

In the Matter of Arbitration Between:

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**TOWNSHIP OF HARRISON**

"Public Employer,"

- and -

**HARRISON FIREMEN'S MUTUAL  
BENEVOLENT ASSOCIATION  
LOCAL NO. 22**

"Union."

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**INTEREST ARBITRATION  
DECISION AND  
AWARD**

Docket No. IA-2007-113

**Before  
James W. Mastriani  
Arbitrator**

Appearances:

**For the Town:**

Robert E. Murray, Esq.

**For the FMBA:**

David I. Fox, Esq.  
Fox & Fox, LLP

The Town of Harrison [the "Town"] and Harrison Firemen's Mutual Benevolent Association Local No. 22 [the "Union"] are parties to a collective negotiations agreement [the "Agreement"] commencing January 1, 2002 and extending through December 31, 2006. The Agreement covers the Deputy Fire Chief, Battalion Chiefs, Captains and Firefighters. After an impasse developed for a new Agreement that would have become effective January 1, 2007, the parties jointly submitted their dispute to interest arbitration in accordance with the rules of the New Jersey Public Employment Relations Commission. Thereafter, pursuant to the mutual agreement of the parties, I was designated by the New Jersey Public Employment Relations Commission to serve as arbitrator.

I held pre-interest arbitration mediation sessions which served to narrow the issues in dispute but many remained open. This required the convening of interest arbitration hearings conducted in Harrison, New Jersey. The Town and Union argued orally, presented testimony and documentary evidence. The record remained open for the submission of additional exhibits. Each party filed written post-hearing briefs, response briefs and additional post-hearing submissions, the last of which was received on June 11, 2009.

As required by statute, the Town and the FMBA submitted the following last offers on the issues in dispute.

## **FINAL OFFER OF THE FMBA**

1. Duration: 5 years – from January 1, 2007 to December 31, 2011.
2. Increase of 5% on January 1 of each year, across-the-board.
3. Special Night Differential Pay, as is the case in neighboring Newark for all tour employees and in most other Fire Departments, of \$1,000 in base pay.

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4. Senior Officer Pay: After 15 years of service, a senior officer differential of \$5,000.
5. Driver's Pay, as in the case in Trenton, of 4.5% to senior employees.
6. Increase EMT certification payment by 5%; pay 1% additional each year on January 1 of the 5-year contract.
7. Increased ambulance daily stipend to \$100.
8. Increased EMS yearly stipend for all Firefighters to \$1,200 and put into base pay.
9. Resume, as in the case with all municipal employees except in certain exceptions, such as Election Day, for staff personnel (namely the Fire Inspector and Deputy Chief) who are scheduled to work holidays, time off on that holiday.
10. Increase in the base payment for Fire Prevention Specialist, UFD from \$6,000 to \$12,000 (now performed by Staff Firefighter George Kondek). In addition, this should be designated as a regular Staff Firefighter position as per the DOP title.
11. Training Officer: The job of Training Officer has in the past been performed in the Fire Department. It is, as per present practice, being restored to the Fire Department. It is critical, for example, at the recent fire in Hudson County at a 15-story high rise where Harrison was called for mutual aid, the availability of a "high rise kit" as provided at that fire was not adequately trained for in Harrison. The Training Officer, UFD should be a firefighter job at Captain's pay.
12. The Executive Officer position should be designated, as it now is, as a permanent Deputy Chief staff position.

13. Harrison should be required to enforce the provisions of the interest arbitration award of January 2004 with regard to the limitation of staff officers being pulled on line tour jobs.
14. Fire Official, UFD, as to which a Firefighter (George Kondek) is determined the appointee, should continue as a UFD Firefighter job with a \$5,000 payment.
15. Vacation Days: Firefighter 19 days; Fire Prevention Inspector 23 days; Captain 23 days; Battalion Chief 25 days; Deputy Chief 27 days in 2007 and 28 days in 2008 thereafter.
16. Overtime: Firefighters shall receive overtime no less than at the top firefighter's rate inclusive of longevity.
17. Non-emergency Transports: Eliminate.
18. Clothing Allowance: Deputy Chief-Eliminate clothing allowance and roll into base pay. Fire Prevention Inspector-Eliminate clothing allowance and roll into base pay.
19. Holidays: Fire Inspector and Deputy Chief – If scheduled to work holiday, the Fire Inspector and Deputy Chief will be off.
20. Town Vehicle: Deputy Chief shall be assigned Town vehicle.
21. The attached Ordinance provision should be incorporated into the contract.
22. The four (4) Battalion Chiefs who perform the same duty as Deputy Chiefs and taking the same tests should be eliminated so that there are five (5) Deputy Chiefs who receive the same pay. All of these positions now have taken the same promotional test. In addition, the duties should be increased to include a situation, which has been the case in the past, namely, that these employees, or 1 of them, performed the third party recovery service for which Harrison now pays an outside sources \$26,000 annually. The effective providing of this service in-house in Harrison should, as is reflected in future Exhibits, enable the full effective amount of the recovery to be made.

**Proposals Submitted By**  
**The Town of Harrison to Harrison F.M.B.A. Local 22**

1. Term 5 years January 1, 2007 to December 31, 2011.
2. Article VII – Overtime: Add new Paragraph E. The Fire Chief in his discretion shall have the right to assign staff personnel to the floor/shift rotation to fill vacancies caused by vacation, sick leave or any other absences in the line rotation. Officers may be assigned to fill in for the absence of any other officer regardless of rank.
3. Article VIII – Vacation:

Section D3 – Line 5 delete three members and insert two members and delete “a fourth (4)” insert “a third (3)”

Section E – Vacation carryover shall be limited to two (2) years of accrued vacation time; provided further that current banks in excess shall be red circled; provided further the 2007 vacation entitlement not used may be carried over notwithstanding the preceding limitations. Unused vacation in excess of this limitation shall be void. The parties shall develop a program guaranteeing the scheduling of vacations in a timely manner to ensure that all time may be scheduled.

4. Article XII – Insurance:

Section 1B Prescription co-pay: effective July 1, 2007 the co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$25.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program subject to the co-pay for this option.

Section 1A Modify as follows; effective July 1, 2007 the Town shall pay the full cost of the individual portion of the foregoing insurance coverage and the employee shall pay \$500.00 of the cost of such coverage through payroll deductions. This amount shall be increased \$250.00 effective July 1, 2008, and an additional \$250.00 effective July 1, 2009, and an additional \$250.00 effective July 1, 2010 and an additional \$250.00 effective July 1, 2011. Effective January 1, 2008; employees hired after that date shall be entitled to the HMO selection subject to the foregoing shared cost program; if an employee who is hired after January 1, 2007 wishes to enroll in the Traditional Plan the employee shall pay the cost differential for the enhanced coverage and the shared cost program as set forth in this provision payment shall be through payroll deductions.

5. Article XVIII – Grievance and Arbitration Procedure: Review, revise, and streamline appropriate procedure and steps and appeals.

