STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of the Interest Arbitration Between:

CITY OF CAMDEN

-and-

Docket No. IA-2014-018

IAFF LOCAL 788

Before: Susan W. Osborn, Interest Arbitrator

Appearances:

For the City:
Brown and Connery, attorneys
(Michael J. DiPiero, of counsel)
(Michael J. Watson, of counsel)

For the IAFF:
Kroll, Heineman and Carton, attorneys
(Raymond Heineman, of counsel)

REMAND AWARD

On May 19, 2014, I issued an interest arbitration award for a successor agreement between the City of Camden and IAFF Local 788. On May 28, IAFF Local 788 appealed the economic portions of the award to the Public Employment Relations Commission. Local 788 asserted that I had miscalculated the cost of longevity increases and step increases, and argued that the miscalculations resulted in the award not being based upon substantial credible evidence in the record. The Union argued that, because of the calculation errors, the economic portion of the award was less generous to the firefighters than may have been the case had the award been calculated accurately. The

City refuted that miscalculations were made and contended that any asserted miscalculations did not have a material impact on the award.

On June 26, the Public Employment Relations Commission remanded the award to me on the limited basis for an explanation on how I calculated longevity for 2016, to pro-rate the longevity projection for 2016 based on the employees' anniversary dates, and to comment on whether any miscalculation would cause me to reconsider the economic aspects of the award, either in the increases awarded or the methods implemented to curb costs.

Both parties submitted written arguments on July 22, 2014. The Union also proffered additional exhibits, including revised versions of its employee salary data for 2014, 2015 and 2016. It noted that the original lists submitted by both parties did not accurately calculate the longevity and step movement payments. It proposed to correct the record evidence accordingly. Further, it submitted Exhibit UX-94, a 1994 fire department staffing study; Exhibit UX-95, an excerpt from New Jersey Pensions and Benefits Manual showing employer contribution rates to PFRS; and Exhibit UX-96, an excerpt from the PFRS Employee Benefit Manual summarizing pension benefits. The City objected to all of these submissions. I have considered UX-95 and UX-96.

The Union argues that the calculation of 2013 longevity amounts were erroneous, thus resulting in an incorrect figure for the 2% hard cap. Further, the Union contends that the longevity calculations for all years of the awarded contract were incorrectly pro-rated. Finally, the Union argues that I substantially miscalculated the projected cost of moving 26 firefighters to the senior pay step in December, 2016. The Union concluded that these errors cause me to overstate the impact of longevity increases and step movements on the application of the 2% hard cap.

The Union now argues that I should reconsider my decision to remove longevity payments from base pay and my decision to freeze step movement. In support of this contention, it argues that the City has the ability to pay the increments, continue the longevity payments and still absorb modest salary increases within its budget because the City has already benefitted from a series of cost savings. It asserts that so far in 2014, six firefighters have been promoted out the unit, four firefighters retired, one firefighter died. The Union contends that since the City did not fill any of these vacancies, the City will save over $440,000 over the course of the first half of the year. The Union further asserts that firefighters have retired from the department directly as result of my award concerning the "pensionability" of longevity pay.

The City argues first, that there is no basis to disturb the Award's conclusions concerning the total base pay paid in 2013, nor the resulting calculations of the 2% hard cap limitations. This issue was affirmed by the Commission and not the subject of this remand. Second, the City maintains that any mathematical errors in the cost of longevity increases over the life of the contract were slight and should not cause any adjustment to the prior award. Third, the City contends that even if miscalculations were made with regard to the cost of advancing employees to senior pay in 2016, any such errors would not warrant a change in the award, since the "Union has already been awarded $587,193, not including the flat dollar longevity payments it will receive in 2015 and 2016." Further, it notes that the freeze on step movements were awarded "to strike a balance between providing the City with some relief from its financial woes and providing the firefighters with a reasonable and fair increase that will keep pace with cost of living increases." Award p. 68. The City argues that this decision was based on substantial credible evidence that the City can no longer afford its rising labor costs. Therefore, the City argues that the prior award should not be changed.

