is currently seeking to increase the health benefit co-payment in the following manner: Create three tier system: generic, preferred and brand name: \$10/\$20/\$35 for retail; \$3/\$10/\$15 for mail order.

The chart set forth immediately below demonstrates that a large number of large urban municipalities do not require employees to pay health benefits co-payments as substantial as what is being sought by the City. It is critical to note that all of the municipalities set forth in the attached chart provide their fire employees with greater compensation than that in which the FMBA receives.

***MUNICIPALITIES THAT PROVIDE FOR BETTER  
PRESCRIPTION DRUG CO-PAYMENT BENEFITS***

Paterson
Newark
Jersey City
Elizabeth
Edison
Camden
Bergenfield
East Orange
Passaic
Bloomfield
West Orange
Hillside
Hoboken
New Brunswick
Springfield
Maplewood
Kearny

## **WORK SCHEDULE**

The parties have devoted much testimony, documentary evidence and argument on the issue of work schedule. The sheer volume and quality of the parties' presentations do not allow for a comprehensive summary of their positions. I will start by setting forth the FMBA's proposal seeking to change the existing work schedule providing for a 10/14 hour shift to the 24/72 hour shift.

The FMBA submits the following proposal:

Within sixty (60) days of the issuance of an Interest Arbitration Award in this matter, the City shall commence, for Local No. 6, a 24/72 hour shift schedule on a one year trial basis, subject to the terms of this agreement. This means that there shall be a 24 hour tour followed by 72 hours off work, for all employees except for certain agreed upon staff "day" employees. The parties may mutually agree to a different implementation date. The 24/72 hour shift schedule shall remain in effect unless it is altered or replaced by Interest Arbitrator James W. Mastriani pursuant to the procedures set forth herein.

If either party desires to revert to the current work schedule (10/14-hour shifts) at the end of a 12-month period, which shall begin on \_\_\_\_\_ and end on \_\_\_\_\_, it shall serve written notice of its intention to do so on the other party, at least 60 days prior to the end of that period. The specific reasons with statistical backup and detailed argument shall be submitted with the notice. The other party who receives the notice shall after 30 days of receipt provide its objections to the notice and the parties shall immediately thereafter meet and confer in an effort to resolve any dispute concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to binding arbitration no later than 30 days after the end of the 12 month period, to Arbitrator James W. Mastriani. The parties agree that the reversion to the old schedule shall only be based upon a demonstration of good cause for this and in evaluating the issues in question, such things as employee morale, productivity, staffing, training, sick leave, and the like may be among the criteria addressed. However, issues which are not attributable to the 24/72 hour shift such as reductions in manning, sick leave caused by on-the-job injury, or long-term illnesses or injuries, and the like, shall not be considered in support of a change to the former shift. During the period prior to the 60 day period, a committee consisting of representatives of Local 6 and of the City shall meet at least every 30 days to evaluate the shift and any concerns which either party has with regard to its implementation.

The 24/72 hour shift shall remain in effect after the 12 month period. If there is objection to as set forth above, it shall continue at least until a determination of the arbitrator is made, provided that timely objection is made as aforesaid by the objecting party.

If neither party elects to submit the matter to arbitration in accordance with the procedures set forth above during the initial 12 month period, then the 24/72 hour work schedule shall become the permanent work schedule.

The conversion of hours shall be on the basis of one day equals 12 hours.

Operational periods shall mean 12 hours.

Vacation time may, subject to other provisions of the agreement, be taken in operational periods of 12 hours.

Prior to the implementation of the 24/72 hour shift, the parties shall meet to agree upon of such things as paid leave time like vacations, holidays, personal days and sick days to maintain the equivalent level of benefit as under the current 10/14 hour shift schedule.

At the March 18, 2008 arbitration hearing before the original interest arbitrator, the FMBA made a comprehensive submission in support of the proposal to convert to the 24/72 hour work schedule. In addition to its documentary presentation, testimony was offered by Robert Brower, First Vice President of the New Jersey State FMBA.

The FMBA's proposal includes a trial period that would provide an opportunity for both parties to evaluate the experience under the new work schedule. The scope of such evaluation would include the efficiency of operation of the department, employee morale and the impact of the new work schedule on issues such as sick leave, overtime, productivity and staffing levels. Under the

trial period, the new work schedule would be subject to scrutiny in the event that the City offered an objection to its continuation.

The FMBA contends that a comparison of charts reveals that there would be no increase in manning levels and no increase in work hours. Thus, there would be no adverse economic impact or additional costs to the City. The FMBA argues that it has shown that the 10/14 hour work schedule has a more adverse affect on firefighter efficiency, fatigue and training than that which would exist under the 24/72 hour work schedule. The new work schedule, according to the Union, would not cause a change in the proximity to Trenton of the residences of the firefighters because 152 of the 171 firefighters reside within twenty (20) miles of the City and 163 reside within twenty-five (25) miles of the City. The FMBA points to a survey conducted in Union Township over a twelve (12) year period between 1974 and 1986 showing that the 24/72 hour work schedule provided a decrease in sick leave allowance and overtime and an increased efficiency and productivity. A similar survey was done with respect to injury comparisons showing a decrease in tour of duty firefighter injuries the FMBA also submits a list of paid fire departments in New Jersey who have moved to the 24/72 hour work schedule:

**Examples of Departments on 24/72 Shift:**

	<b>County</b>	<b>Department</b>	<b>Shift</b>
1	Passaic	Paterson	24/72
2	Passaic	Passaic	24/72
3	Middlesex	Woodbridge	24/72

4	Hudson	Jersey City	24/72
5	Hudson	North Hudson	24/72
6	Hudson	Kearny	24/72
7	Morris	Morristown	24/72
8	Union	Union	24/72
9	Union	Roselle	24/72
10	Middlesex	Carteret	24/72
11	State	N.J. State Fire	24/72
12	Hudson	Hoboken	24/72
13	Union	Hillside	24/72
14	Middlesex	Perth Amboy	24/72
15	Essex	South Orange	24/72
16	Essex	Irvington	24/72
17	Essex	Maplewood	24/72
18	Hudson	Harrison	24/72
19	Middlesex	Edison	24/72
20	Essex	West Orange	24/72
21	Union	Elizabeth	24/72
22	Hudson	Union City	24/72
23	Union	Westfield	24/72
24	Essex	East Orange	24/72
25	Hudson	Bayonne	24/72
26	Hudson	Hoboken	24/72
27	Camden	Camden	24/72
28	Union	Rahway	24/72
29	Essex	Newark	24/72
30	Essex	Orange	24/72
31	Bergen	Teaneck	24/72
32	Essex	Montclair	24/72
33	Union	Cranford	24/72
34	Union	Plainfield	24/72
35	Bergen	Nutley	24/72
36	Essex	Bloomfield	24/72
37	Gloucester	Gloucester City	24/72
38	Passaic	Clifton	24/72
39	Essex	Bellville	24/72
40	Middlesex	New Brunswick	24/72
41	Atlantic	Atlantic City	24/72
42	Bergen	Hackensack	24/72
43	Middlesex	Edison	24/72

The FMBA also relies upon a certification from the Jersey City Fire Chief attesting to the advantages of the 24 hour shift as well as a certification from the City of Newark also supporting the shift change, including observations that the shift change did not cause problems with respect to supervision of rank and file firefighters despite the fact that fire officers worked the 10/14 hour work schedule

for several years after the implementation of the 24/72 hour work schedule for firefighters in 2003. The FMBA also submits case law precedent supporting the negotiability of its proposed work schedule, including a ruling by the Superior Court, Appellate Division in the Township of Teaneck where the firefighters were awarded the 24/72 hour work schedule, despite the fact that the fire officers worked a different schedule

The City objects to any change being made to the current work schedule, and specifically objects to the FMBA proposal to convert to a 24/72 hour work schedule. The City offers the following position in support of rejection of the FMBA proposal:

The FMBA's response to these concerns is to argue that the 24/72 schedule is used elsewhere, and that there is allegedly a "trend" in favor of its adoption. (See, e.g., FMBA Exhibit U-14). Indeed, the FMBA presents what is little more than a "going rate" argument, as if it were addressing salary increases rather than an operational issue. On a matter such as work schedules, "going rate" analysis is misplaced. Salaries are determined by market forces; operational issues such as work schedules are not.

It is simply not sufficient to argue that other departments have adopted a 24/72 schedule, or that arbitrators have awarded the schedule elsewhere, as if one were comparing salary increases. One cannot determine whether a work schedule that is appropriate elsewhere is appropriate in Trenton without close consideration of all relevant operational factors, such as: (1) staffing levels, (2) frequency and duration of calls, (3) number of fire companies, (4) nature of calls and types of fires, (5) the type, age, and nature of the structures in the municipality, including but not limited to the building materials used and the fire prevention/suppression measures contained therein, (6) the availability of mutual aid from professional fire departments in neighboring communities, and (7) the availability of off-duty members for recall in cases of emergency or understaffing. The FMBA provides no such analysis.

In contrast, the City has presented data comparing Trenton to municipalities cited by the FMBA as having adopted or been awarded the 24/72 schedule. (City Exhibit C-148 to C-152). The median home value is

significantly lower in Trenton than in the communities cited by the FMBA. Trenton has a significantly higher percentage of homes built prior to 1940 than do the communities cited by the FMBA. Trenton has a higher percentage of commercial and industrial properties than do the communities cited by the FMBA. (*Id.*) And Trenton, unlike any of the communities cited by the FMBA, is home to the State House, all State agencies, and the State courts.

Further, only a handful of paid fire departments are available to provide mutual aid in Trenton, as compared to Northern New Jersey where paid fire departments are more plentiful.

Trenton is therefore not comparable to the communities cited by the FMBA under PERC's regulations governing comparability. N.J.A.C. 19:16-5.14(d). This would be true even if the Arbitrator were considering a purely economic issue such as salary increases. The lack of comparability bears even greater significance when considering an operational issue such as work schedules.

Much of the FMBA's presentation on this issue focused on the fact that firefighters like the 24/72 schedule. (FMBA Exhibit U-14). It is apparently a convenience to firefighters because it reduces the number of days they work per year, thereby allowing firefighters to obtain second jobs and otherwise attend to personal matters. There was even a suggestion that the 24/27 schedule would assist the firefighters' social lives by providing them with additional time off to "recover" if they overindulged. These are not, and should not be, the controlling factors. No employer in any industry establishes work schedules based solely, or even primarily, upon convenience to employees. The overriding considerations are the actual operational needs of the employer and the providing of services to its customers. These considerations apply with particular force in the case of a public safety agency such as a fire department. And the FMBA's presentation failed to address these considerations.

The Trenton Fire Department has operated under a 10/14 schedule for over two decades. This schedule lies at the core of the department's operations. Staffing, work assignments, policies, procedures and countless operational details have been built around this existing schedule. These cannot be discarded lightly absent substantial justification for such a fundamental change. It is respectfully submitted that employee preference and claims that "everybody else is doing it" are not substantial justifications.

FMBA Exhibit U-14 asserts, *inter alia*, that a 24/72 schedule simplifies personnel administration and communications. Whatever truth this assertion may have in the abstract, it is cannot be an accurate assertion in Trenton insofar as the Fire Superiors have opted to retain the current schedule. Placing firefighters on the 24/72 will complicate, not simplify, administration and communications in the Trenton Fire Department.

A word is warranted about the FMBA's proposed "trial period." The trial period as proposed by the FMBA is truly no trial period at all. Under the FMBA's proposal, the City would be bound to continue the 24/72 as part of the negotiations *status quo* unless it can demonstrate to a future arbitrator, or persuade the FMBA in negotiations, that the schedule is not working or is adversely affecting operations. That is precisely the same right the City would have if the schedule is awarded on a permanent basis. A true trial period would either grant the City the right to reinstate the 10/14 schedule unilaterally in its discretion, or would automatically "sunset" the 24/72 and reinstate the 10/14 unless the parties agreed otherwise. The "trial period" offered by the FMBA offers the City nothing except the burden of negotiating a giveback.