6. Article XIX – Salaries: The Township is proposing the following salary increases for current employees:

Effective January 1, 2007 + 2.75% across the board

Effective January 1, 2008 + 2.75% across the board

Effective January 1, 2009 + 2.75% across the board

Effective January 1, 2010 + 3.25% across the board

Effective January 1, 2011 + 3.50% across the board

7. Article XIX Salaries

Section 3 effective January 1, 2007 delete the current stipend program. The Town shall provide the FMBA with the total payout of the 2006 stipends. The FMBA shall advise the Town of Harrison not later than December 1<sup>st</sup> of each year the method of distribution of these funds to all members of the bargaining unit this will be the method for distributing the ambulance stipend for the year 2008 and the following.

8. Article XX Longevity effective January 1, 2008, the Longevity pay program shall be terminated. Salary rates in effect on December 31, 2007 as a result of the current Longevity program shall be continued, but such rates shall be red-circled and shall not be increased by the longevity percentages in the future and no new pay rate pursuant to the longevity percentage shall be granted on or after January 1, 2008.

9. Article XV Paragraph E clarification, the maximum payment whether the Employee elects to take the time off with pay or a lump sum payment, the total payment shall be the same and shall not exceed one year's salary. Add new Paragraph E3. Effective January 1, 2011, the maximum payments shall not exceed \$18,000.00.

10. The Town reserves the right to submit additional proposals and counter proposals not later than the second session after the initial exchange of written proposals.

### **BACKGROUND**

The negotiations between the parties reached a genuine impasse. Although the FMBA, and the Town have negotiated in good faith in a highly

professional manner, they sharply differ on the merits of the issues, the relevance and weight to be given to the evidence in support of their positions and on the terms that should be awarded. Each sees its own proposal as representing the more reasonable determination of the issues, after giving due regard to the statutory criteria. Because of this, the parties' submissions are very comprehensive in scope. They center heavily on the Town's finances, including its statutory limitations, external comparability between the fire department and paid departments elsewhere and internal comparability between the police and fire departments. The FMBA asserts that the department is effective and productive. Despite its differences with the FMBA on the issues, the Town has recognized that all of its public safety personnel are highly dedicated and professional in the performance of their duties to the Town and its residents.

The Town of Harrison is a civil service municipality and is one of twelve (12) municipalities in Hudson County. Its western boundary is highly developed along the Passaic River and it is intersected by State Highway 280 and the Northeast Corridor Rail System, including PATH. Its population increased from 13,425 in 1990 to 14,424, an increase of 7.4%. The Town has been undergoing a redevelopment plan that could substantially increase its population and enhance its business district. The Town receives a substantial amount of state aid. Although state aid decreased between 2007 and 2008, the decline was the second smallest on a percentage basis among Hudson County municipalities. The Town qualifies for extraordinary aid through the Distressed Cities Program.

The Town maintains a paid, professional fire department. There is a non-bargaining unit Chief. The bargaining unit personnel includes one (1) Deputy Chief, Four (4) Battalion Chiefs, fourteen (14) Captains, one (1) Fire Prevention Specialist Fire Inspector and thirty-four (34) Firefighters. The Department also operates a busy Emergency Medical Services [EMS] Department.

The FMBA proposes a five year contract with a December 31, 2011 expiration. The FMBA acknowledges that its salary and other economic proposals are substantial. However, it contends that existing levels of salaries, payment of stipends in connection with the performance of EMS services, special payments and other fringe benefits are below parity with other municipalities throughout the state and also lacking in parity with the Harrison Police Department. The FMBA further contends that its examination of the Town's finances by its financial expert demonstrates that the Town can accommodate the expenditures proposed by the FMBA without unduly burdening the taxpayers, requiring any reductions in the delivery of municipal services and within the Town's statutory spending and tax levy limitations. It points to one area of analysis by its financial expert that advises that even if all of the proposals of the FMBA were granted, the Town would remain in compliance with laws concerning budget caps and caps on the levy.



The FMBA argues that its salary proposal consisting of five (5) years at five (5%) percent annual increases applied to all steps in the firefighter and fire officer salary guide has been justified by its submission based upon the following facts:

(1) The FMBA's Financial Expert submitted a Financial Report regarding the Town'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 Hudson County; (3) Harrison Firefighters and Fire Officers perform comparable public safety functions to Harrison Police Officers and Police Superior, yet work more hours per year than Harrison Police Officers and Superior Officers; and (4) Numerous other factors.

As demonstrated by the FMBA Financial Expert, Dr. Caprio, the Town of Harrison is comfortably able to fund the FMBA's proposals in its entirety. Dr. Caprio further acknowledges that the Town can do so without any negative impact and in a manner consistent with all the criteria required to be considered by PERC.

The salary percentage increases offered by the Town are considerably lower than the "norm" of recent Police and Fire contracts which were voluntarily settled and those in which an Interest Arbitration Award was rendered. See FMBA Exhibits Book 1.

More importantly, however, the FMBA's Final Offer for annual salary increases is appropriate whereas here the FMBA demonstrated that its members are performing an exceptionally high percentage of EMS runs.

The Town rejects the Union's reliance upon settlements and awards in other geographical jurisdictions and also challenges the Union's view of the Town's finances. The Town notes that many of the jurisdictions cited by the Union that call for increases of 4% had their negotiations resolved before the state legislature enacted the 4% tax levy cap and before the serious downturn in

the economy. The Town also refers to the 2006 settlement in Kearny that called for a 3.7% increase while the firefighters in Harrison received a 4.0% increase. The Town points out that the extraordinary aid it has received from the state is reflective of the Town's poor financial state which it claims cannot fund the cost of the FMBA's salary proposals without adverse impact. The Town objects to the FMBA's omission of the cost of step increases for fourteen (14) firefighters which it estimates to exceed an additional one (1%) percent of the total salary base of the bargaining unit. I turn to the issues in dispute.

The FMBA submits that it does not receive a stipend for a night shift differential and it seeks such differential at an amount of \$1,000 to be placed in base pay. It justifies its proposal based upon the following:

The FMBA, as noted herein, as well as noted in the FMBA Exhibits, responds to a high number of fire runs, EMS runs in both Harrison and East Newark and mutual aid calls in Kearny. As set forth in FMBA Exhibits 147-154 and 162-165, the population in the Town has increased exponentially. The Town of Harrison, for example, has experienced the following increase in the population according to the U.S. Bureau of Census: 1980-12,242; 1990 - 13,425 and 2000 - 14,424. The total increase in population for 1980 through 1990 in population change was 9.7%. The total increase in population from 1990 through 2000 increased 7.4%. This is an extremely high rate of growth. As set forth herein and as set forth in the above-referenced exhibits, there has been a substantial amount of building, including the current building of the Red Bull stadium. Notwithstanding this substantial growth in population and the substantial growth in commercial and residential property, the level of manpower has remained stagnant.

In fact, the manning in the Fire Department has steadily declined over the past ten years. Ten years ago, for example, there were 61 Firefighters and Fire Officers in the TO. Today, there are only 55 Firefighters and Fire Officers employed by the Town. See FMBA

Exhibit 29. This subjects FMBA members to additional hazards, including but not limited to, increased HAZ-MAT incidents, crime and other critical incidents. Accordingly, the FMBA Firefighters and Fire Officers should receive additional compensation for performing these hazardous duties.