I have considered the City's arguments and some of the IAFF's arguments. I specifically reject the Union's arguments concerning personnel changes in the fire department in 2014. The Commission has previously held that retirements and separations from service after the base year (commonly referred to as "breakage", may not be considered to costing out an award. Borough of New Milford, P.E.R.C. No. 2012-53, 38 NJPER 340 (¶116 2012). I also have not considered the Union's claim that my award is impacting firefighters' decision about when to retire.

Summary of Prior Award

In the prior award I found that the parties agreed on a total salary base of $11,102,197[1] paid to firefighters in the base year, 2013. However, the parties disagreed on the total longevity payments paid to firefighters in that year. Based upon the record evidence, I found as a fact, that longevity increases were awarded on employee's anniversaries. Notwithstanding the parties' disagreement on when longevity increases were actually implemented, both parties submitted spreadsheets showing longevity payments for full-year increases. The City calculated the longevity payments for 2013 at $421,921 while the Union calculated the longevity payments at $420,313. Because neither party produced a spreadsheet which calculated the pro-rated amount of longevity increases for 2013, I performed the necessary calculations to pro-rate for each employee who received a longevity increase in 2013 as he reached

[1] In its decision, the Commission inaccurately stated that the agreed upon a total base pay of $11,201.197. The correct agreed-upon figure is $11,102,197.

a benchmark in length of service. I arrived at a total longevity paid for 2013 of $366,324.75. Thus, I calculated the total base pay for 2013 (contract salary paid plus longevity) to be $11,468,521.75. Further, I calculated the 2% annual hard cap amount at $229,370.44. I found that <u>if</u> all step increases and longevity increases are paid throughout the life of the three-year agreement, the resulting costs would be:

Longevity and Increment Costs		
Year	Longevity Increases	Increment Cost
2014	71,448.59	53,873.13
2015	76,895.64	2,466.24
2016	68,126.18	146,565.15
Total (3-Year Contract)	**216,470.41**	**$202,904.52**

The Union now contends that the longevity was miscalculated in each year of the awarded contract. It asserts that longevity increases in 2014 were $83,128; in 2015, $73,138, and in 2016, 55,434. Thus, the Union contends that the total cost of longevity increases over the contract life should have been calculated at $211,700.00.

In addition, it asserts that step increases were also miscalculated. More particularly, it argues that 26 employees with a hire date of December 13, 1999 will become eligible for "senior pay" when they begin their 18th year of employment in December, 2016. The Union alleges that I improperly credited the costs of this increment payment for 11 ½ months of 2016 rather than for one-half a month. It points out that these 26 employees did not receive increases to their longevity until they reached their anniversary dates in mid-December, 2016.

The Union therefore contends that these miscalculations significantly reduced the total funds available for employee increases and/or resulting benefit concessions in my award. PERC remanded the award to me for a review of the longevity calculations in 2016. It instructed me to decide whether a miscalculation was made, and if so, to determine whether such a miscalculation would impact upon the contract terms awarded in my original decision.

* * *

I will review the 2016 calculations for longevity increases. The Union's arguments in its written positions statement, as well as the documents it submitted, concerning perceived miscalculation for longevity in 2013, 2014 and 2015 are not considered here, as the Commission's remand is limited to the 2016 calculation.

<u>Longevity payments</u>:

I have reviewed all of the 2016 calculations concerning longevity payments. The calculation for these increases in longevity was pro-rated in each instance by the following formula: (2013 contractual salary x former longevity amount x percent of year prior to anniversary date) + (2013 contractual salary x new longevity amount x percent of year after anniversary date). Below is an example of how this formula was applied.