For the foregoing reasons, together with those addressed in Point II, *infra*, the FMBA's proposal to create a 24/72 work schedule, even on a trial basis, should be rejected.

### **Administrative/Operational**

#### **Fire Related School Enrollment/ Reimbursement/Fire Related School Days**

The FMBA seeking to institute a FIRE related only school or class enrollment reimbursement program for each Firefighter, not to exceed \$100 annually per Firefighter. The FMBA is also seeking to institute a school day program to attend fire related courses. Specifically, the FMBA is seeking to obtain 208 hours a year, as time off, to be used to attend fire related courses. In support of its proposal, the FMBA offers the following:

The FMBA is seeking to institute a FIRE related only school or class enrollment reimbursement program for each Firefighter, not to exceed \$100 annually per Firefighter. Members of the FMBA consistently take fire related courses to maintain their qualifications for a certification, or in the alternative, to gain additional knowledge in their profession. This proposal helps FMBA members to provide better services to the residents of Trenton.

The City seeks rejection of this proposal asserting that the existing system for training adequately meets the Department's needs.

### **Demand Days**

The FMBA has proposed to increase the number of Demand Days from 3 to 6 days. In support of its proposal, the FMBA offers the following argument:

Article IV, Vacations, Section 2, Demand Days, provides members of the FMBA with the ability to utilize 3 of their vacation days at any time, provided the member gives his immediate supervisor 48 hours notice and provided that no more than 5 overtime replacements are generated. Demand days are similar in concept to personal days, a concept that is recognized in a large number of collective bargaining agreements. This benefit should be increased since other Fire Departments receive greater vacation benefits, as well as also receiving a personal day benefit.

The City urges rejection of the FMBA proposal and offers its own proposal to convert demand days to regular vacation days. The City's proposal would allow it to require greater notice than currently is provided for demand days which are akin to personal days. The FMBA opposes the City's proposal citing, among other things, that the PBA currently continues to receive this benefit.

### **Daily "A Days" Usage**

The FMBA has proposed to increase the number of overtime replacements from 5 to 10 Firefighters per shift. In support of this proposal, the FMBA offers the following argument:

The current contract defines “A Days” as follows: Three (3) of the above vacation days may be taken by every firefighter in his discretion, provided forty-eight (48) hours advance notice is given to his immediate supervisor, and no more than five (5) overtime replacements are generated by such vacation selections.

As noted above, the FMBA is seeking to increase the number of overtime replacements from 5 to 10 Firefighters per shift. Fire Officers currently receive the same benefit (5 overtime replacements) even though their unit is comprised of a significantly smaller number of individuals. As such, the above benefit should be increased by 5 Firefighters so that a similar percentage of Firefighters can utilize time off.

### **Military Leave Policy**

The FMBA is seeking to change and clarify the current practice in connection with the manner in which Firefighters are allowed to utilized their time to attend required military duty. In support of this proposal, the FMBA offers the following argument:

The FMBA is seeking to clarify and/or incorporate the relevant military leave language set forth in the New Jersey Administrative Code into the CBA so that the parties are clear as to the benefit a Firefighter is eligible to receive if they are called to duty.

### **Mutual Exchanges**

The FMBA is seeking to clarify this benefit so that mutual exchanges, once authorized, cannot be denied if, for whatever reason, one of the employees involved in a mutual swap is unqualified for the job. The FMBA is also seeking to require the City to abide by the language of the contract which provides for unlimited mutual exchanges. In support of this proposal, the FMBA offers the following argument:

The FMBA is seeking to clarify the current language set forth in Article VI, Leave of Absence and Leaves without Pay, Section 1, Mutual Exchange of Leave. Currently, members of the FMBA are allowed to mutually exchange shifts with another employee who has equal qualifications. Currently, however, issues arise wherein after the Firefighter submits the request and receives an approval from his/her immediate supervisor and another Firefighter is allowed to exchange shifts, the Firefighters shift changes and the other Firefighter is not qualified to perform that specific duty. This causes problems within the Fire Department and causes problems for the Firefighters who were permitted to exchange shifts. Accordingly, the FMBA is seeking to clarify the current language in the contract so that once the mutual exchange is initially approved, it cannot be denied if the qualifications, which were once equal, later become unequal.

It is also important to note that the City should be required to abide by the language set forth in the above-referenced provision of the CBA which allows for unlimited mutual exchanges.

The City argues against the awarding of this proposal. It argues:

The FMBA makes the astounding proposal that the City should be compelled to allow a mutual exchange when one of the participating employees is unqualified for the position into which he is exchanging. Merely to quote the proposal is to demonstrate its weakness. How can the Arbitrator possibly force the City to allow a public safety employee to assume a public safety position for which he is not qualified? Not being qualified to perform an assignment is ground for removal. *N.J.A.C. 4A:2-2.3(a)3*. Further, PERC has held that employers have the non-negotiable right to veto a swap involving an employee who lacks the requisite skills or ability to perform the duty in question. *City of Newark*, P.E.R.C. No. 2006-60, 32 NJPER 40, 42 (Para. 22, 2006). The FMBA proposal exceeds the City's lawful authority and should be rejected. *N.J.S.A. 34:13A-16g(6)*.

## **Article VIII – Grievance Procedure**

The FMBA proposes to incorporate a new provision into Article VIII which would require the City to reimburse the FMBA for all attorneys fees incurred by the FMBA when the FMBA is victorious in any legal proceeding brought against the City for violating the parties contract. In support of this proposal, the FMBA offers the following argument:

The cost of litigating the City's violations of the parties' collective bargaining agreement is exceptionally high. In the past, the City has, without due regard for the language of the CBA, blatantly violated the parties collective bargaining agreement. The FMBA should, therefore, be reimbursed for the cost of litigation and/or arbitrating matters in which the FMBA prevails.

The City urges denial of this proposal. It submits that:

The City recalls four grievances with the FMBA that have gone to arbitration since 2001: a grievance on funeral leave, a grievance concerning the remedy in the funeral leave case, a grievance concerning sick leave reports that is included in City Exhibit C-100, and a grievance concerning a claim for diver's pay. The FMBA prevailed on the first, but the City prevailed on the following three. Perhaps the FMBA should reimburse the City's legal fees.

The City also proposes a modification to the existing language in the Agreement concerning the grievance procedure:

- a. Grievances must be initiated within 15 days of the date on which the grievant learned or should have learned of its occurrence, or else will be deemed waived. Grievances must be appealed within 10 days of the date on which an employer response is due, or else will be deemed waived

- b. Eliminate arbitration of minor (five days or less) disciplinary disputes.

The City further proposes the implementation of reasonable timelines for the filing of grievances. (City Exhibit C-9, para. 8a). The City states that:

The current contract allows a grievance to be filed within ten days of its occurrence or ten days of the employee's first knowledge of it. (City Exhibit C-1, page 12). Under this standard, an employee who claims not to have known of a grievance until years after it occurred could file a timely grievance. This is not reasonable. The City therefore proposes that grievances be filed within fifteen days of the date on which the grievance learned or reasonably should have learned of its occurrence. This language is customary in labor relations, and imposes an obligation on all parties to be reasonable. An employee who could not reasonably have known of the events giving rise to the grievance will be accommodated, whereas a grievant who unreasonably sleeps on his rights will be time-barred.

The City hereby withdraws its proposal with respect to the time for appealing of grievances. The terms currently set forth in the parties' contract on grievance appeals should be continued.

### **Union Days**

The FMBA is seeking five (5) additional union days for FMBA Executive Board members, *i.e.*, President, Executive Vice-President, Central District Vice-President, Treasurer and Secretary. The FMBA is also seeking to clarify the language in the contract relating to members ability to attend conventions as set forth in New Jersey statutory law. In support of this proposal, the FMBA offers the following argument:

The FMBA is seeking five (5) additional union days for FMBA Executive Board members, *i.e.*, President, Executive Vice-President, Central District Vice-President, Treasurer and Secretary.

This is necessary because the above individuals are required to handle grievances, negotiation issues, attend State FMBA meetings and other important meetings, and in general, perform a number of duties for the benefit of FMBA members. The request for additional days is especially reasonable since other large municipalities such as Newark allow the President of the union to be on paid leave to handle union related matters.

It is of critical importance to note that this proposal is especially reasonable since the PBA, in its December 31, 2008 Interest Arbitration award, was awarded full union release time off for the president of the union

...

The FMBA is also seeking to clarify the language in the contract relating to members ability to attend conventions as set forth in New Jersey statutory law.

In this regard the benefits afforded to representatives of certain organizations should be incorporated into the CBA. More specifically, N.J.S.A. 38:23-2 provides as follows:

The head of every public department and of every court of this State, every superintendent or foreman on the public works of this State, the heads of the county office of the several counties and the head of every department, bureau and office in the government of the various municipalities, shall give a leave of absence with pay to every duty authorized representative of the Grand Army of the Republic, United Spanish-American War Veterans, Disabled American Veterans, Disabled American Veterans' Auxiliary, Veterans of Foreign Wars, Ladies Auxiliaries of Veterans of Foreign Wars, Ladies Auxiliary, Veterans of World War I of the U.S.A., American Gold Star Mothers, Indian War Veterans, American Legion, American Legion Auxiliary, Jewish War Veterans of the United States, Ladies Auxiliary, Department of New Jersey, Jewish War Veterans of the U.S.A., Catholic War Veterans of the United States, Ladies Auxiliary of New Jersey, State Department, Catholic War Veterans, the 369<sup>th</sup> Veterans Association, Incorporated, Women's Overseas Service League, American Veterans of World War Two, Korea and Vietnam, and AMVETS

Ladies Auxiliary, Reserve Officers Association of the United States Marine Corps League of the United States, Army and Navy Legion of Valor, the Twenty-ninth Division Association, Council of the State Employees, War Veteran Public Employees Association, New Jersey Civil Service Association, Blind Veterans Association of New Jersey, Army and Air National Guard Association of New Jersey, The National Guard Association of the United States, The United States Coast Guard Auxiliary, Navy League, Veterans of World War I of the United States of America, Polish Legion of American Veterans, Polish Legion of American Veterans, Ladies Auxiliary, the Italian American War veterans of the United States, Incorporated, the Ladies Auxiliary, the New Jersey Firemen's Association, the New Jersey State Exempt Firemen's Association and the Tuskegee Airmen, Incorporated, to attend any State or national Convention of such organization.

A certificate of attendance to the State convention or encampment shall, upon request, be submitted by the representative so attending.

Leave of absence shall be for a period inclusive of the duration of the convention with a reasonable time allowed for time to travel to and from the convention. NO person shall be entitled to a total of more than 5 days leave of absence with pay each calendar year for the purpose of attending, as authorized representative, the State or national convention of one or more of the above enumerated organizations. The leaves of absence authorized hereunder shall not be cumulative and any unused leaves shall be canceled at the end of any given year.

The City urges denial of this proposal. It argues:

The FMBA demands five paid union leave days for certain of its officers, in addition to the pool days ***already provided*** under the parties' contract. (City Exhibit C-1, page 3). Paid leave is an economic item. This demand is inconsistent with the internal pattern of settlement, duplicates an existing benefit, and is

unwarranted given the City's financial condition. It should be rejected.

**Article II, Section 3 (Convention Leave):**

The City proposes to amend Article II, Section 3 – Convention Leave to be consistent with controlling statute, N.J.S.A. 11A:6-10, which, in its view, limits convention leave only to the state and national conventions of the New Jersey Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc., and the Professional Fire Fighters Association of New Jersey. In support of its proposal, the City offers the following:

With respect to convention leave, the City seeks to amend existing contract language to comport with the controlling statute. N.J.S.A. 11A:6-10 requires the granting of convention leave to the designated representatives of "an employee organization ... affiliated with the New Jersey Policemen's Benevolent Association, Inc., Fraternal Order of Police, Firemen's Mutual Benevolent Association, Inc. or the Professional Fire Fighters Association of New Jersey." Significantly, the statute was amended in 2002 to eliminate reference to other organizations, L. 2001, c. 309, following a court decision that had stricken the previous version of this statute as arbitrarily exclusive, and as unreasonable "special legislation." *N.J. State FMBA v. North Hudson Reg. Fire and Rescue*, 340 N.J. Super. 577 (App. Div. 2001), cert. den., 170 N.J. 88 (2001).