It is also important to note that other urban departments receive the same Night - Shift Differential. Specifically, Trenton, Newark and Kearny receive compensation for Night - Shift Differential. The above-referenced provisions of these CBA's are attached hereto as **Exhibit E.**

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The Town objects to the night differential proposal. While acknowledging that such benefit may exist in Trenton, Newark and Kearny, the Town contends that this benefit is absent in most other communities. The Town submits the following argument in opposition to the night differential:

Firefighters in Harrison work a 24 hour schedule which means they report to work 91 days in a calendar year less vacation and other paid time off. There is simply no basis for the grant on a 24 hour schedule for night differential. The 24 hour work schedule is generally regarded as one of the most attractive work schedules in public employment. It should also be noted that the FMBA does not make clear whether the night differential where it exists in a few towns is paid to Officers who may still work the 10/14 workday-workweek which is different from the 24 hour workday.

An additional proposal advanced by the FMBA involves the inclusion of a Senior Pay Step in its salary schedule. The FMBA does not currently receive senior pay but proposes that senior officers with fifteen (15) years experience receive a senior officer differential of \$5,000. The FMBA offers the following argument in support of its proposal:

Many fire departments throughout the State of New Jersey receive some form of a senior duty payment. In fact, the following Fire

Departments in the State of New Jersey receive a senior duty payment: 1. Edison - 1% Senior Duty EMT pay after completion of five (5) years of service; 2. Hackensack - 24<sup>th</sup> year of service - \$500 - 25<sup>th</sup> year of service \$1,000; 3. Union - \$900 after the 15<sup>th</sup> year of service; 4. Linden - \$1,500 upon completion of the 20<sup>th</sup> year of service; 5. Paterson - 3% duty differential upon completion of 18<sup>th</sup> year of service; and 6. Bergenfield - \$2,500 base payment upon completion of 20<sup>th</sup> year of service. A copy of the above-referenced CBA provisions are attached hereto as **Exhibit F**.

The Town urges denial of this proposal asserting that unit members already receive longevity and that the compensation the FMBA seeks on the senior pay issue cannot be separated from the cost of the overall economic package.

The FMBA also proposes the addition of a senior driver pay stipend into the Agreement. According to the FMBA, no such payment is provided, although such provision exists in the Township of Union and in the cities of Hoboken and Trenton. Specifically, the FMBA proposes to include a driver-tillerman pay similar to the provision in Trenton where firefighters are compensated an additional 4.5% for performing these duties. The provision in Trenton states the following:

All Driver-Tillermen, Paid Drivers and Basketmen shall receive a 4.5% of top base salary as additional compensation, added to the normal paychecks for these employees. In addition, firefighters servicing temporarily as Driver-Tillerman, Paid Drivers, and Basketmen shall be paid at the higher rate for each day they are so assigned.

The FMBA submits that:

The above driver position is a form of additional compensation for all senior firefighters. The positions are filled based on seniority. The FMBA is seeking to incorporate a similar provision into its CBA. This is especially relevant and necessary when reviewing the substantial redevelopment projects within the Town. Based on the foregoing, the FMBA's proposal is reasonable and should be awarded.

In Trenton, Drivers Pay is designed for firefighters to be equivalent to the police rank of Sergeant, a rank which does not exist in Harrison as a first level of superior. This senior duty pay, therefore, has a number of reasonable justifications.

The Town urges rejection of this proposal noting that the sole support for the FMBA's proposal is that the senior driver stipend may exist in Union, Hoboken and Trenton. The Town accuses the FMBA of engaging in the "cherry-picking" of communities for the purpose of making a comparability argument and that the FMBA provides no further support on behalf of its position.

The FMBA has also advanced three proposals with respect to the delivery of emergency medical services. The FMBA responds to a substantial number of EMS calls annually. It submits the following chart reflecting such activity:

**EMS RUNS FROM 2000 TO PRESENT**

<b>YEAR</b>	<b>EMS RUNS</b>
2000	1812
2001	1740
2002	1694
2003	Data Not Available

2004	Data Not Available
2005	1762
2006	2026
2007	1,303 (January through July)

See FMBA Exhibit 31, 55-57, 63, 65, 68.

In addition to the above, the FMBA provides EMS services to the City of East Newark pursuant to an inter-local government agreement. Based upon this agreement, the FMBA responded to 52 EMS calls in 2004, 92 in 2005, and 72 in 2006. Beyond this, the FMBA provides mutual aid responses to the Town of Kearny concerning EMS and fire response incidents. The FMBA submits a chart showing that it has serviced eleven (11) mutual aid responses in 2004, 52 in 2005 and 152 in 2006 to the Town of Kearny.

The FMBA asserts that its three (3) EMS proposals could be funded by the Town's ability to collect transport fees relating to the EMS calls. On this point, the FMBA submits the following argument.

The Town has the ability to collect \$450 for each transport that the FMBA is required to do within Harrison. The FMBA responds to a high number of EMS calls during a given year. Accordingly, the Township has the ability to collect, on average more than \$800,000 for these transports. See FMBA Exhibit 59. As set forth in Exhibit 59, the Town could have realized \$872,550 if they had collected the \$450 transport fee. As set forth in that Exhibit, we requested information pertaining to the amount of money the Town collected for rendering these services. We never received those documents. Accordingly, it must be assumed, based on its meager collection

history to date, that the Town collected very little of the revenue it was entitled to.

In addition to the above, the Town, through a Town Resolution, should be collecting, at the very least \$6,000 a year from East Newark to perform EMS duties. This number does not include the \$450 fee that is assessed to the individual and/or insurance company that utilizes the Harrison FMBA for EMS service. See FMBA Exhibit 24.

The FMBA's first EMS proposal is to increase the current EMT certification base payment from one (1%) percent to six (6%) percent by having a one (1%) percent increase made on January 1 of each year of the new five year agreement. Based upon a prior interest arbitration award rendered on January 16, 2004, all unit employees with EMT certification received a differential of .75% effective January 1, 2003 and 1% effective January 1, 2004. These payments are made to base. The FMBA explains and justifies its proposal as follows:

This is an effort to make Harrison somewhat comparable to other New Jersey communities which provide full-time EMS service, such as in Roselle, Trenton and Ocean City.

Specifically, as has been demonstrated in FMBA Exhibits, in addition to what will be demonstrated herein, the norm across the State of New Jersey is to provide EMT certification stipends of at least 2% of base pay. Moreover, Harrison, unlike most communities throughout the State of New Jersey, perform all EMS services for one of its contiguous municipalities, East Newark. Harrison also, as has been demonstrated throughout the Exhibits, provides a substantial amount of EMS mutual aid responses to Kearny. West Orange, New Brunswick Teaneck, Westfield, Elizabeth, South Orange, Wildwood, North Wildwood, Bergenfield, Hackensack, and Ridgewood all receive significant stipends for the mere maintenance of the EMT certification.

These certifications justify the increases sought by the FMBA.

**EMT PAYMENT FOR MUNICIPALITIES WHICH  
ONLY DO BACKUP EMS DUTIES**

<u>Municipality</u>	<u>EMT Payment</u>
West Orange	2% stipend added to base pay
New Brunswick	1.25% stipend added to base pay
Teaneck	2% stipend added to base pay
Westfield	\$1,500 (Firefighter) \$1,633 (Fire Officer)
Elizabeth	\$900
South Orange	\$1,250
Wildwood	\$1,000
N. Wildwood	\$1,000
Bergenfield	\$1,526.62
Hackensack	\$1,250
Ridgewood	\$3,471

See FMBA Exhibit 19, 46-50, 52.