Hire Date	2013 Base Salary	Old Longevity %	New Longevity %	New Long. Amt.	Old Rate Factor	New-Rate Factor	2013 Total Longevity Paid
12/13/1999	$75,492.00	0.03	.05	$3,774.60	0.94	0.06	$2,355.35

For 2016, there were 13 employees eligible for a longevity increase. All of these were hired in 1997, and therefore began their twentieth year of employment with the City in 2016. These employees would be entitled to longevity based upon the longevity schedule for employees hired after 1/1/97. Therefore, they reached their 20th-year benchmark of 7% in 2016. Longevity increases for these employees were each calculated on a pro-rated basis as described by the formula above. The one fire prevention specialist will reach the longevity benchmark on February 3, 2016, and his longevity payment will go from $4,339 to $6,314. He was pro-rated at 8% of the year at his old longevity rate and 92% of the year at his new rate. His longevity actually paid in 2016 was $6,170.88. 11 firefighters will reach the longevity benchmark on February 3, 2016, and will go from a longevity amount of $4,067.95 to $5,694.99. Their total longevity paid in 2016 was pro-rated at 8% of the year at their old rate and 92% of the year at their new rate. One firefighter reached his 20th year benchmark on August 22, 2016.

He will also go from $4.57.95 to $5,694.99. His total longevity paid in 2016 was pro-rated at 63% of the year at his old rate and 37% of the year at his new rate. His total longevity paid in 2016 was $4,669.90. All other unit members stayed at their same longevity pay throughout the year.

Thus, the cost of longevity increases, awarded in 2016 was actually $369.08 higher than I reported in my original award. I previously calculated the longevity increases for the three-year period to total $216,470.41. Thus, after recalculation for 2016, the total cost of longevity increases for the three-year period is $216,839.49.

Because my award removed longevity from base pay, I did not include the costs associated with the 2015 and 2016 longevity increases in the "cost of the award" calculations. This was incorrect. Section 16.7 of the statute, as well as the Commission's decisions in Borough of New Milford and Byram Township, P.E.R.C. NO. 2013-72, 39 NJPER ¶ 151(2013), makes it clear that costs of longevity increases must be inside of the 2% hard cap.

Senior Pay

It appears that the Union's complaint is not primarily with the calculation of longevity payment costs in 2016; rather, it challenges the calculations made concerning "senior pay" in

2016.[2] Contractually, senior pay is the top step on each of the two salary guides. Employees reach this step when they enter the 18th year of service with the City. While one could label this form of pay increase as an "increment", it is really a form of longevity. As I said in my original award,

> Employees are actually receiving two forms of compensation for long-time service to the City. The first is the longevity program, found in Article XVI, which gives employees an additional percentage, ranging from 3% (at their tenth year) to 11% by their 24th year...
>
> The second form of compensation for long service to the City comes in the form of senior pay -- step 6 on the firefighters' salary guide and step 5 on the fire prevention specialists' guide. Employees are eligible for this step after completing 17 years with the City.

Since I previously analyzed the senior pay benefit as a form of longevity for length of service, and the Union specifically argued to the Commission that a significant miscalculation was made in the cost of senior pay in 2016, I will assume that the Commission's remand directive includes an analysis of the senior pay calculations for 2016.

Before any salary increases, the cost of advancing a firefighter from step 5 ($75,485) to "senior step" (step 6: $81,357) on the firefighters' guide was $5,872.[3] After the awarded across-the-board salary increases of 1% in 2014, 1.5% in

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[2] Both parties recognized in their written submissions that this was the Union's primary issue, and both parties addressed the issue.

[3] No fire prevention specialists are eligible to advance to senior step in 2016.

2015, and 1.5% in 2016 were awarded, the price tag of moving a firefighter to senior step in 2016 would be $6,110.[4] 26 firefighters will be eligible to advance to senior step on December 13, 2016. Upon reviewing the calculations made for these employees' movement to senior step, I find that the cost of that step movement was significantly overstated in my original award.[5] These increases were included under the heading "increment costs" and I reported that the total increments, if granted, for 2016 would be $146,565.