The parties' most recent contract was settled prior to the *North Hudson* decision and the resulting amendment to N.J.S.A. 11A:6-10. As such, Article II, Section 3, of the parties' contract was not updated to reflect the new law. (City Exhibit C-1, page 3). The contract contains an obsolete statutory reference and continues to refer to convention leave for the American Legion, an organization not listed in N.J.S.A. 11A:6-10. It is reasonable to conform the contract to existing law. It is also mandated under the "lawful authority of the employer" criterion. N.J.S.A. 34:13A-16g(6).

The FMBA seeks the denial of this proposal. It asserts that the City has failed to submit any documentary evidence to demonstrate that the above-referenced amendment to Article II, Section 3 is necessary.

### **Drug and Alcohol Policy**

The FMBA is seeking to modify and/or revise the current drug and alcohol policy. The FMBA's proposal does not offer the specific modifications or provisions it is seeking. However, the FMBA offers the following explanation:

The parties have, in the past, negotiated a drug and alcohol policy. Since its implementation, the FMBA has established that there are flaws in the current drug and alcohol policy. As such, the FMBA is seeking to negotiate certain revisions with the City regarding penalty issues and other related topics. This proposal is reasonable and should be awarded.

The City rejects the FMBA's proposal as not stating how the Union seeks to revise the policy. Instead, the City offers a proposal that would incorporate drug/alcohol testing procedures that were recommended by a labor-management task force because the parties have already agreed upon revisions to the policy.

### **Clothing**

The FMBA is seeking to clarify the language pertaining to a clothing allowance. According to the FMBA, the parties previously agreed to eliminate clothing allowance pay with the understanding that the City would supply

uniforms. The FMBA alleges that the City has, on an ongoing basis, refused to supply Firefighters with adequate articles of clothing. Because of this, the FMBA is seeking to clarify and/or incorporate language into the Agreement which would require the City to provide articles of clothing in a specific manner. Under the Union's proposal, the City would be required to purchase clothing annually and Firefighters would be measured and clothing ordered in July for estimated delivery the next January. Alternatively, the FMBA proposes that the City should be required to provide, as it had done in the past, a clothing allowance payment to all members of the FMBA. That payment would be set at the equivalent sum required to purchase two (2) pairs of pants and two (2) shirts. The FMBA is also requesting that the City pay for the FMBA members dress uniforms and station jackets.

In its post-hearing brief, the FMBA offers the following explanation and justification in support of its proposal:

Article XVII, Compensation, Section 4, Clothing Allowance, provides as follows in pertinent part:

Effective December 31, 2000, the Clothing Allowance will be eliminated. (Firefighters will come to work in appropriate attire).

Employees who are provided uniforms, etc., in accordance with the regulations and procedures of the Employer shall reimburse the City for the costs of said uniforms at the rate of \$15.00 each pay period until the full cost of the uniform issued is reimbursed by the City.

As set forth above, the FMBA is seeking to clarify the above provision in the contract so that the City would be required to purchase clothing for all Firefighters on an annual basis. Firefighters should be measured and all orders should be placed in July for estimated delivery in January. Currently, the City is not providing members of the FMBA with adequate clothing. The FMBA agreed to eliminate the clothing allowance provision if the City provided the FMBA with adequate clothing. The City has failed to do so to date, and as such, the specifics of the City's obligations should be set forth in the contract. Alternatively, the City should be required to re-institute a clothing allowance not affecting the unit value, but equivalent to purchasing of two (2) pairs of pants and two (2) shirts. More specifically, the payment should, at the very least, be the same as the payment currently being received by the PBA.

The FMBA is also requesting that the language pertaining to the requirement that Firefighters pay for their dress uniform and station jackets be clarified and revised. In that regard, the language set forth above should be clarified to acknowledge that the payment refers to the purchase of dress uniforms and station jackets. In addition, the City should be required to pay for the FMBA members dress uniforms and station jackets. This is certainly reasonable since the City specifically requires Firefighters to obtain the above articles of clothing.

It is critical to note that a large number of FMBA's receive substantial clothing allowance payments. Trenton Firefighters do not, however, receive compensation for a clothing allowance. As noted above, the PBA receives a substantial clothing allowance.

The City seeks rejection of the proposal offering the following explanation:

The FMBA seeks to impose a financial penalty on the City if the City does not purchase clothing for firefighters annually. The penalty would be the re-creation of the clothing allowance if the City does not provide new clothing on an annual basis. The FMBA provides no proof that annual clothing changes are necessary. This proposal is therefore nothing more than a disguised effort to re-create an economic item that was surrendered in prior negotiations. This demand is inconsistent with the internal pattern of settlement, has not been justified by the party seeking the change, and is unwarranted given the City's financial condition. It is also an economic item improperly labeled as a non-economic item. It should be rejected.

## **Funeral Leave**

The FMBA has proposed to incorporate a new provision into Article VI - Funeral Leave to provide that funeral leave should not affect vacation periods or members on vacation. In support of its proposal, the FMBA offers the following:

Article VI, Leaves of Absence and Leave without Pay, Section 2, Funeral Leave, provides as follows in pertinent part:

If an employee is on vacation and attends the funeral or viewing of a covered relative, then the appropriate covered time will be charged to funeral leave and not vacation time.

A new provision should be incorporated in the above provision which provides as follows: "Funeral leave shall not affect vacation periods or members on vacation."

This provision is necessary because situations have occurred when Firefighters have needed to remain on leave for more time than the benefit that is currently provided to members of the FMBA. By way of background, the contract provides members of the FMBA with four days off to attend the funeral of certain covered relatives. If necessary, additional time off can be provided when appropriate. In those instances, vacation picks for members in the station house where a member needed to use additional funeral leave time may be disrupted. Another members' vacation time may be disrupted because the Fire Department only allows a certain number of Firefighters in a station house to be on vacation at any given time. In those instances, a member may be required to cancel their vacation plans, try to find a mutual swap, use a demand day or attend work. The above-requested language would eliminate that problem, and as such, the proposal should be awarded.

The City seeks rejection of this proposal based upon its argument that:

The FMBA proposal on this subject is labeled a funeral leave proposal. But when one reads the proposal, it really means that the

City should be barred from considering employees absent from duty due to funeral leave when determining minimum manning for vacation purposes. Such a proposal adversely affects the City's ability to man its operations, will increase overtime costs, and is not properly justified by the party proposing the change. It should be rejected

### **Battalion Chief Aides**

The FMBA proposes to delete all references to Battalion Chief Aides from the contract. It proposes that the term "adjunct position" be inserted in its place to accurately portray the title. In support of this proposal, the FMBA offers the following argument:

The language Battalion Chief aides should be deleted from the contract and replaced with the phrase "adjunct position". The change in language actually portrays the title and how these individual employees are referred to at the Fire Department. Both of the above-referenced titles require the employee to perform the same job functions. See Article XVII, Compensation, Section 9, HAZMAT, Section A.

The City objects to this proposal. It argues:

The FMBA proposal in this regard is incomprehensible. The FMBA argues that the assignment that has been known as Battalion Chief Aide for at least twenty years, see City Exhibit C-143, should be retitled "adjunct position." The FMBA claims that this is title actually in use for the BC Aide position, but cites no evidence to support its claim. The FMBA then claims that the two titles "perform the same job functions." Assuming this to be true, the fact remains that the two titles are separate and distinct. Further, the only support that the FMBA offers for the assertion that the two titles "perform the same job functions" is a contract provision stating that BC Aides receive HAZMAT pay if they are HAZMAT certified. (City Exhibit C-1, page 18). This contract provision says nothing about BC Aide duties and says nothing about adjuncts. The Arbitrator should reject this proposal

## **Article XI, Miscellaneous**

The FMBA has proposed to change the manner in which transfers are determined to make transfers based upon seniority. The FMBA seeks to clarify the existing language in Article XI, Miscellaneous, Section 2, which provides as follows in pertinent part:

The Fire Director or his designee will continue to exercise the managerial authority to transfer firefighters to positions for which there are qualified as the need of the Fire Service requires. However, the Fire Department will continue its policy of giving due regard to seniority in cases of voluntary requests to fill vacancies and also in cases of involuntary transfers.

Members of the negotiating unit shall have the option of exchanging tours of duty both within and without duty stations upon proper notification and approval of their respective supervisors.

The FMBA contends that it is seeking to modify the above-referenced language so that all transfers are based on seniority instead of the current practice whereby transfers are only based on seniority when the transfer is voluntary in nature or in cases of involuntary transfers. According to the FMBA, many contracts throughout the State provide for this benefit.

The City responds that:

The FMBA wishes to delete current contract language and mandate that transfers be based solely on seniority. This proposal is "justified" by the unsupported assertion that "{m}any contracts

throughout the State provide for this benefit." However, none are cited.

Not only has the FMBA failed to justify this change, but a contract provision mandating that transfers be based on seniority is illegal and unenforceable. This has been textbook law in New Jersey for over thirty years. *Ridgefield Park Education Ass'n v. Ridgefield Park Board of Education*, 78 N.J. 149, 156 (1978). The FMBA proposal exceeds the City's lawful authority and should be rejected. N.J.S.A. 34:13A-16g(6).

### **Article XI, Miscellaneous, Section 1**

The FMBA is seeking to revise Section One to include "any City owned facilities or equipment" to the list of assignments/duties that Firefighters are not allowed to perform. The FMBA offers the following arguments in support of its proposal:

Currently, Article XI, Miscellaneous, Section 1, provides as follows in pertinent part:

No employee of the Trenton Fire Department shall be assigned to perform any duty not related to firefighting and training, fire prevention, rescue, salvage, overhaul, and other similarly related work. However, such work shall not include masonry, painting, plumbing, carpentry or electrical work to the fire station.

The FMBA is seeking to revise Section 1 to include "any City owned facilities or equipment" to the list of assignments/duties that Firefighters are not allowed to perform. The revised provision would provide as follows:

No employee of the Trenton Fire Department shall be assigned to perform any duty not related to firefighting and training, fire prevention, rescue, salvage, overhaul, and other similarly related work. However, such work shall not include masonry, painting,

plumbing, carpentry or electrical work to the fire station or any City owned facilities or equipment.

The FMBA asserts that such jobs should be performed by civilian employees of the City. The incorporation of the above language into the provision of the CBA would ensure that Firefighters are not required to perform this out-of-title work.

The City seeks rejection of the proposal claiming that it would prohibit the City from asking firefighters to clean or service their turnout gear, their fire engines, or clean their fire houses, because they are all "City owned."

#### **New Section – No Waiver Clause**

The City proposes to incorporate a new provision into the no waiver clause as follows:

- a. Section 1: "Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof."
- b. Section 2: "No deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer shall be permitted except by the express, written permission of the Business Administrator. Any deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer that may occur in the absence of such express, written permission of the Business Administrator shall be deemed unauthorized, null and void. Under no circumstances shall any such unauthorized deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer give rise to any claim, right or benefit in favor of the Union or any Employee other than the right

to grieve same in accordance with the grievance procedure contained herein. All claims, rights and benefits accruing to the Union or any Employee shall only be as set forth herein by the express provisions of this Agreement."

In support of its proposal, the City offers the following justification:

First, the City proposes that the failure to enforce a contract provision shall not be deemed a waiver thereof. (City Exhibit C-9, paragraph 9a). This is nothing more than the codification of the familiar rule that past practice cannot override clear contract language. F. Elkouri and E.A. Elkouri, *How Arbitration Works, Sixth Edition*, 627-9 (BNA Books, 2003). This proposal should be awarded.