The existing Agreement also provides for an Ambulance Daily Stipend. This is a non-base payment. The aforementioned 2004 interest arbitration award adjusted the daily EMS stipend as follows:

Effective January 1, 2003, firefighters who work the EMT program shall be paid \$52.78 per 24 hour period, payable in the next year after earned. Effective January 2004, firefighters who work the EMT program shall be paid \$54.90 per 24 hour period, payable in the next year after earned. This payment shall not be included in



base salary, and not subject to longevity or overtime or other rates. An employee who works part of a 24 hour day shall be paid pro rata.

The FMBA's second EMS proposal is to increase this stipend to \$100 per 24-hour period. The FMBA seeks to change the current practice concerning the payment of the stipends. Currently, only two FMBA members per tour receive this daily stipend. The two employees that receive the daily stipend are assigned to the primary ambulance at Headquarters. Because all other employees perform EMS duties on a regular basis, the FMBA requests that all members of the FMBA receive the EMS daily stipend in base pay. The FMBA argues that:

[O]nly 4 employees received a stipend in excess of \$2,000. 19 Firefighters received compensation in excess of \$1,000 but less than \$2,000. 8 Firefighters received a stipend that was less than \$1,000. 3 Firefighters received no compensation for performing daily EMS duties. No Fire Officers received compensation for performing EMS daily duties. The total cost to the Township for providing this benefit was only \$40,077. The Town, could, if it collected more revenue for providing EMS services, receive revenue of at least \$800,000. The Town has been negligent in collecting money from individuals and/or insurance companies that have been billed \$450 for being provided EMS service from the Town.

The FMBA's third EMS proposal seeks to increase the annual EMS yearly stipend, a non-base payment. Currently, unit employees receive the following EMS yearly stipend pursuant to the terms of the aforementioned 2004 interest arbitration award.

Emergency Medical Services: Effective 1/1/99, all unit employees shall be required to obtain and maintain EMT Certifications.

Effective 1/1/99, the joint EMS stipend shall be eliminated. Stipends for Emergency Medical Services shall be as follows:

	1/1/2003	1/1/2004
Deputy Chief	\$1,040 per year	\$1,082 per year
Battalion Chief	\$1,040 per year	\$1,082 per year
Captain	\$936 per year	\$972 per year
Firefighter	\$260 per year	\$270 per year

This stipend shall be payable the following February from the year in which it was earned. These payments shall be one time only, not included in base salary, and not subject to longevity or overtime or other rates. An employee who worked part of the year shall receive a pro rata stipend.

The FMBA proposes to increase the yearly EMS certification payment for firefighters from \$270 to \$1,200 and convert the payment from non-base to one that is in base pay. The increase would be the same for Captain, Battalion Chief and Deputy Chief and the stipend would be placed into base pay. The FMBA's rationale is that unit employees should be adequately compensated for performing the large number of EMS calls that they are required to perform. The FMBA asserts that the stipends are less than the norm that is paid within the state and also notes that it is the norm to place yearly EMS stipends in base pay. On this latter point, the FMBA notes the jurisdictions in which the EMS stipends are EMS base payments.

Clifton	\$1,200 EMT, 1500 EMTD
West Orange	2% of base pay
Linden	8% of base pay
Hillside	6% of base pay

Roselle	2% EMS Pay; 3% "ambulance care providers"; \$1,000 EMT Certification.
Ocean City	\$3,486
Westfield	\$1,500 (Firefighters); 1,633 (Fire Officers)
Ventnor City	\$1,500
South Orange	\$1,250
Wildwood	\$1,000
N. Wildwood	\$1,000
Bergenfield	\$1,362
Maplewood	\$1,444

See FMBA Exhibit 54.

The Town seeks the rejection of all of the FMBA's EMS proposals. It contends that the FMBA has not properly considered the economic impact of these proposals and that additional compensation is already provided in each of the three areas involved in the FMBA's proposals. The Town points out that the costs of all the economic items must fit within the overall financial circumstances of the Town. The Town objects to the FMBA's reference to the EMS collection experience. It argues that: "the history in Harrison was such that at one time the FMBA and the Town of Harrison had agreed to have a division of revenues between the Town treasury and the FMBA. It was the FMBA who wanted this practice changed and the current practice was established." The Town also disputes the figures used by the FMBA that claim a potential for the receipt of over \$800,000. Instead, the Town relies on its own figures showing receipts of between \$150,000 and \$180,000.

The FMBA also makes a proposal concerning holidays for staff personnel. This proposal would apply to the one (1) Deputy Chief and the one (1) Fire

Inspector. These officers work a work schedule consisting of four (4) ten-hour shifts rather than the 24/72 hour shifts worked by line members. Prior to the 2004 interest arbitration award, staff officers received thirteen (13) paid holidays, the same time off as any other line member. The award provided that the former practice that allowed the taking of holidays in the form of a day off or a day earned, be limited to three days total per year. The FMBA now seeks to eliminate this restriction. The FMBA submits the following argument on behalf of its proposal:

The above restriction applies solely to the Fire Department. More specifically, PBA staff officers are not subjected to the above restrictions, nor are the Police Superior Officers. For instance, Police Administration employees, specifically, Police Chief Kearns and Deputy Chief Green are not subjected to the above provision. In addition, those employees assigned to the Detective Bureau are entitled to paid holidays off. There are approximately five police employees assigned to the Detective Bureau. Also, the CPU Unit, which is comprised of approximately four employees, is not required to work on designation holidays. There are also two police employees who are assigned to the Traffic Bureau. These police employees are entitled to paid time off for holidays. The above employees are all deemed staff officers, and receive holiday pay. No other Harrison staff employees in any union or non-union position, outside of Fire staff officers, are required to work on holidays. See FMBA Exhibits 6-7.

The Town requests the denial of the FMBA's proposal concerning staff holidays. The Town argues that the FMBA's reference to the Police Chief and Deputy Chief is misplaced. It notes that "the Police Chief and Deputy Police Chief no longer have longevity as evidenced by their labor contracts and so the Town finds it rather incongruous that the FMBA would seek a benefit based upon

two contracts in question in the Police Department since they no longer enjoy longevity.”

Another proposal of the FMBA is to increase the base payment for the Fire Prevention Specialist, UFD. The current payment is \$6,000 and the increase sought is \$12,000. The FMBA also contends that this title should be designated as a regular staff fighter position as per the DOP title. In support of this proposal, the FMBA submits the following argument:

The Harrison Fire Department employs one Fire Prevention Specialist. Currently George Kondek is the Fire Prevention Specialist. As set forth in the January 16, 2004 Interest Arbitration Award, effective January 1, 2007, the Fire Prevention Specialist salary was \$76,729. That number does not included any of the pensionable items that are included in base pay. A Harrison Firefighter at top pay, without any pensionable items included in base pay, receives a salary of \$70,500. The differential between the two above salaries is \$6,229. This differential should be increased an additional \$6,000 above the rank of a top grade Firefighter.