The appropriate calculation of this 2016 step movement (after the salary guide increases previously awarded) for each firefighter is: $6,110 x 5% (18/366) = $305.50.[6] For all 26 firefighters, this would total $7,943. Thus, the cost of increments was over calculated by $138,622. Thus, if step movement and longevity payments (at the 2013 flat dollar rate) are awarded for all years, the actual cost of increments in all years, after factoring in the impact of guide percentage increases previously awarded, plus longevity payments, is shown is follows:

[4] It should be noted that movement to senior step is the only increment cost, as no other employees are moving through the guide.

[5] This occurred when I inadvertently inverted the percentage of the year that they received the increase and compared with the percentage of the year before that date.

[6] These 26 firefighters are eligible to receive senior pay the first day of their 18th year -- December 14, 2016. This means they will have the increases pay for 18 of the 366 days in 2016, or 5% of the year.

Corrected Longevity and Increment Costs			
Year	Longevity Increases	Increment Costs	Total Cost
2014	71,448.59	53,873.13	125,321.72
2015	76,895.64	2,466.24*	79,361.88
2016	68,495.26	7,943.00*	76,438.26
Total (3-Year Contract)	216,839.49	$64,282.37	281,121.86

*My original award contained no increment costs for 2015 and 2016 because I froze senior pay.

Admitting that the miscalculation of increment costs was significant, the question then is whether the economic package previously awarded should be adjusted. I previously determined that the costs of across-the board increases for all unit members would total: $113,280 for 2014 (1%); $171,929 for 2015 (1.5%); and $176,753 for 2016 (1.5%). This is an aggregate cost of increases to the guide of $461,962.[7] This cost, added to the cost of longevity and increment payments as detailed above ($281,121.86), would total $743,083.86. This amount would exceed the three-year hard cap maximum of $688,111.31 by $54,972.55. Thus, adjustments in the economic package awarded will be required.

First, as it is now obvious, the 2016 actual cost of increment payments is much smaller than I previously found; the savings to the City is relatively small. Therefore, I have determined to lift the freeze on senior pay. Unit

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[7] I previously found that the total cost of the award would be $587,193. Award, p. 78. That cost calculation, unfortunately, did not count the longevity cost increases in 2015 and 2016.

employees will now be allowed to advance to the senior pay step on their anniversary dates in 2015 and in 2016.

However, adjustments will be necessary in the across-the-board increases. I previously awarded 1% increase to all unit employees retroactive on January 1, 2014; a 1.5% increase to all unit employees on January 1, 2015; and a 1.5% increase effective on January 1, 2016. That level of salary increases now proves to be untenable under the 2% hard cap. Accordingly, the salary increases need to be reduced in order to stay within the 2% hard cap. I propose to do this by reducing the amount of the awarded salary increases to 1.25% in 2015 and 1.25% in 2016.

The Union strenuously argues that the award should be modified in several ways. Most significantly, it argues against removing longevity pay from base pay for purposes of pension contributions. I found that awarding this proposal would save on the both the employer's cost and the employee's cost of pension payments, as well as save on overtime expenses. The Union now argues that removing longevity from base pay for pension purposes would effectively reduce a firefighter's pension significantly. It produced an excerpt from the PFRS manual (UX-96) showing that for PFRS members who were enrolled before May 21, 2010, the pension is based upon the final 12 months of pension credits. All members of Local 788 started with the City's fire department before this date; therefore, I conclude that this rule would affect all members of the unit.

It is true that the Union could have produced this document at hearing, or at the least, argued the pension statute application in its initial brief. Nevertheless, now that I have been made aware of this fact, it would be difficult to ignore. The Union points out that the removal of longevity from base pay would have a dramatic impact on a firefighter's pension: a firefighter with 24 years' service would have his base pay in his final year of service reduced by $8,949 (the longevity amount). Regular retirement for a firefighter with 20 or more years of service and age 55 is based upon 50% of his "final compensation" --for tier 1 employees, that is his last year of service. Thus, I now realize that awarding this provision would have a dramatic impact on firefighters' pension rights.