The City also proposes a new Section 2 that would require the express, written permission of the Business Administrator to allow any deviation from, modification of or exception to the terms of the agreement negotiated between the parties. (City Exhibit C-9, paragraph 9b). The language proposed by the City will assure that those City officials who ultimately would be responsible for funding any deviation from the contract must pass judgment on any such deviation. The proposed language would also work to the Union's advantage by avoiding the possibility of unauthorized deviation from contract language. The proposal should be awarded.

The FMBA urges the denial of this proposal. It argues that:

The City failed to submit any documentary evidence which demonstrates that the above requested proposal is warranted. A similar proposal was submitted by the City in its Final Offer to the PBA. As set forth on page 27 of the Award (Exhibit B), Arbitrator Pierson denied the proposal based upon the fact that the City did not meet its burden of proof for the inclusion of the non-economic benefit in the Award. Similarly, the City again failed to meet its burden of proof in connection with this proposal, and as such, the City's proposal pertaining to the incorporation of a "No Waiver Clause" into the CBA should be denied.

### **On-the-Job Injury**

The City proposes to eliminate full pay for employees who suffer from on the job injuries and limit pay to workers compensation benefit only. In support of its proposal, the City offers the following justification:

The City's justification for seeking this concession was twofold. First, employees on Workers' Compensation leave receive 70% of their regular pay in the form of Workers' Compensation insurance payments that are tax free. The City "tops off" the remaining 30% as regular pay with full payroll deductions; however, because the 70% of pay received from Workers' Compensation is untaxed, officers on Workers' Compensation leave actually take home more pay than they would have if they remained uninjured. The City expressed serious concern that this state of affairs constituted a financial disincentive for officers to return from work-related injuries.

Second, the City cited the explosive increase in its Workers' Compensation costs between Fiscal Year 2005 and Fiscal Year 2007, an increase of approximately 47%. (City Exhibit C-51).

The Workers' Compensation issue is an issue that the City raised with each one of its bargaining units. In its negotiations with AFSCME, the City reached a compromise solution; specifically, employees on a Workers' Compensation leave would continue to receive full regular salary from the City, with full payroll deductions. The Workers' Compensation benefit would simply be "signed over" to the City, a procedure used in many other municipalities. (City Exhibit C-107, Paragraph 18).

The City urges the Arbitrator to award the identical provision in the instant matter. This resolution fairly and reasonably addresses each party's legitimate interests. Firefighters who are injured on duty will continue to receive the full pay they receive while on duty, at no loss to themselves. On the other hand, the disincentive to return to work that the City has identified will be reduced, which will in turn assist the City in reducing the cost related to Workers' Compensation. This fair and equitable resolution should be incorporated into the Arbitrator's award.

The Union urges rejection of this proposal. It contends that:

The City failed to submit any documentary evidence which demonstrates that the above requested proposal is warranted. Currently, members of the FMBA, pursuant to Article VI, Leaves of Absence and Leaves Without Pay, Section 3, Subsection A, are entitled to remain on sick leave for a period of up to one year, with full pay, for each separate illness or incurred. The City is seeking to revise this practice so that employees who are injured on duty are only compensated with workers compensation benefits. This would amount to a substantial reduction in benefits. Firefighters place their lives on the line on a daily basis and should, at the very least, know that they will receive full compensation for a period of up to one year while they recover from an on the job injury.

The chart set forth immediately below demonstrates that a large number of municipalities provide employees with this benefit.

**MUNICIPALITIES THAT PROVIDE FOR FULL PAY FOR UP TO  
A YEAR FOR FIREFIGHTER INJURIES**

Jersey City
Hackensack
Clifton
East Orange
Passaic
Bergenfield
West Orange
Teaneck
Hoboken
New Brunswick
Springfield
Kearny
Linden

It should also be noted that a similar proposal was submitted by the City in its Final Offer to the PBA. Arbitrator J.J. Pierson stated as follows on pages 26-27 of the Award (Exhibit B):

One economic proposal submitted by the City regarding the elimination of the full pay for employees who suffer from on the job injuries is addressed in singular fashion [footnote omitted]. According to the City, police officers on Workers' Compensation leave receive 70% of their regular pay in the form of a Workers' Compensation insurance check (paid tax free) and "top-off" the remaining 30% in the form of regular pay (with full payroll deductions). The City asserted that, through this method of payment, police officers actually take home more pay when injured on the job than they would have received prior to injury. As such, the City expressed "serious concern" that the method of pay for police officers on Workers' Compensation have "financial disincentive" to return from work-related injuries.

While the City cites its settlement with AFSCME as additional rational for adopting the measure of "signing over" the Workers' Compensation payment to the City in return for remaining on regular payroll (with full payroll deductions), this Arbitrator is not convinced that police officers have either abused Workers' Compensation benefit or pursued a financial incentive to remain out of work after a work related injury. Evidence does not justify this proposal and it shall be denied.

The FMBA argues that "the City relies on the same conceptual arguments in its on the job injury proposal for Firefighters. Since the same fact pattern applies, and since the City arguably submitted, at the very least, similar documentary evidence in the presentation of its position concerning on the job injuries, this proposal should be denied."

### **Red Circling**

The parties' Agreement currently contains a provision which allows a permanent employee who is demoted as a result of an administrative reorganization by the City (although not due to an economic layoff or reduction in force) to retain the salary of his or her prior rank if it is above the maximum of the new title. The City proposes to eliminate this provision and that the demoted person's salary be based on the appropriate step of the applicable salary guide for the lower rank. The City's proposal states:

"Any officer demoted or reduced in rank or title for any reason, including but not limited to layoff/demotion for reason of economy, efficiency or any related reason, shall thereupon be compensated at the salary level appropriate for the officer's demotional title. The officer will be placed on the salary step for the demotional job title that corresponds to the step on which the officer has been compensated for his/her previous title. Any contract provision, City policy or practice inconsistent with this provision is hereby deemed superseded, null and void."

The FMBA urges rejection of this proposal. It argues that:

The City failed to submit any documentary evidence which demonstrates that the above requested proposal is warranted. A similar proposal was submitted by the City in its Final Offer to the PBA. As set forth on page 27 of the Award (Exhibit B), Arbitrator Pierson denied the proposal based upon the fact that the City did not meet its burden of proof for the inclusion of the non-economic benefit in the Award. Similarly, the City again failed to meet its burden of proof in connection with this proposal, and as such, the City's proposal pertaining to red circling should be denied.

## **DISCUSSION**

As previously stated, the City and the FMBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. Each party has provided an analysis of why its own position is best supported by the statutory criteria. All submissions have been thoroughly reviewed and considered.

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

(1) The interests and welfare of the public. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by (P.L. 1976, c. 68 (C. 40A:4-45.1 et seq.)).

(2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of employment of other employees performing the same or similar services and with other employees generally:

(a) In private employment in general; provided, however, each party shall have the right to submit additional evidence for the arbitrator's consideration.

(b) In public employment in general; provided, however, each party shall have the

right to submit additional evidence for the arbitrator's consideration.

(c) In public employment in the same or similar comparable jurisdictions, as determined in accordance with section 5 of P.L. 1995. c. 425 (C.34:13A-16.2) provided, however, each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

(9) Statutory restrictions imposed on the employer. Among the items the arbitrator or panel of arbitrators shall assess when considering this factor are the limitations imposed upon the employer by section 10 of P.L. 2007, c 62 (C.40A:4-45.45).

In interest arbitration proceedings, the party seeking to modify existing terms and conditions of employment has a burden to prove that there is basis for its proposed change. I have applied that principle to my analysis of the issues in dispute. The burden to be met must go beyond merely seeking change in the absence of providing sufficient evidentiary support. Any decision to award or deny any individual issue in dispute will include consideration as to the reasonableness of that individual issue in relation to the terms of the entire award. This is so because the manner in which an individual issue is decided can reasonably impact upon the resolution of other issues. In other words, there may be merit to awarding or denying a single issue if it were to stand alone but a different result may be required after assessing the merits of any individual issue within the context of an overall award.

The City and the FMBA disagree on the duration of the Agreement. The FMBA proposes a CBA to be effective January 1, 2006 through at least

December 31, 2012 while the City proposes that a contract extend from January 1, 2006 through December 31, 2010. The history of the parties' negotiations show unique circumstances. Some of these have been set forth in the early portion of this award and some are set forth in the interest arbitration awards that concern PBA Local 11 and the Police Superior Officer's Association. I have decided that the most appropriate duration of agreement should embrace a contract effective January 1, 2006 through December 31, 2012. It is obvious that the parties have invested a substantial amount of effort and cost towards these negotiations. The interests and welfare of the public would not be served by a resolution of these contract issues that extend only through December 31, 2010. Moreover, the City has reached a voluntary resolution with its Fire Superior Officers Association that extends through December 31, 2012 as well as receiving an interest arbitration award with the Police Superior Officers Association that also extends through December 31, 2012. Thus, the City already is obligated to project future labor costs through December 31, 2012 and can do so with this unit as well. Accordingly, I award a contract duration of January 1, 2006 through December 31, 2012.

I next address certain proposals that each party has offered that I have decided to deny in their entirety based upon my determination that a proposal has either not been supported by a sufficient level of credible evidence or that a proposal warrants denial based upon having either undetermined economic

impact or economic impact on unit employees or the City that would be inconsistent with the terms of the overall award.

The FMBA has proposed increases in the shift differential, hazmat payment, college degree stipend, acting officer pay, diver's pay and driver's pay. These proposals build upon existing benefits that are already provided for in the Agreement. For example, the Agreement already provides for a 1.25% shift differential, a hazmat payment of 1%, acting officer pay at 30%, driver's pay at 4.5%, diver's pay at 1% and flat rate stipends for specific college degrees. There is insufficient evidence in the record that would justify the expansion of these existing benefits. The fact that other agreements in different municipalities may produce a higher payment or stipend among any of these existing benefits does not, standing alone, justify an increase. I also note that with respect to the hazmat payment, acting officer pay, diver's pay, driver's pay and shift differential, that the existing level of payments is expressed in percentages which will cause an increase in the dollar payments in each year of the new agreement as a result of the across the board increases that have been awarded. I am not persuaded by the FMBA's argument that the driver's pay stipend should be increased based upon an alleged parity argument, comparing driver's pay with the base pay for Sergeants in the PBA agreement. There is merit, however, to the position articulated by the FMBA that the contract reflect that appointments to the driver position be based solely on seniority. It is unrebutted that this has been the practice since the inception of the driver's pay provision has been placed in the

Agreement. Such right should be conditioned upon the applicant having the qualifications to perform the duties of the position. With this exception, these proposals are denied.

The FMBA has proposed an increase in the number of vacation days received. The existing benefit at Article IV, Section 1, subsection B of the Agreement, currently provides for a schedule that provides for a minimum of seventeen (17) days after one (1) year of service to twenty-six (26) days after ten (10) years of service. The Union's primary argument in support of this proposal is that its existing schedule provides a lesser amount of vacation days than certain specified other municipalities within the State of New Jersey. This, standing alone, does not represent a sufficient basis for an expansion of this benefit, especially in light of the fact that there is no evidence that the number of vacation days has been expanded among the City's other public safety units.

The City has proposed to eliminate driver's pay. As mentioned above, those firefighters eligible for driver's pay currently receive a 4.5% payment. There is no dispute that the driver-tillerman assignment continues to involve the same duties, responsibilities and accountability that has existed in the past. The City has not met its burden to justify the elimination of this payment. Accordingly, the City's proposal is denied.

The City and the FMBA have offered proposals concerning Union Days and Convention Leave. Article II, Section 3 of the Agreement governs convention leave. Neither the City nor the Union has accepted the other's proposal. Article II contains a total of six sections that allow for either the conduct of union business, attendance at PERC hearings, attendance at state or international conventions and participation in grievance investigations or collective bargaining meetings. Neither party has presented sufficient justification to either expand or diminish the existing comprehensive scheme that provides time off without loss of pay for the specified reasons stated in Article II. Both the City and the FMBA seek clarifications or amendments that reference New Jersey statutes that address union or convention leave. I do not award either proposal but I encourage continued discussions between counsel for the City and the FMBA to, if necessary, refine the existing contract language to avoid any aspect of the existing sections in Article II being in contravention of legal requirements.