The increase would be consistent with other municipalities throughout the State of New Jersey, and, in fact, the increase in the differential is much lower than what is provided to other Fire Prevention Specialists throughout the State of New Jersey. By way of example, the Kearny Fire Inspector receives a substantially greater salary than the current Fire Inspector receives in Harrison. More specifically, a top pay Firefighter in July 1, 2006, received a salary of \$83,385. An Inspector, during the same year, received a salary in the amount of \$97,568. See FMBA Exhibit No. 122A.

The Town again notes that the Union’s proposal, which would double the base payment of the Fire Prevention Specialist, is an economic issue and must be considered within the total economic cost of the award.

The FMBA also proposes a compensation level for the job of Training Officer within the fire department. It proposes the addition of a Training Officer, UFD and that this position be a firefighter's job at Captain's pay. The FMBA points out that the department was recently called upon to make a mutual aid assignment at a fifteen story high-rise building in Hudson County, a "high-rise kit" was provided at the fire but there was inadequate training for this task within the Harrison Fire Department. On behalf of this proposal submits the following argument:

The individual who performs these functions is required to obtain a substantial amount of training and is required to perform many additional tasks. This position, as set forth above, is critical because all members must be trained to handle all types of situations, especially in an area like Harrison, which is becoming increasingly populated with the recent growth of residential homes and commercial properties. Accordingly, this individual should receive payment that is commensurate with that of a Captain.

The Town objects to the arbitrator's exercise of his authority to create a new title, Training Officer, UFD, and also to the costs involved with paying a firefighter at the level of Captain's pay.

The FMBA proposes that the Executive Officer (Deputy Chief) position should be designated as a permanent Deputy Chief position. As argued by the FMBA:

The sole request of the FMBA is that the present practice should be put in writing. The position of "Executive Officer", which was

implemented after the Table of Organization was restructured, requires the individual to perform duties which include but are not limited to, a Supply Officer (review all department supply requests and requisitions, insure that all safety related equipment and uniforms are in stock or procured when needed, and insure that bills are promptly paid), Computer Maintenance Officer (Creates and maintain computerized records of all maintenance, repairs, purchases, etc. for the Emergency Safety Fleet) and he is responsible for updating the Emergency Operating Plan of the Town. The Deputy Chief is also in charge in the absence of the Chief. Other duties of the Deputy Chief are set forth in the July 9, 2003 DOP letter, which is attached to FMBA Exhibit 116. The Town has failed to produce any evidence that would demonstrate that the FMBA's proposal is unreasonable. As such, the FMBA's proposal relating to the Executive Officer is reasonable and should be awarded.

The Town contends that the FMBA's proposal to designate an Executive Officer title and to limit the Town's ability to select and designate such a person is an improper invasion of its managerial prerogatives. The Town submits the following argument:

The proposal submitted by the FMBA is confusing at best. As a general proposition, the determination to select and designate an "Executive Officer" is a management prerogative. The Town at its sole and absolute discretion would make such a determination. There is at the present time no title "Executive Officer."

The Town does have the title Deputy Fire Chief. But there is not a recognition to the title sought. It is respectfully submitted that the FMBA failed to submit any evidence that would be compelling to find in favor of this proposal.

The FMBA offers a proposal concerning an issue that was a subject of the 2004 interest arbitration award. The FMBA proposes that Harrison should be required to enforce the provisions of the interest arbitration award of January 2004 with regard to the limitation of staff officers being pulled on line tour jobs.

The FMBA references the following portion of the award as it relates to the staff officer work schedule.

Effective within sixty (60) days of this Award, the work schedule for Staff Officers shall be four (4) ten-hour days in a seven (7) day cycle to include a working lunch in the same amount of length as currently provided. Issues concerning start and stop times and the actual days of work in the work schedule shall be discussed between the Chief and the designated representative of the FMBA. I retain jurisdiction of this issue in the even that an agreement is not reached on the details of the work schedule. Such jurisdiction may be invoked by written application to the arbitrator with service on the party.

The FMBA contends that the Town continues to engage in improper actions by assigning staff officers to perform line officer jobs in violation of the parties' contract and past practice. The FMBA relies upon certification of Battalion Chief Michael Greene, which is attached to FMBA Exhibit No. 117B in support of this allegation. As set forth in the FMBA's Exhibits, it is alleged that Deputy Chief Anders has been required to perform line duties even though he is the Executive Officer. The FMBA also alleges that Fire Inspector Konddek is also required to perform line duties on occasion even though he is a staff officer. Based on the foregoing, the FMBA asserts that its proposal is reasonable and should be awarded.

The Town urges the rejection of the FMBA's proposal contending that the Town has no obligation currently, or by the terms of a prior award, to limit its ability to assign fire officers to perform line duties. The Town submits that it is a civil service community and that the duties of fire officers are prescribed by the



Department of Personnel. According to the Town, “[a]s long as individuals are performing duties within the job titles established by the Department of Personnel, the Town has the right to make such assignments.” The Town further contends that, “the FMBA fails to recognize that the primary purpose of the Fire Service is fire suppression, fire code enforcement and emergency services. At times it is necessary for Staff Officers to function in line capacity.”

The next proposal of the FMBA concerns the position of Fire Official, UFD. That position, according to the FMBA, should continue as a UFD Firefighter job with a payment of \$5,000. In support of this proposal, the FMBA makes the following argument:

As is set forth in FMBA Exhibit 122B, Harrison Department Order #1463, dated July 28, 2006, Fire Inspector Kondek was assigned as Acting Fire Official from July 28, 2006 through August 7, 2007. As was noted in the FMBA's Exhibits, the Fire Department no longer has a Fire Official as set forth in the DOP rules and regulations. This is true even though the parties CBA provides for a substantial payment to the individual designated Fire Official. As set forth in FMBA Exhibit 4, the Fire Sub-Code Official was entitled to an additional payment of \$13,475 in 2006. Fire Inspector Kondek did not receive additional compensation for performing the duties of a Fire Official. Instead, the Town had Fire Chief Dologhan performing out of title Fire Official work without providing him any remuneration. The DOP found the above action to be in violation of civil service rules and regulations. See FMBA Exhibits 122B-122D.

As set forth in FMBA Exhibit 122D, the Town has since agreed to appoint a Fire Official. Fire Inspector George Kondek has been performing the functions of a Fire Official without receiving any additional payment, which is well outside of the norm in New Jersey. Accordingly, the FMBA is now seeking a payment in the amount of \$5,000 for the performance of this job. This proposal is

especially reasonable given the fact that the payment was previously substantially higher than what the FMBA is now seeking.

The Town seeks the denial of this proposal as being simply an additional substantial cost factor that the FMBA has not justified.

The FMBA has proposed to improve the existing vacation schedule set forth in Article VIII, Section A. The existing vacation schedule is set forth in the following chart:

Fireman (New hires after 4/17/96)	5 days after six months of service 10 days after two full years of service 15 days after five full years of service
Fireman	18 days per annum
Captain	20 work days per annum
Battalion Chief	24 work days per annum
Deputy Chief	24 work days per annum

The FMBA proposes that the above vacation schedule be revised to provide as follows: Firefighters 19 days; Fire Prevention 23 days; Captain 23 days; Battalion Chief 25 days; Deputy Chief 27 days effective January 1, 2007 and 28 days in 2008 and thereafter. In support of this proposal, the FMBA submits the following argument:

As set forth in the FMBA's Exhibits, a number of Fire Departments throughout the State receive substantially greater vacation benefits than what is currently enjoyed by members of the FMBA. More

specifically, the following municipalities provide their Fire Department employees with a substantially greater vacation benefit: 1) Union FMBA and FOA; 2) Roselle; 3) Bergenfield; and 4) Springfield FMBA and FOA. See FMBA Exhibits 129-132. In addition to the above, other employees within the Town receive greater vacation benefits. More specifically, The Police Department Deputy Chief currently receives a greater vacation benefit than the Deputy Chief within the FMBA. The Police Department Deputy Chief receives 28 vacation days effective January 1, 2008. Fire Department Deputy Chief's, on the other hand, are restricted to 24 days. Accordingly, the FMBA's request for an increase in number of vacation days received is reasonable and should be awarded.