Accordingly, I will revise my award concerning longevity as follows:

> Effective immediately, all longevity amounts will be converted from a percentage to a flat dollar amount, based upon the dollar value of the employee's longevity percentages times their 2013 salary rates.
>
> Effective January 1, 2015, longevity payments shall continue to be included in base pay for all employees hired before the date of this award, but shall not be considered part of base pay for overtime calculation purposes.
>
> For all unit members hired after the date of this award, longevity payments shall be made in a separate, lump sum, annual payment to be distributed to employees by December 1, and longevity pay will no longer be considered part of base pay.

Of course, the impact of this revision to the award will be that the City must continue to make pension payments on longevity sums for all current employees. The total cost of longevity payments in 2015 will be $514,839.26. According to the Union's exhibit UX-95, the City's 2014 contribution rate to PFRS is 23.25% of base salary. So, the savings to the City if I had maintained the awarded provision to exclude longevity from base would have been $119,700 in 2015. To offset this continued expense to the City, I will reduce the amount of salary guide increases and I will freeze increases to longevity in 2016. The resulting modified award is as follows:

> 2014: All employees eligible for step movement on the salary guide shall receive their step increases effective on the date of their anniversary. All employees eligible for increases in their longevity amounts shall receive longevity increases effective on their anniversary. All employees will receive a 1.0% increase in salary, effective and retroactive to January 1, 2014.[8] The salary guide will be adjusted accordingly.
>
> 2015: Eligible employees will receive their step increases on the respective salary guides on their anniversaries. All employees eligible for increases in their longevity amounts shall receive longevity increases effective on their anniversaries. All employees will receive a 1.25% increase in salary, effective January 1, 2015. The salary guide will be adjusted accordingly.

[8] The parties' stipulated that the past practice has been to provide employees who have retired from the fire department since the last contract has expired with retroactive pay for the time they worked. Accordingly, the City will pay employees who retired since January 1, 2014 with the retroactive pay increase pro-rated for the time they worked in 2014.

2016: Eligible employees will receive their step increases on the respective salary guides on their anniversaries. All employees will receive a 1.25% increase in salary, effective January 1, 2016. The salary guide will be adjusted accordingly. Employees eligible for increases in longevity payments will not move up to the next longevity amount in 2016, and will be frozen at their then current longevity amounts for all of 2016.

The resulting costs of the revised economic package are as follows:

Cost of Revised Award					
Year	ATB Salary Increases		Increments	Longevity Increases	Total Cost
2014	**113,280.00**		**53,500.87**	**71,448.59**	**238,229.46**
2015	**143,274.16**		**2,466.24**	**76,895.64**	**222,636.04**
2016	**147,294.16**		**7,943.00**		**155,237.16**
Totals	**403,848.32**		**63,910.11**	**148,344.23**	**616,102.66**

This revised award will allow the City to reduce some of its long-term labor costs associated with the Fire Department, while at the same time, preserve some of the firefighters existing benefits. I believe it strikes an equitable balance between the needs of the City to prudently manage its budget and the needs of the employees to be fairly compensated. The revised award will continue to fit within the Fire Department budget and will not violated the caps restrictions on the 2014. Moreover, it will permit the City to maintain unit continuity as there will be no special negative incentives for employees to seek early retirement.

Susan W Osborn

Susan W. Osborn
Interest Arbitrator

Dated: August 9, 2014
Trenton, New Jersey

On this 9th day of August, 2014, before me personally came and appeared Susan W. Osborn to me known and known to me to be the individual described in and who executed the foregoing instrument and she acknowledged to me that she executed same.

Pamela Jean Sutton Browning

PAMELA JEAN SUTTON-BROWNING
ID # 2424173
NOTARY PUBLIC
STATE OF NEW JERSEY
My Commission Expires August 20, 2017