Each party has a proposal that concerns the existing drug and alcohol testing or policy. The FMBA seeks to modify or revise the current drug and alcohol policy but does not advance any specific language. The City seeks to incorporate drug/alcohol testing procedures that were recommended by a joint labor/management task force. Because the drug/alcohol testing procedures have been jointly agreed upon by the task force, it would be reasonable and consistent with the parties' joint efforts, to incorporate those procedures into the

Agreement. I award the City's proposal on this point. I award no other changes. However, because these issues are of such significance to the City, its firefighters and the public, I award the continuation of a joint labor management task force for the purpose of updating and/or revising existing policies and procedures as circumstances warrant.

The FMBA proposes to change and clarify the current practice in connection with the manner in which firefighters are allowed to utilize their time to attend required military duty. The record does not specifically address current practices or policies that are now in effect. The parties are required, as a result of 2004 legislation, to comply with the requirements set forth in N.J.S.A. 38:23-1 et.seq. with respect to time off, loss of time and leave with or without pay for leaves of absence for duty that do not exceed 30 work days in a calendar year and leaves of absence for duty that are in excess of 30 work days in a calendar year. Clearly, these more recent amendments govern the minimum and required standards governing military leave. I award language which requires adherence to this recent law, and all other relevant legal requirements that may exist. In the event that binding and established practices are alleged to exist that are not inconsistent with statutory requirements, I neither abolish such practices nor confirm their existence.

Each party has offered proposals that concern Article VIII, the grievance procedure. The FMBA seeks language that would require the City to reimburse

the FMBA for all attorneys fees in the event that the FMBA succeeds in any legal proceeding brought against the City for violating the parties' contract. In the absence of evidence that the City has knowingly, willfully and consistently engaged in conduct that violates the collective bargaining agreement, I am compelled to deny this proposal. The City seeks to eliminate the arbitration of minor disciplinary grievances that involve five (5) days or less suspension or loss of pay. The City has not justified a basis for the removal of minor disciplinary grievances from the arbitration clause. I note that the legislature has recently provided for the arbitration of major disciplinary actions for police officers in non-civil service jurisdictions. Such legislation reflects that public policy favors administrative rather than judicial forums for the review and determination of disciplinary matters. Accordingly, the City's proposal is denied. The City has also proposed to modify certain of the time requirements set forth in the grievance procedure. The existing procedure, as set forth in Article VIII, contains a specific process along with time requirements. The City has not met its burden to award a change in the existing procedure and thus, this aspect of its proposal is also denied.

The City has proposed to add a new article to the Agreement entitled a "No Waiver Clause." Such clause would include two sections as follows:

Section 1: "Except as otherwise provided in this Agreement, the failure to enforce any provision of this Agreement shall not be deemed a waiver thereof."

**Section 2:** “No deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer shall be permitted except by the express, written permission of the Business Administrator. Any deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer that may occur in the absence of such express, written permission of the Business Administrator shall be deemed unauthorized, null and void. Under no circumstances shall any such unauthorized deviation from, modification of, or exception to the terms of any provision of this Agreement on the part of the Employer give rise to any claim, right or benefit in favor of the Union or any Employee other than the right to grieve same in accordance with the grievance procedure contained herein. All claims, rights and benefits accruing to the Union or any Employee shall only be as set forth herein by the express provisions of this Agreement.”

The parties have offered vigorous argument in support of either the awarding of or the denial of this proposal. Their arguments have previously been set forth and need not be repeated here. The City’s concern emphasizes the need to codify the well established principle that clear contract language cannot be overridden by an unwritten past practice. This arbitrator endorses that principle as one that is commonly accepted. However, in order for this principle to be sustained, it is not necessary for a labor agreement to contain a no waiver provision. The record does not reflect that the existing agreement has been interpreted in a manner that would disregard clear and unambiguous contract language. Moreover, a similar proposal was advanced by the City in the PBA arbitration proceeding and was denied. Accordingly, I deny Section 1 of the City’s proposal.

Section 2 of the City's proposal is based upon the City's fear that the contract could be modified, deviated from or that an exception to its terms be permitted without express, written permission of the Business Administrator. However, no credible evidence has been presented that the terms of the contract have been changed in a manner that has not been authorized by anyone who is without the legal authority to do so. Accordingly, I conclude that the City has not met its burden to include the language set forth in Section 2 of its proposal.

The Union has proposed to add a new stipend to the already existing stipends provided for in the Agreement. Specifically, the Union seeks to implement a 2.5% differential for those employees who perform technical rescue duties. The payment would be made to all members of Engine 10, Ladder 4 and Rescue 1. The FMBA notes that its firefighters are technical rescue responders for the County. The Union also refers to a stipend provided for such specialists in the Elizabeth FMBA Interest Arbitration Award that was issued on May 5, 2008. Significantly, the FMBA notes that the base salary increases that were awarded in Elizabeth were at the level of 3% in each year, although the Award did provide new or increased stipends. In this instance, the record does reflect specialized activity in the area of technical rescue. However, the awarding of a new stipend for an undetermined number of firefighters cannot be justified during this contract term given the City's financial circumstances and the arbitrator's intent, stated in the salary portion of this award, to direct the greatest portion of

the City's financial abilities to the across the board salary increases that extend to all firefighters. Accordingly, this proposal is denied.

The City and the FMBA have each proposed a modification to the existing contract provision that concerns demand days. The FMBA proposes to increase the number of demand days from three (3) to six (6) while the City proposes to convert the demand days to regular vacation days. A demand day is a day that allows for the use of a vacation day with less notice to the supervisor than would be required of a vacation day. In this sense, a demand day is conceptually similar to a personal day. Neither party has met its burden to justify any change in the existing system for the use of a demand day set forth in Article IV, Vacations, Section 2. Accordingly, the proposals of the City and the FMBA are denied.

The parties' positions on salary widely vary and are underpinned by theories that give weight to different criteria. The City relies heavily upon internal pattern of settlement pointing to voluntary settlements with the TFSOA [FMBA Local 286] and its primary non-law enforcement unit [AFSCME], and prior interest arbitration awards with its rank and file police [PBA Local 11] and its police superiors [PSOA], the Pierson and Tener awards respectively. The FMBA, by inference, does not contest the relevance of to the PBA Local 11 Award, but makes a claim for parity with this unit by way of a "parity adjustment" of \$2,566. Formally, it seeks the parity adjustment plus increases of 5.5% in

2006, 2007 and 2008 followed by 4.75% increases in 2009, 2010, 2011 and 2012.

Where, as here, an internal settlement pattern is claimed to be controlling, under existing precedent, the arbitrator is compelled to first determine whether it in fact exists and, if so, whether there should or should not be adherence.<sup>2</sup> The reasons for the conclusions to be reached must be clearly stated.

The Pierson Award for PBA Local 11 provided for the following wage increases:

Effective: January 1, 2006: 3.75% across-the-board

Effective: January 1, 2007: 3.75% across-the-board

Effective: January 1, 2008: 3.50% across-the-board

Effective: January 1, 2009: 3.75% across-the-board

Effective: January 1, 2010: 3.75% across-the-board

Subsequent to the Pierson Award for rank and file police officers, the Tener Award issued for the police superior officers. That award followed the salary terms set forth in the PBA Local 11 prior award during years 2006 through 2010 and, for the reasons stated in the award, Arbitrator Tener awarded two additional years, 2011 and 2012, at increases of 3.5% in each year:

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<sup>2</sup> The precedent for this framework appears in County of Union v. Union County Corrections Officers, PBA Local 999, PERC No. 2003-33. See also Somerset County Sheriff's Office v. Somerset County Sheriff's FOP Lodge #39, Docket No. A-1899-06T3, 34 NJPER 8 (App. Div. 2008). More recently the issue of pattern was addressed by PERC in Borough of Ramsey and PBA Local 155, PERC No. 2010-26, October 29, 2009.

2006 3.75%  
2007 3.75%  
2008 3.5%  
2009 3.75%  
2010 3.75%  
2011 3.5%  
2012 3.5%

In the Fire Department, the City reached a voluntary settlement with the Trenton Fire Superior Officers [TFSOA] after the issuance of the police awards. The voluntary settlement included a contract duration of 2006 through 2012 but at somewhat different across the board increases:

January 1, 2006 – 3.5%  
January 1, 2007 – 3.5%  
January 1, 2008 – 3.5%  
January 1, 2009 – 3.5%  
January 1, 2010 – 3.0%  
January 1, 2011 – 3.5%  
January 1, 2012 – 3.5%

In the non-law enforcement unit, the City reached voluntary settlement with AFSCME for a five year duration at an average of 3.39%. Those terms are as follows:

January 1, 2007 – 3.2%  
January 1, 2008 – 3.35%  
January 1, 2009 – 3.4%  
January 1, 2010 – 3.5%  
January 1, 2011 – 3.5%

In evaluating the merits of the pattern argument on salary, the resolution of other major economic terms and conditions of employment must also be examined. This is so because of the well established principle that an agreement must be viewed in its totality. If it were to be otherwise, a party would be free to ignore a main element included in new contract terms which could have impacted on the fashioning of other major contract terms. Here, the City offers evidence that other bargaining units have all modified their health insurance provisions either through award or by voluntary settlement.

The rank and file police unit, by virtue of the Pierson Award, received the following modifications to health insurance:

- A. Co-pay of medical insurance
  - i. From January 1, 2009: \$19 per pay for single coverage/ \$23 per pay for all others
  - ii. From January 1, 2010: \$21 per pay for single coverage/ \$25 per pay for all others
- B. Prescription drug co-pays: Effective 1/1/2009 create three tier system: generic/preferred/brand: \$10/\$20/\$35; \$3/\$10/\$15 mail order

The police superiors received the same modifications by virtue of the Tener Award:

Health insurance shall be changed as proposed by the City so that employees will contribute \$19 per pay for single coverage and \$23 per pay for all others effective July 1, 2009 and \$21 per pay for

single coverage and \$25 per pay for all others effective January 1, 2010. Additionally, also effective July 1, 2009, prescription co-pays shall be \$10 for generic drugs, \$20 for preferred drugs and \$35 for brand drugs. The corresponding amounts for mail order drugs shall be \$3, \$10 and \$15.

In the voluntary agreement between the City and the Fire Superiors, the parties agreed to include the same modifications:

Effective the first day of the month following ratification of this Agreement by the City, there shall be a co-pay by each employee of \$19.00 per pay (biweekly pay) for those with single coverage and \$23 per pay (biweekly pay) for those with family coverage. Effective January 1, 2010, the foregoing payments shall be increased from \$19.00 to \$21.00 and from \$23.00 to \$25.00.

Effective the first day of the month following ratification of this Agreement by the City, the co-pay for retail for the prescription drug plan shall be changed (see Section 7.02 of Prior Agreement) so that it shall be \$10.00 for generic prescription drug, \$20.00 for preferred prescription drugs, and \$35.00 for brand prescription drugs; co-pays for mail order prescription drugs shall be \$3.00 for generic prescription drugs, \$10.00 for preferred prescription drugs, and \$15.00 for brand prescription drugs.

In the AFSCME Local 2886 unit, the City's largest bargaining unit, the Agreement also provided for modifications in the areas of health insurance and prescription drugs. Those modifications were not identical to those referenced above but so closely mirror those terms that it could be said that the concessions are substantially equal to those in the public safety units.

I first address the City's proposal concerning health insurance. As argued by the City, its proposals in this proceeding are identical to the health insurance modifications awarded in the PBA proceeding and the PSOA proceeding. In

addition to the terms set forth in those awards, the City and the Fire Superiors unit voluntarily agreed to the identical terms that were awarded in the police units. Those terms are identical to the proposal advanced by the City in this proceeding.