The Town urges the denial of the FMBA's vacation proposal. It contends that the existing benefit is sufficiently generous and should not be disturbed. The Town submits that the FMBA's sole justification for the proposal is the fact that certain other communities may offer a greater vacation benefit. The Town objects to the FMBA's use of comparability in communities which the Town claims are not comparable to Harrison, such as Teaneck, Bergenfield and Springfield.

The FMBA offers a proposal concerning Article VII, Overtime. It proposes that firefighters shall receive overtime at no less than the top firefighter rate inclusive of longevity. It also seeks to remedy a Fire Officer Overtime grievance that it set forth in its Exhibit #121. In support of this proposal, the FMBA offers the following:

Article VII, Overtime, of the parties CBA provides as follows, in pertinent part: "Beginning January 1, 2003, overtime shall be computed at the individual's annual rate for the year in which the overtime work is performed". The FMBA is seeking to revise that program in the manner set forth above, so that all Firefighters will

receive overtime at the same rate, instead of the current practice which bases the overtime calculation on the individual's rate of pay. Furthermore, the overtime calculation does not include longevity in the rate. That practice should be revised so that individuals are entitled to include longevity in the overtime rate. The Town has failed to submit any evidence that demonstrates that the FMBA's proposal is unreasonable and should not be awarded. Accordingly, the FMBA's proposal relating to the payment of overtime is reasonable and should be awarded.

As it relates to the grievance set forth in FMBA Exhibit 121, the following is a brief recitation of the facts that led to the filing of the grievance.

On or about August 19, 2007, the FMBA drafted a grievance regarding the distribution of overtime to FMBA Fire Officers. The grievance was presented to the Chief on August 20, 2007.

The grievance is regarding the Town's failure to abide by an agreement regarding the distribution of overtime within the Fire Department to those employed in the Fire Officers rank.

By way of background, on or about July 21, 2003, the FMBA submitted a grievance concerning the manner in which overtime was distributed to members of the FMBA. The grievance was denied at all steps. The FMBA submitted the matter to arbitration. James W. Mastriani was designated arbitrator of the matter.

During an informal arbitration/mediation that Arbitrator Mastriani was present at, the parties reached an informal agreement concerning the manner in which overtime would be distributed to members of the FMBA. At that time, the parties agreed that the Fire Officers would receive approximately 1/3 of the overtime. This agreement was in effect until the Fire Chief, without reason, violated the agreement. Accordingly, the FMBA submitted the within overtime grievance to attempt to address this matter and enforce the prior agreement from 2003.

The Town urges rejection of the FMBA's proposal asserting that it is either without merit or lacking in support by any credible evidence in the record.

An additional proposal of the FMBA is to limit the practice wherein firefighters perform non-emergency transports. The FMBA offers the following background and argument in support of this proposal:

[N]on-emergency transports involve things like helping citizens get to doctor appointments, assisting them in going shopping or getting to and from social events. For example, a citizen may need assistance getting down the staircase from her house to the sidewalk. The Fire Department must go to the location and help the citizen get down the stairs. Then they help the citizen get back up the stairs when the citizen returns home from whatever activity they are engaging in. The above-referenced duties are rarely, if ever, performed by Firefighters throughout the State. Based on the foregoing, the FMBA is seeking to eliminate this duty. This is especially necessary when reviewing the statistics concerning the number of runs the Harrison FMBA responds to each year. As previously noted, the FMBA's duties will likely increase substantially now that the redevelopment project has commenced and will likely be completed in 2009.

The Town objects to the FMBA's proposal. In response to the proposal, the Town argues that the non-emergency transport function "is an important function that currently is an established part of the Harrison Fire Department's services to the community. The attractive salary and benefit programs that have been established reflect all of the services provided to the taxpayers by the Department. It would be inappropriate to eliminate any of the duties performed previously by members of the Department and therefore the Arbitrator is urged to reject the elimination of services sought."

The FMBA offers an additional proposal limited to the Deputy Chief and the Fire Prevention Inspector. The proposal would eliminate the existing \$625

payment, now paid as an annual clothing, purchase and maintenance allowance, and roll this payment into base pay. The FMBA supports this proposal by referring to agreements in Long Branch, Clifton, Kearny, Linden, Bergenfield, Trenton and Bayonne, all of which include clothing allowance in base pay.

The Town objects to the proposal noting that the comparables advanced by the FMBA do not constitute a “norm” and also objects to the FMBA’s use of this term without providing a definition. The Town sees no merit and having some employees receiving clothing allowance while others would not.

The FMBA also proposes to implement a rank differential system between ranks in the fire department. The FMBA contends that such systems are the norm in a large majority of municipalities in New Jersey, including Belleville, Roselle and Hoboken. The Town contends that the FMBA has not met its burden with respect to this issue and sees no relevance in the FMBA’s citation of this benefit in the communities of Belleville, Roselle and Hoboken.

An additional FMBA proposal is to have the Town assign a Town vehicle to the Fire Department Deputy Chief. In support of this proposal, the FMBA points to the police department wherein the Deputy Chief of Police is assigned a Town vehicle and for reason of parity, given their similar supervisory roles within their respective departments, the FMBA argues that its proposal is reasonable and should be awarded. The Town does not accept the FMBA’s representation

that other Deputy Chiefs have the right to be assigned a Town vehicle. Beyond that, the Town objects to the cost of awarding this proposal.

The FMBA proposes to incorporate Ordinance No. 1051 regarding health benefits upon retirement, into the collective bargaining agreement. The FMBA explains that the proposal is currently enjoyed and should be made part of the Agreement. Based upon the fact that the existing benefits had been enacted by the Town in Ordinance 1051. According to the FMBA, the following health benefits upon retirement are provided under the following circumstances:

1. When an employee retires on a disability pension;
2. When an employee completes 25 years of service within the State or locally administered retirement system, 4 of which must be completed within Harrison;
3. When an employee reached the age of 65 years or older with 25 years of service with the State or locally administered retirement system, 4 of which must be completed within Harrison; and
4. in certain circumstances when the employee reaches the age of 62.

The final proposal of the FMBA would eliminate the rank of Battalion Chief and maintain a rank structure consistent of Deputy Chiefs and Captains. If such proposal is awarded, the FMBA seeks to institute a seniority shift bidding procedure. The FMBA offers the following explanation and justification for this proposal:

The Fire Department currently has one (1) Deputy Chief. There are four (4) Battalion Chiefs.

By way of background, prior to the Summer of 2002, the Harrison Fire Department had four (4) Deputy Fire Chiefs in its TO", each of whom acted as both a tour commander for the four (4) shifts, as

well as handling various administrative duties assigned by the Fire Chief.