Based upon all of the above, the City has demonstrated that a pattern of settlement does exist in the area of health insurance and prescription drug co-payments. The FMBA has argued that the City's health benefits proposal should not be awarded because there are differences between firefighters and police officers with respect to salaries and annual hours worked and, also, that the terms for non-public safety employees are irrelevant because of the differences that exist between firefighters and the AFSCME employees in respect to the work that they perform. The FMBA goes into great detail distinguishing between the treatment it seeks with the terms on health insurance that have been either awarded or voluntarily agreed to within the City of Trenton. The FMBA also relies on a set of labor agreements in many other jurisdictions where firefighters are not required to pay health care contributions.

After due consideration of the positions advanced by the FMBA in opposition to the City's health insurance proposals, I am unable to sustain the Union's argument that there should not be adherence to the proven pattern of settlement on this issue. There is uniformity within the City on this issue and to exclude the FMBA from this pattern would be inconsistent with the interest and

welfare of the public and the weight to be given to internal comparability. The FMBA's reliance on external comparability cannot be sustained, not only because internal patterns justify the City's proposal, but because many labor agreements in evidence show that employee participation exists even where those communities are not so heavily subsidized by the State as is the City of Trenton. The more recent temporary reductions in premiums for coverage under the NJSHBP does not warrant a different result given the longer term rise in health benefit costs, sharp increases in the City's pension contributions and the City's financial condition.

Accordingly, I award the City's proposal to be effective prospectively and without retroactive contributions.

Effective January 1, 2010, and thereafter; there shall be an employee contribution of \$21 per pay for single coverage and \$25 per pay for all others.

Also effective January 1, 2010, the prescription drug co-pays shall include a three tier system: generic, preferred and brand name: \$10/\$20/\$35 for retail; \$3/\$10/\$15 for mail order.

I next turn to the issue of salary. Based upon the awards and settlements set forth above, the record reflects a pattern of reasonable consistency among the relevant bargaining units but not identical terms for all public safety units. The PBA was awarded a five year agreement for the years 2006 through 2010 averaging 3.7%, the police superiors were awarded the same terms over the same five year period but two years were added, 2011 and 2012, at 3.5% each.

The average for the police superiors was 3.64% over this seven year period. The Trenton Fire Superior Officers reached a voluntary agreement over the same seven year period (2006-2012) as was the case with the police superiors. The salary terms over the seven years average 3.43%. However, the fire superiors also agreed upon a 1% increase (from 12% to 13%) in longevity effective January 1, 2010 for employees after 24 years of service as well as a 1% (from 13% to 14%) increase effective January 1, 2010 for employees after 29 years of service. Prior to this change, the longevity schedule had been the same as currently exists for the FMBA. Neither the PBA nor the police superiors received the longevity increase nor other economic improvements. The non-law enforcement unit represented by AFSCME Local 2886 reached a five year agreement (2007-2011) between the years 2007 and 2011 averaging 3.39%.

Before addressing the merits of the pattern of settlement argument on salary, I note that neither party's salary proposal is within the range of reasonable consistency as reflected in the aforementioned agreements. The City's proposal more closely resembles the averages provided by the other agreements but, at 3% per year, is well below the average. In addition, it seeks a three month deferral by having effective dates of April 1 rather than January 1. The FMBA proposal is substantially higher and averages over 5% per year.

The FMBA's wage proposal, not including its demand for an additional \$2,566 in a "parity adjustment," is clearly unsupported by the record or by

application of the statutory criteria. It well exceeds the cost of living, is above the evidence on internal and external comparability, its costs would cause adverse financial impact on the City, its residents and taxpayers, and would be an aggravating factor in the requirement by the City to adhere to the statutory limitations on budgetary expenditures and its taxing authorities. The City has provided an extensive cost analysis. It calculates the FMBA's proposal as costing \$894,000 in 2006 in "new money over the prior year," \$943,000 in 2007, \$995,000 in 2008, \$906,000 in 2009, \$950,000 in 2010, \$995,000 in 2011 and \$1,042,000 in 2012. The cumulative cost increase is calculated to range from \$894,000 in 2006 to \$6,700,000 in 2012. The 2012 figure is over 50% of the total payroll cost for the bargaining unit in 2007 and would cause average annual increase in the municipal tax rate of 4.52 tax points. In contrast, the City's proposal is calculated at \$366,000 in 2006 in "new money over the prior year," \$499,000 in 2007, \$513,000 in 2008, \$529,000 in 2009 and \$545,000 in 2010.<sup>3</sup> The estimate of cumulative cost increase ranges from \$365,000 in 2006 to \$2,452,000 in 2010. The City's proposal, while more compatible with its overall financial circumstances than the FMBA's falls short of meeting the costs required to maintain reasonable consistency with all of the internal comparability data. The City, through Feigenbaum's testimony and certifications does show a declining financial ability, but an award at the level of the City's proposal would create instability in labor relations and conflict which would not benefit the interests and welfare of the public. The financial report of the Union's expert

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<sup>3</sup> The City's calculations on its own proposal are somewhat less than what would be caused by a full annual increase because its proposal is based upon a three month deferred increase with effective dates of April 1

reflects that costs which exceed the City's proposal can be borne without adverse financial impact and within the City's statutory obligations.

In the absence of an identical pattern of settlement among all of the groups, there is a generally consistent pattern. The salary increases that I find to represent the most reasonable determination of the issue is a structure of increases that is parallel with the terms agreed to between the City and the TFOA unit. These increases are calculated at an average of 3.43% based upon the following across-the-board increases:

January 1, 2006 – 3.5%

January 1, 2007 – 3.5%

January 1, 2008 – 3.5%

January 1, 2009 – 3.5%

January 1, 2010 – 3.0%

January 1, 2011 – 3.5%

January 1, 2012 – 3.5%

The FMBA contends that a salary that exceeds the fire officers' agreement is more appropriate because firefighters receive a lower salary than that received by the police officers, notwithstanding the fact that firefighters work a greater number of hours. While this argument may have surface appeal, I find that during this contract term, a stronger relationship regarding compensation exists within the fire department rather than relationships that go beyond the department. The FMBA's argument that the TFOA agreement must be

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rather than January 1.

disregarded because it was allegedly struck to avoid layoffs cannot be credited. I find, more than likely, that the terms agreed upon were based more upon the City's declining financial condition and the longevity increases that were also included in that package. The net annual economic change in new money over the prior year calculates to \$569,000 in 2006, \$589,000 in 2007, \$609,000 in 2008, \$630,000 in 2009, \$559,000 in 2010, \$672,000 in 2011 and \$696,000 in 2012.

The parity adjustment proposed by the FMBA would, during this contract term, be inconsistent with the weight to be given to the internal comparison between the firefighters and the TFOA. Its award will also compel additional costs that would cause adverse financial impact on the City.

Another factor on compensation supporting the awarding of the above package is the FMBA's demand for an additional 1% on each step of the longevity schedule. The TFOA agreement increased longevity by 1% at the 24 and 29 years of service steps on the longevity schedule. This increased longevity from 12% to 13% and from 13% to 14% at these steps. In order to maintain consistency on compensation terms between the rank and file and the fire officers, I also award these longevity steps for the FMBA, in addition to the across the board increases, while also rejecting the City's proposal to freeze longevity at each employee's current longevity dollar amount while eliminating longevity payments prospectively.

The issue of the work schedule is also in dispute. The FMBA seeks a change to the 24/72 hour shift schedule while the City seeks to maintain the existing 10/14 hour shift schedule. The existing schedule and the changes that would be made to the firefighters' shifts were the subject of extensive testimony and exhibits. The changes to the schedule were concisely set forth in the FMBA's submission as follows:

The following chart sets forth the 10/14-hour schedule:

WORKDAY BEGINS...	0800 - 1800 HOURS	1800 - 0800 HOURS
Monday	work 10 hrs.	off 14 hrs.
Tuesday	work 10 hrs.	off 48 hrs.
Wednesday	---	---
Thursday	---	work 14 hrs.
Friday	off 10 hrs.	work 14 hrs.
Saturday	off 72 hrs.	---
Sunday	---	---
Monday	---	---
Tuesday (cycle #2)	work 10 hrs.	off 14 hrs.

The FMBA seeks in this Interest Arbitration to implement the "24/72" hour schedule which means a Firefighter's platoon would work one (1) 24-hour tour followed by 72 hours off to recuperate until the next 24-hour shift. Under the "24/72" hour schedule, a Firefighter's platoon works two (2) 24-hour tours every eight (8) days.

The following chart sets forth the 24/72 hour schedule:

<b>WORKDAY BEGINS...</b>	<b>0800 - 0800 HOURS</b>
Monday	work 24 hrs.
Tuesday	off 72 hrs.
Wednesday	---
Thursday	---
Friday (cycle #2)	work 24 hrs.
Saturday	off 72 hrs.
Sunday	---
Monday	---
Tuesday (cycle #3)	work 24 hrs.

As previously mentioned, the City contested the negotiability of the FMBA's proposal on March 31, 2009. After the close of interest arbitration hearings in the instant matter, the scope filing with PERC was initiated after a voluntary resolution was reached by the City with the Trenton Fire Officers Association [TFOA] on March 9, 2009. During the negotiations with the TFOA, a proposal had been advanced to change the fire officers work schedule to the same 24/72 hour work schedule as has been sought in this proceeding by the FMBA. However, the voluntary settlement with the TFOA did not include the work schedule change and the fire officers remained on the existing 10/14 hour work schedule. The City's main argument against the negotiability of the work schedule change sought by the FMBA is that an award of the 24/72 hour work schedule would impair operational efficiency and undermine the ability of Captains to maintain discipline, to supervise effectively and adequately provide

for training needs. Thus, the City claimed that the FMBA proposal was not mandatorily negotiable and could not be the subject of interest arbitration.

In the scope of negotiations proceeding, PERC found, notwithstanding the City's position, that the 24/72 hour work schedule is mandatorily negotiable and may be submitted to interest arbitration. In pertinent part, [see PERC No. 2001-20, September 24, 2009] PERC stated that:

In Teaneck Tp., P.E.R.C. No. 2000-33, 25 NJPER 450 (¶30199 1999), we addressed an identical issue. The firefighters proposed a 24/72 work schedule and the employer opposed the proposal on the ground that the superior officers were on a 10/14 schedule. The arbitrator awarded the 24/72 schedule and, on appeal, we modified the award to provide that the 24/72 schedule could be implemented only if and when the 24/72 schedule was adopted for the superior officers' unit. The Appellate Division reversed and remanded that portion of our ruling and the Supreme Court affirmed substantially for the reasons expressed by the Appellate Division. 353 N.J. Super. 289 (App. Div. 2002), aff'd o.b. 177 N.J. 560 (2003). The Appellate Division stated that:

[F]rom a practical standpoint PERC's decision dooms the FMBA rank-and-file to continuation on the 10/14 shift in perpetuity so long as the Township continues to oppose the change to a 24/72 shift for the officers. . . . By its postponement of a trial period for the 24/72 schedule, PERC has sent FMBA's proposal off to a political never-never land. Such a result is both arbitrary and unreasonable.

On remand, we directed the arbitrator to consider the work schedule proposal in light of the standards arbitrators should apply in considering proposals for a major work schedule change, including proposals that would result in supervisors being on a different work schedule from the employees they supervise.

[A]n arbitrator may award such a proposal only if he or she finds that the different P.E.R.C. NO. 2010-20 6. work schedules will not impair supervision or that, based on all the circumstances, there are compelling reasons to grant the proposal that outweigh any supervision concerns.  
[Teaneck, 25 NJPER at 455]

Thus, the arbitrator in this case may consider the FMBA's work schedule proposal under the Teaneck standards.

Subsequently, the arbitrator in Teaneck awarded the FMBA proposal for the 24/72 hour work schedule. In part, he relied upon the Fire Chief's testimony that an award resulting in dual work schedules would not be "unworkable."

The record on the work schedule issue is very complete. There are competing certifications in evidence as well as testimony and many exhibits. During the course of this hearing, the City had opposed the change to the 24/72 hour work schedule even when the changed work schedule was proposed in negotiations by both the FMBA and the Fire Officer unions. After the voluntary settlement with the fire officers that did not include the work schedule change, the main objection voiced by the City is the concern that an award of the proposed work schedule would place the firefighters and fire officers on different work schedules with resulting conflicts to operations and supervision.

I find it significant that this particular issue of dual work schedules has been thoroughly reviewed and considered by PERC and has also been reviewed at the highest level of New Jersey's court system. The fact that a fire department would operate with firefighters and fire officers on different work schedules has not been found to render the issue non-negotiable. The courts have specifically rejected the claim advanced by the City in this proceeding that the dual work schedule necessarily, among other things, would impair supervision. As found by the Court, to reach such per se conclusion would doom the FMBA rank and

file to a continuation of the 10/14 shift in perpetuity simply because the change would result in different work schedules within the department. Of course, simply because the issue has been found to be mandatorily negotiable does not require an award on the merits of the issue that favors the FMBA. I have carefully reviewed the record on the issue.

The City has submitted managerial opinions within the department that an award of this proposal for the firefighters would not be operationally sound. The FMBA has countered such opinion with opinion of its own from different departments who operate on a 24/72 hour work schedule (as in Jersey City) and also from a major urban department [See City of Newark] which actually operated for almost four years on the same dual work schedules that would operate in the City of Trenton in the event that the FMBA's proposal were to be awarded. In the Newark example, different work schedules were worked between January 31, 2003 through September 3, 2007, at which time the fire officers converted to the 24/72 hour work schedule. There is nothing in the record that would counter the views expressed by the City of Newark FMBA officials that the department worked well under the different work schedules and continues to work well after the conversion to work schedule uniformity. I have also reviewed the testimony of the Teaneck Fire Chief who, upon questioning over whether the dual work schedule could work, expressed no opposition.

The testimony of Robert Brower, First Vice President of the FMBA, reflects lengthy experience with work schedules and, in particular, the 24/72 hour work schedule proposed by the FMBA. Brower's conclusion that the schedule sought will result in decreased sick time use, less overtime and improved productivity and morale was documented as well as experience showing a decrease in civilian and firefighter injuries. His views, of course, with respect to Trenton, are speculative because, unlike the after the fact overtime in Union Township, it cannot be determined with any degree of certainty that similar beneficial results would be realized in the City of Trenton. This can only be determined after there is actual experience with the work schedules over a reasonable period of time. The concerns expressed by the City representatives concerning the potential for an impairment of supervision cannot be dismissed. These concerns were expressed in good faith but, as with Brower's conclusions, are speculative with respect to what would occur in Trenton and cannot be credited in the absence of actual experience over a reasonable period of time.

A reasonable determination of this issue is to award the FMBA's proposal in conjunction with a trial period that, in the event of a dispute, can offer solid factual evidence that can be applied to the advantages and/or disadvantages of operating the department under the 24/72 hour work schedule for firefighters and whether the changed schedule should remain or be converted back to the old schedule. The FMBA has met its burden to show the department should be permitted to operate for a reasonable period of time subject to review. Concern

over any impairment of supervision would also be reviewed based upon actual experience with the fire officers continuing to work on the 10/14 hour work schedule. In addition to any potential claim of impairment, any claimed benefits relating to cross-supervision could also be examined. Nothing herein shall be construed as preventing the City and the fire officers from agreeing to work a common work schedule if both parties deemed it appropriate to do so.

Comparability is not the deciding factor in this determination although the FMBA has shown that all major urban fire departments operate on the 24/72 work schedule. If the objectives claimed by the FMBA are met, the interests and welfare of the public will be furthered and the financial burden on the City could be eased.

The awarding of the FMBA's work schedule proposal is not inconsistent with awarding the terms of the TFOA agreement on the issues of salary and longevity despite the exclusion of the TFOA work schedule proposal from the MOA. Unlike the salary and longevity issues, which involve compensation, the work schedule proposal does not and, based upon this record, will not cause additional costs to the City nor requires the additional staffing of firefighters.

Accordingly, I have awarded the FMBA's proposal along with a trial period. I have modified the FMBA's proposed trial period to accommodate concerns expressed by the City. One such modification is to extend the trial period to

eighteen (18) months to allow for a broader period of experience before a request for review is made. Another is to defer the implementation of the new schedule from "within 60 days" to "within 90 days" if the City desires to have more administrative time to implement proper transition to the new schedule. Another modification is to specifically incorporate into the review standards the issue of the relationship between fire officers and firefighters with emphasis on supervisory and operational experience. I award the following:

Within ninety (90) days of the issuance of an Interest Arbitration Award in this matter, the City shall commence, for Local No. 6, a 24/72 hour shift schedule on a two year trial basis, subject to the terms of this agreement. This means that there shall be a 24 hour tour followed by 72 hours off work, for all employees except for certain agreed upon staff "day" employees. The parties may mutually agree to a different implementation date. The 24/72 hour shift schedule shall remain in effect unless it is altered or replaced by mutual agreement or by decision of an interest arbitrator (pursuant to PERC rules) pursuant to the procedures set forth herein.

If either party desires to revert to the current work schedule (10/14-hour shifts) at the end of a 18-month period, begin on \_\_\_\_\_ and end on \_\_\_\_\_, it shall serve written notice of its intention to do so on the other party, at least 60 days prior to the end of that period. The specific reasons with statistical backup and detailed argument shall be submitted with the notice. This shall not preclude the submission of additional evidence thereafter. The other party who receives the notice shall after 30 days of receipt provide its objections to the notice and the parties shall immediately thereafter meet and confer in an effort to resolve any dispute concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to binding arbitration no later than 30 days after the end of the 18 month period, to an arbitrator designated by PERC under its rules and regulations. The parties agree that the reversion to the old schedule shall only be based upon a demonstration of good cause for this and in evaluating the issues in question, such things as employee morale, productivity, staffing, training, sick leave, overtime and the like may be among the criteria addressed. The city may produce evidence as to the impact of dual work schedules on departmental operations, continuity and impairment or impediments to supervision. However, issues which are not attributable to the 24/72 hour shift such as reductions in manning, sick

leave caused by on-the-job injury, or long-term illnesses or injuries, and the like, shall not be considered in support of a change to the former shift. During the period prior to the 60 day period, a committee consisting of representatives of Local 6 and of the City shall meet at least every 30 days to evaluate the shift and any concerns which either party has with regard to its implementation.

The 24/72 hour shift shall remain in effect after the 18 month period. If there is objection to as set forth above, it shall continue at least until a determination of the arbitrator is made, provided that timely objection is made as aforesaid by the objecting party. The determination of the arbitrator shall be based upon the record developed without prejudice to the fact that the 24/72 hour work schedule shall be maintained during the course of review.

If neither party elects to submit the matter to arbitration in accordance with the procedures set forth above during the initial 18 month period, then the 24/72 hour work schedule shall become the permanent work schedule.

The conversion of hours shall be on the basis of one day equals 12 hours.

Operational periods shall mean 12 hours.

Vacation time may, subject to other provisions of the agreement, be taken in operational periods of 12 hours.

Prior to the implementation of the 24/72 hour shift, the parties shall meet to agree upon of such things as paid leave time like vacations, holidays, personal days and sick days to maintain the equivalent level of benefit as under the current 10/14 hour shift schedule.

The FMBA has proposed to clarify language pertaining to the clothing allowance. The FMBA refers to a previous agreement where clothing allowance pay was eliminated in exchange for the City agreeing to supply uniforms. The FMBA proposes that the City be required to purchase clothing annually or, in the alternative, make a clothing allowance payment to its members equivalent to purchasing two pairs of pants and two shirts. The City opposes this proposal as an attempt to resurrect a clothing allowance payment. I award no change to the

previously agreed upon system. If the City has, as the FMBA has alleged, refused to supply firefighters with adequate articles of clothing pursuant to the prior agreement, the FMBA has the ability to resort to the grievance procedure to seek compliance with the prior agreement.

The FMBA also seeks to clarify the existing agreement on mutual exchanges or mutual swaps. According to the FMBA, it seeks to clarify this benefit so that mutual exchanges, once authorized, cannot be denied if, for whatever reason, one of the employees involved in a mutual swap, because of unforeseen circumstances, is unqualified for the job. The FMBA is also seeking to require the City to abide by the language of the contract which provides for unlimited mutual exchanges. The City objects to the proposal as potentially causing an unqualified firefighter to replace the vacant firefighter position. As the City points out, the existing case law conditions mutual swaps upon the swap involving qualified employees. For this reason, I deny the proposal. With respect to the FMBA's allegation that the City is not abiding by the language of the contract that it claims provides for unlimited mutual exchanges, such challenge can be presented and processed through the parties' grievance procedure.

The FMBA proposes to incorporate the current holiday benefit into the Agreement. Currently, unit members receive pay for thirteen (13) holidays based on a City ordinance. The labor agreement requires that the City provide such holidays as are designated for all City employees under existing ordinance

employees receive thirteen (13) paid holidays. The holiday pay is not reflected in the parties' salary schedule. The Union proposes that the ordinance be incorporated into the contract. The City objects asserting that the Union is seeking to guarantee a fixed number or fixed identity of the holidays. I do not award a change to the existing agreement on holiday pay. However, I do award the requirement that the City provide the FMBA with the City ordinance and adequate notice if and when the ordinance might change. This will satisfy the FMBA's stated concern that its members are unaware of either the ordinance or the existing benefit.

The FMBA proposes a new section to Article VI, Section 2, Funeral Leave. Currently, a unit member is provided with four days off to attend a funeral of certain covered relatives. The FMBA's proposal does not affect the funeral leave benefit itself but instead is directed at avoiding a circumstance where another member's vacation pick during another member's use of funeral leave time may be disrupted. For this reason, the FMBA proposes language stating "funeral leave shall not affect vacation periods or members on vacation." The City objects to the proposal because it would bar the City from considering employees absent from duty due to funeral leave when determining minimum manning for vacations. Under the existing agreement, when such circumstance arises, a firefighter can avoid canceling a vacation pick by use of a demand day or by trying to find a mutual swap. The record contains no evidence as to the potential impact of this proposal nor the potential that might exist for increasing overtime

costs. I find that the FMBA has not met its burden on this issue and accordingly it is denied

The FMBA has proposed to delete the last sentence of Article III, Section 3, Overtime. Its proposal would lift the stated prohibition on holiday pay, diver pay, shift differential, degree money and hazmat adjustments from being included in overtime calculation. No calculations appear as to what the economic impact of this proposal would be if awarded. The primary argument in support of this proposal is that base salary for unit firefighters is less than many other fire departments throughout the state and is also less than the City police officers. After review of this proposal, and the justification provided, I decline to award a change to the status quo on the calculation of overtime pay.

Both parties have made proposals that concern the issue of sick leave. The City proposes to eliminate the current sick leave benefit which provides for up to one year of paid sick leave per illness or injury. In the year 2000, the TFOA modified its agreement to provide for fifteen (15) sick days per year instead of "unlimited sick leave." Currently, police officers are under the same provision as exists in the FMBA Agreement. The FMBA opposes this change asserting that restrictions sought by the City were not awarded in the PBA Local 11 award and that any concerns raised by the City could be addressed by the City implementing existing standards and policies. The FMBA notes that in recent years, sick leave has been reduced with the cooperation of the FMBA. It also

believes that the adoption of the 24/72 hour work schedule would address sick leave concerns. The Union also seeks to increase the sick leave buyback provision from \$20,000 to \$25,000 and to revise the sick leave buyback penalty from 15 sick days to 40 sick days. This latter proposal would modify Article VI, Section 4 that provides a schedule of penalties prior to retirement.