At some point in 2002, the Town of Harrison was audited and a new TO was developed by the Town and the DCA. The agreement required a modification to the Deputy Chief rank. Specifically, the Town agreed to eliminate three (3) Deputy Chief positions through attrition. Three (3) Deputy Chiefs have since retired and now there is only one (1) Deputy Chief employed by Harrison.

Because of the above modifications, the Town, with the permission of the DOP, appointed two (2) FMBA members who were at the top of the Deputy Chief list to the rank of Battalion Chief. The promotees were assigned to perform line duties, not administrative duties. Prior to the change in the TO, the Battalion Chiefs performed administrative duties also.

After the change in the TO, however, the remaining Deputy Chief has assumed the role of "Executive Officer". His duties include the that of a Supply Officer (review all department supply requests and requisitions, insure that all safety related equipment and uniforms are in stock or procured when needed, and insure that bills are promptly paid), Computer Maintenance Officer (Creates and maintain computerized records of all maintenance, repairs, purchases, etc. for the Emergency Safety Fleet) and he is responsible for updating the Emergency Operating Plan of the Town. The Deputy Chief is also in charge in the absence of the Chief. Other duties of the Deputy Chief are set forth in the July 9, 2003 DOP letter, which is attached to FMBA Exhibit 116.

Based on the foregoing, the FMBA is seeking the above-requested revision in the rank system. As set forth below, the FMBA's proposal would result in overtime savings, increased safety, and other cost savings.

### **Overtime Savings**

The Deputy Chief, as is clearly obvious when reviewing various DOP documents, should not be performing line duties. See FMBA Exhibit 116. The Deputy Chief has, however, been performing line duties in violation of the DOP documents. This typically happens when a Battalion Chief is on vacation or is out sick. When a Deputy Chief is on the line, it causes overtime.

It is also critical to note that in the January 16, 2004 Interest Arbitration Award, on page 42, Arbitrator Mastriani specifically



limited the amount of time a staff officer can perform line duties. Specifically, if a staff officer is required to fill in for a line officer, the staff officer is only allowed to work a 10-hour shift. The staff officer cannot, pursuant to the Interest Arbitration decision, work a 24-hour shift. As a result, overtime will always occur when a staff officer fills in on the line because the second portion of the 24-hours (14 hours) must be filled as overtime. This would not occur if the FMBA's proposal regarding the reorganization of the Fire Officer ranks structure was awarded because the FMBA could implement the Kearny rank structure system, which, as set forth below, would alleviate the above situation.

Specifically, if the Battalion Chief title is eliminated, there would be five (5) Deputy Chief positions. The proposed rank structure will be similar to that of Kearny.

In Kearny for example, there are five (5) Deputy Chiefs. One of the Deputy Chiefs is assigned to perform administrative duties. The Administrative Deputy Chief position is filled through seniority bidding. The Administrative Deputy Chief is deemed a "floater", which means they typically work a four (4) day, 10-hour tour per work week. The Administrative Deputy, however, would be reassigned to the line, thereby working a 24-hour shift, in certain circumstances. Specifically, the Administrative Deputy Chief would fill in on the line when a line staff Deputy Chief was on vacation, was injured, or was sick. Other needs not set forth herein may also require the Administrative Deputy Chief to fill in on the Line.

Certain situations that have, for instance, caused overtime in Harrison, would not have caused overtime in Kearny. By way of example, Battalion Chief Doran was injured and was out on leave for approximately one year. The Town paid approximately \$37,000 for required overtime and acting Battalion Chief pay. This would not have happened in Kearny because the Kearny Fire Department would have assigned the Administrative Deputy Chief to the Line and the Administrative duties would have been split between the other Deputy Chiefs. That is a substantial savings for the Town.

### **Safety**

The elimination of a rank will also increase safety concerns for all FMBA members because a high ranking Fire Officer would be able to maintain command all fire scenes.

### **Cost Savings**

Battalion Chief Edward Doran used to do the EMS billing for the Town as a private contractor, not through his position of Battalion Chief with the Fire Department. He has a substantial knowledge of the EMS billing system and can train the other Battalion Chiefs and Deputy Chiefs as to how to perform the EMS billing duties if the proposed rank structure was implemented. The Town would realize a savings of approximately \$36,000. This would offset any costs that would result from eliminating the Battalion Chief Structure.

It is also critical to note that the structure that is utilized in Kearny is also utilized in other municipalities throughout the State.

It is also critical to note that the PBA, in its most recent interest arbitration award, received an increase in police superior officer salaries by one rank.

See FMBA Exhibit 208.

### **Shift Bidding.**

The FMBA is seeking to implement a seniority shift bidding procedure for the rank of Deputy Chief if the rank of Battalion Chief is awarded. Specifically, the FMBA is seeking to implement a shift bidding procedure similar to that in Kearny. In Kearny, the Administrative Deputy Chief position is bid on by seniority. It is not an assigned position. In other municipalities that have similar rank structures, a similar shift bidding process is used. Based on the above, the FMBA seeks to implement the same shift bidding process, and this proposal is, therefore, reasonable and should be awarded.

The FMBA's proposal is, therefore, reasonable because it will help alleviate overtime concerns and other concerns set forth above.

The Town urges denial of the FMBA's proposal. The Town maintains that the elimination of positions and the creation of positions is a non-negotiable, managerial prerogative. The Town further argues that it is a matter solely within the province of the New Jersey State Department of Personnel.

The Town, as does the FMBA, proposes a five year agreement with a December 31, 2011 expiration date. It proposes salary increases pursuant to the following schedule:

Effective January 1, 2007 + 2.75% across the board  
Effective January 1, 2008 + 2.75% across the board  
Effective January 1, 2009 + 2.75% across the board  
Effective January 1, 2010 + 3.25% across the board  
Effective January 1, 2011 + 3.50% across the board

The Town contends that its salary proposal is reasonable and should be awarded in its entirety for many reasons.

The Town emphasizes that it participates in the Distressed Cities Program which is an indicator of its need for financial assistance in order to maintain a reasonable level of services to offer to the public. It makes the following argument on this point:

It is also important to note from the documents that the Town of Harrison has submitted that the Town of Harrison is in the Distressed Cities Program. This is a special municipal aid program whereby certain communities on application are granted extraordinary state aid. It is in that regard that the Arbitrator must recognize that the Town of Harrison in the first instance has been determined by the State of New Jersey to be in special need of additional financial assistance. This additional financial assistance is not designed for the purposes of providing extraordinary salary and benefit increases in labor negotiations, but is rather a function of a recognition by the State that a particular community requires significant additional aid because of unique circumstances and because there are limitations on the tax increases that can be imposed upon a community.

It is in that regard that the Town of Harrison executed the Memorandum of Understanding with the State of New Jersey and it

was through that program that Harrison received additional aid. The program, as the arbitrator can see upon examination of the exhibit submitted in the course of the proceeding, requires substantial state oversight for all purposes of economic operation of a community. This additional oversight and the financial aid that comes as a result is a clear indication of the financial difficulties that a community faces and therefore is entitled for special consideration.