After review of the parties' proposals and the record in support of those proposals, I decline to award any changes to any of the contractual articles referencing sick leave. I conclude that neither party has met its burden to change existing benefits and restrictions contained in the Agreement.

The FMBA seeks to increase the value of its vacation buyback benefit from eight (8) hour days to twelve (12) hour days. It points out that the buyback rate at retirement is based on an eight (8) hour day but that its members average work day is twelve (12) hours. The existing calculation for the vacation buyback is based upon prior agreement and established practices and I decline to award a change to the status quo.

The City has proposed to eliminate full pay for employees who suffer from on the job injuries. It seeks to limit pay to the Workers' Compensation benefit only. The FMBA objects to the proposal because it would amount to a substantial reduction in existing benefits, especially for firefighters whose work makes them susceptible to on the job injuries. The FMBA submits a lengthy list

of municipalities that provide for full pay for up to a year for firefighter injuries. This issue was addressed in the interest arbitration award involving PBA Local 11. There, the City expressed a concern that police officers could actually take home more pay when injured on the job than they would have received prior to injury under the existing system. In denying this proposal, Arbitrator Pierson found that the record did not support a finding that police officers have either abused the Workers' Compensation benefit or pursued a financial incentive to remain out of work after incurring a work related injury. On the record that is before me, I conclude that similar reasoning should be applied to the FMBA and that the City's proposal be denied.

The FMBA has proposed to delete all references to Battalion Chief Aides from the contract and insert the "adjunct" position in its place. The Union asserts that new position more accurately portrays the title. Although the two titles are alleged to perform the same job functions, there is a dispute over this assertion and the record is simply not sufficient to allow for a determination to be made. Accordingly, I am reluctant to award a deletion of an existing title and the proposal is denied.

The City has proposed to include a Red Circling provision in the Agreement that would alter an existing benefit which permits a permanent employee to retain the salary of his or her prior rank if it is above the maximum of a new title that that employee is demoted to as a result of an administrative

reorganization. This issue was proposed by the City in the PBA local 11 proceeding and it was denied. The burden of proof to change this provision has not been met and it is denied.

The FMBA has proposed a change in the manner in which certain vacation days may be taken. Under the Agreement, three (3) of a firefighters vacation days may be taken with 48 hours notice so long as no more than five (5) overtime replacements are generated. The FMBA seeks to increase the number of overtime replacements from five (5) to ten (10) firefighters per shift. The FMBA claims that the fire officers operate under the same standard although they have significantly fewer employees. The record does not reflect that the number of "A Days," as these days are called, have been unduly restricted based upon the existing standards. Accordingly, I decline to award this proposal.

The FMBA has made proposals concerning fire related school enrollment / reimbursement / fire related school days. Under its proposals, a firefighter would receive reimbursement not to exceed \$100 annually and 208 hours per year, as time off to attend fire related courses. The record does not reflect what the actual costs would be to the department either in compensation or time off or whether the proposed time off could impact upon the department's operations despite the fact that the purpose of the proposal is directed towards positive results. The proposal is denied.

The FMBA has proposed to modify Article XI, Miscellaneous, Section 2 to require that all transfers be based on seniority. The existing language provides that the fire department give “due regard to seniority.” The City objects to the proposal on the basis that it would impede its non-negotiable managerial prerogative by mandating that transfers be based on seniority. The FMBA has not sustained its burden to prove that the existing language requires modification. In the event that the Union believes that the City has not given “due regard” to seniority, any such complaint may be submitted to the grievance procedure. Accordingly, the proposal is denied.

The FMBA seeks clarification of Article XI, Miscellaneous, Section 1. The language therein references duties that the firefighters are precluded from performing. The FMBA seeks to extend prohibitions on work assignments to specified work that would be performed at “any City-owned facilities or equipment.” I am constrained to deny this proposal because the language proposed does not clearly specify what facilities or equipment would constitute “City-owned property.” Further, there is no evidence that the language in Section 1 has ever been interpreted over a dispute claiming that work has been assigned beyond the scope of the existing provision. Accordingly the proposal is denied.

The FMBA has proposed that a 3% stipend be provided for each firefighter who performs “EMS Special Work/First Responder Service.” The arguments with respect to this proposal are detailed and lengthy (see pages 20-24), and need

not be repeated here. The FMBA's presentation emphasizes that recent changes have been made to the emergency services section of the Trenton Fire Department. All firefighters receive First Responder training and the services provided by the City have been expanded. The demand for emergency calls is high and numbers in the several thousands. The FMBA submits contracts of many fire departments where additional compensation or stipends are paid to firefighters who handle emergency medical service related calls, many of which respond to far fewer calls than does the City of Trenton. Due to the recent changes, the additional responsibilities assumed and the evidence submitted on external comparability, I conclude that the FMBA has shown a basis for a stipend. However, its proposal is excessive and simply cannot be awarded due to the financial constraints proven by the City. An award of the FMBA's proposal, or even a lesser but substantial payment, would be incompatible with the evidence the City has presented on all of the financial criteria set forth in the statute. Due to these constraints, I award a stipend of \$250 annually, in base pay, for each firefighter who performs EMS Special Work/First Responder Service commencing January 1, 2011. The cost of this portion of the Award is approximately \$38,000 per year.

In rendering the terms of this award I have, throughout the analysis considered and applied the statutory criteria. The overriding criterion is the interests and welfare of the public whose interests have been served by respecting internal comparability on compensation and the costs required to

sustain that principle. The continuity and stability of employment will be maintained by continuing to provide contract terms to firefighters that respect internal relationships. The cost of living data weighs against awarding the costs that would have been required under the FMBA proposal but this factor does not dictate a lesser result given the terms of the prior settlements among public safety units. The record does not show that the terms awarded will interfere with the City's lawful spending and taxing authorities. While the costs exceed the City's proposals, they are consistent with the projections that the City would be required to make by virtue of sustaining the pattern of settlement contention that it has advanced.

Based upon all of the foregoing, I respectfully enter the following award.

### AWARD

1. All proposals by the City and the FMBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been voluntarily agreed to and/or modified by the terms of this Award.

2. Duration

There shall be a seven-year agreement effective January 1, 2006 through December 31, 2012.

3. Article XVIII, Compensation, Section 2, Driver's Pay

Language shall be incorporated into the Agreement to provide that Driver position appointments be based on seniority among applicants who are qualified.

## CORRECTED AWARD

1. All proposals by the City and the FMBA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those which have been voluntarily agreed to and/or modified by the terms of this Award.

2. Duration

There shall be a seven-year agreement effective January 1, 2006 through December 31, 2012.

3. Article XVIII, Compensation, Section 2, Driver's Pay

Language shall be incorporated into the Agreement to provide that Driver position appointments be based on seniority among applicants who are qualified.

4. Drug and Alcohol Testing:

The drug/alcohol testing procedures recommended by City/FMBA labor-management task force shall be incorporated into the Agreement.

5. Military Leave

I award language which requires adherence to this recent law [N.J.S.A. 38:23-1 et.seq.], and all other relevant legal requirements that may exist. In the event that binding and established practices are alleged to exist that are not inconsistent with statutory requirements, I neither abolish such practices nor confirm their existence.

6. Work Schedule

Within ninety (90) days of the issuance of an Interest Arbitration Award in this matter, the City shall commence, for Local No. 6, a 24/72 hour shift schedule on a two year trial basis, subject to the terms of this agreement. This means that there shall be a 24 hour tour followed by 72 hours off work, for all employees except for certain agreed upon staff "day" employees. The parties may mutually agree to a different implementation date. The 24/72 hour shift schedule shall remain in effect unless it is altered or replaced by mutual agreement or by

decision of an interest arbitrator (pursuant to PERC rules) pursuant to the procedures set forth herein.

If either party desires to revert to the current work schedule (10/14-hour shifts) at the end of a 18-month period, begin on \_\_\_\_\_ and end on \_\_\_\_\_, it shall serve written notice of its intention to do so on the other party, at least 60 days prior to the end of that period. The specific reasons with statistical backup and detailed argument shall be submitted with the notice. This shall not preclude the submission of additional evidence thereafter. The other party who receives the notice shall after 30 days of receipt provide its objections to the notice and the parties shall immediately thereafter meet and confer in an effort to resolve any dispute concerning the schedule. If the parties are unable to reach agreement, either party shall have the right to submit the dispute to binding arbitration no later than 30 days after the end of the 18 month period, to an arbitrator designated by PERC under its rules and regulations. The parties agree that the reversion to the old schedule shall only be based upon a demonstration of good cause for this and in evaluating the issues in question, such things as employee morale, productivity, staffing, training, sick leave, overtime and the like may be among the criteria addressed. The city may produce evidence as to the impact of dual work schedules on departmental operations, continuity and impairment or impediments to supervision. However, issues which are not attributable to the 24/72 hour shift such as reductions in manning, sick leave caused by on-the-job injury, or long-term illnesses or injuries, and the like, shall not be considered in support of a change to the former shift. During the period prior to the 60 day period, a committee consisting of representatives of Local 6 and of the City shall meet at least every 30 days to evaluate the shift and any concerns which either party has with regard to its implementation.

The 24/72 hour shift shall remain in effect after the 18 month period. If there is objection to as set forth above, it shall continue at least until a determination of the arbitrator is made, provided that timely objection is made as aforesaid by the objecting party. The determination of the arbitrator shall be based upon the record developed without prejudice to the fact that the 24/72 hour work schedule shall be maintained during the course of review.

If neither party elects to submit the matter to arbitration in accordance with the procedures set forth above during the initial 18 month period, then the 24/72 hour work schedule shall become the permanent work schedule.

The conversion of hours shall be on the basis of one day equals 12 hours.

Operational periods shall mean 12 hours.

Vacation time may, subject to other provisions of the agreement, be taken in operational periods of 12 hours.

Prior to the implementation of the 24/72 hour shift, the parties shall meet to agree upon of such things as paid leave time like vacations, holidays, personal days and sick days to maintain the equivalent level of benefit as under the current 10/14 hour shift schedule.

7. Salary

All increases shall be effective and retroactive to their effective dates and shall be applicable to those presently employed and those who were employed or on payroll on each effective date or who have retired on ordinary or disability pension prior to the date of the Award through their date of separation except for those employees who voluntarily resigned or whose separation from employment was not in good standing. Each step of the various salary schedules shall be adjusted by the following percentage increases:

Effective January 1, 2006 – 3.5%

Effective January 1, 2007 – 3.5%

Effective January 1, 2008 – 3.5%

Effective January 1, 2009 – 3.5%

Effective January 1, 2010 – 3.0%

Effective January 1, 2011 – 3.5%

Effective January 1, 2012 – 3.5%

8. Article XVIII, Section 3 - Longevity

Effective January 1, 2010, the longevity schedule shall be modified by 1% at the 24 years and 29 years steps. These steps shall become 13% and 14% respectively.

9. Holiday Pay

The City shall provide the FMBA with the ordinance that designates holidays for all City employees. The City shall also provide written notice to the FMBA when and if the City contemplates a change to the ordinance and a copy of any change to the ordinance.

10. EMS Special Work/First Responder Pay

Effective January 1, 2011, a payment of \$250 annually in base pay shall be paid to firefighters who perform EMS Special Work/First Responder Service. Such payment shall be in base pay.

11. Health Insurance

Effective January 1, 2010, and thereafter; there shall be an employee contribution of \$21 per pay for single coverage and \$25 per pay for all others.

Also effective January 1, 2010, the prescription drug co-pays shall include a three tier system: generic, preferred and brand name: \$10/\$20/\$35 for retail; \$3/\$10/\$15 for mail order.

Dated: December 30, 2009  
Sea Girt, New Jersey

  
\_\_\_\_\_  
James W. Mastriani

State of New Jersey              }  
County of Monmouth              }ss:

On this 30<sup>th</sup> day of December, 2009, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.

  
\_\_\_\_\_  
Gretchen L. Boone  
Notary Public of New Jersey  
Commission Expires 4/30/2013