The documents also submitted in the course of this regard demonstrates that the Town of Harrison had such financial requirements to receive such extraordinary aid from the State such that in the budget of 2007, the Town received 6.6 million dollars from the State; 2.9 million dollars in 2006; 3.4 million in 2005; and 3.5 million in 2004.

According to the Town, there is real uncertainty whether the State will continue to provide such funds to the Town and that its tax base would be unable to fund its collective bargaining agreements without causing an undue burden on the remainder of its budget. Notwithstanding the extraordinary aid that it has received, the Town asserts that it has had to raise local property taxes substantially in order to maintain the status quo. It points to the increase in its municipal tax rate from 1.831 to 2.117 between 2006 and 2007, an increase of 15.6%. The Town contends that it is further stressed by legislation that provides a 4% cap on the amount of tax increase as well as the budget cap legislation that preceded the more recent legislation. The Town expresses the concern that a possibility could arise wherein it would be unable to raise taxes in order to cover costs. Citing statistical data in the record, the Town contends that its salary proposal is more in line with cost of living increases than the offer of the FMBA. It further notes that employment in the fire department has been stable based upon existing terms and conditions of employment because there has been little,

if any, turnover over the course of many years. The Town disputes the relevance of much of the FMBA's comparability evidence claiming that many of these jurisdictions outside of Hudson County should be given little or no weight.

In conjunction with its salary proposal, the Town seeks to delete the current stipend program. Under this proposal, the Town would provide the FMBA with the total payout of stipends and the FMBA would advise the Town as to the method of distribution of these funds. The Town also proposes to terminate the existing longevity program. Under this proposal, salary rates in effect on December 31, 2007 as a result of the current longevity program would be continued, but such rates would be red-circled and would not be increased by the longevity percentages in the future. In addition, no new pay rate pursuant to the longevity percentage would be granted on or after January 1, 2008.

The FMBA disagrees with the Town's salary proposals and deems them to be "artificially low and outside the norm of the majority of awards that have been issued or voluntarily reached during the last two calendar years." The FMBA cites settlements in Atlantic City that provided 4% across the board salary increases between 2003 and 2007. The City of Newark received similar increases. The FMBA points out that the Borough of Roselle is an economically depressed municipality yet its Lieutenants and Captains received 4.75% increases for the 2003 through 2005 calendar years. The FMBA focuses on the

report of its financial expert who, after providing an extensive and detailed analysis provided the following summary:

These favorable development factors are considered enhanced by: (1) a highly stable tax collection rate (Exhibit 15), (2) an extraordinarily high state and miscellaneous revenue base (Exhibits 2 and 6), (3) a fairly average tax per homeowner (See Exhibit 6) assessment, (4) a median change in property tax between 2000 and 2007 (Exhibit 8), and finally, (5) an approximately \$532,061 available CAP margin in 2007. When considering as an overall assessment, it is clear that Harrison is capable of providing the FMBA with a competitive and comparable wage settlement as requested by the Union.

The FMBA also contends that a higher salary increase is justified for firefighters because they work significantly more hours per year than the Town's police officers. The FMBA equates the two hours more per week in the work schedule as providing for 5% more hours of work during a given year. The FMBA characterizes the Town's proposal for the elimination of stipends as "completely unacceptable," noting the extensive amount of work performed in the area of EMS.

The Town has advanced an overtime proposal of its own. It would add a new paragraph E to Article VII and would provide that the Fire Chief in his discretion would have the right to assign staff personnel to the floor/shift rotation to fill vacancies caused by vacation, sick leave or any other absences in the line rotation. He would also have the right to assign officers to fill in for the absence of any other officer regardless of rank. The Town supports this proposal by asserting that its first portion is a managerial prerogative and that substantial cost

savings would be derived from the second portion of its proposal that would allow the Chief to engage in the flexible scheduling of staff personnel.

The FMBA responds that the Town's overtime proposal is unreasonable. Its rationale for the rejection of this proposal is as follows:

This proposal is entirely unreasonable for the reasons set forth above in the FMBA's proposals relating to staffing issues. More specifically, however, the Fire Department employs two FMBA staff personnel, which include the Fire Inspector and the Deputy Chief. As set forth in an undated certification of Battalion Chief Michael Greene, the past practice relating to the filling of openings due to vacation and/or sick leave or any other absence was filled by hiring overtime. The Town has, on a number of occasions violated that past practice by requiring staff personnel to fill in openings in the line of duty instead of calling in overtime. This was the prior subject of an unfair practice charge and corresponding Order to Show Cause. See FMBA Exhibit 117B.

The above staff individuals have a substantial amount of work that they have to complete on each shift and to require them to completely halt their work so that they can fill in for other line employees is highly improper and causes a substantial delay in their ability to perform their jobs.

Accordingly, the Town's proposal is entirely unreasonable and, therefore, should be denied.

The Town has also proposed a modification to the vacation provision at Article VIII. The proposal would modify the number of firefighters that could be off at one time for vacation purposes. This proposal, according to the Town, would allow it to control overtime costs. The limitation on the vacation carryover would prevent the excessive carryover of vacation time which is costly to the Town. As part of that proposal, the Town would engage in a process with the

FMBA to guarantee the scheduling of overtime to ensure that all time would be scheduled.

The FMBA urges rejection of the Town's vacation proposal. It submits that:

[T]he increase in the number of vacation slots from two to three was voluntarily agreed upon by the parties and implemented effective April 1, 2001. The Town has failed to produce any documentary or testimonial evidence that would tend to demonstrate that the Town has experienced any undue hardships since the parties agreed to increase the number of vacation slots per tour.

Currently, there is no limitation imposed on the FMBA as it relates to members' ability to carry over accrued vacation time. The Town is now seeking to limit employees' ability to bank more than 2 years of accrued vacation time, with some limited exceptions. The Town has not produced any documentary or testimonial evidence that would support its assertion that the above revisions should be awarded.

An additional proposal of the Town would modify payments in connection with accumulated sick leave. The first portion of this proposal would be to clarify that the maximum payment, whether it be time off with pay or a lump sum payment could not exceed one year's salary. The Town defines this proposal as a "clarification." The second portion of the proposal would place a cap of \$18,000 on any lump sum payment effective January 1, 2011.

The FMBA seeks the rejection of this proposal citing the fact that its members currently receive up to one year salary upon retirement and that the



Town's proposal to limit the payment to \$18,000 is unreasonable and without any supporting evidence.

A final proposal of the Town would "review, revise and streamline" the grievance and arbitration procedures set forth in Article XVIII. The Town explains its proposal in detail:

[T]he current first step would be continued with the Fire Chief but consideration be given to eliminating the next step which is the Fire Chairman and refashioning the procedure with the next step at the Mayor with consideration of his role as the Appointing Authority. It would be an appropriate procedure for the first step with the Chief, then a second step and then finally arbitration.

The FMBA urges rejection stating that the Town has provided no supporting evidence as to why the grievance and arbitration procedures should be modified.

The Town has advanced proposals concerning health insurance. Included in these proposals are increases in prescription co-pays and contributions to health insurance. The Town sees significance between the State of New Jersey and the CWA that included an agreement for employees to make co-pays on basic hospitalization costs. Because of the substantial economic assistance provided to Harrison by the State, the Town believes that the adoption of a hospitalization program comparable to that negotiated by the State is warranted. The Town also cites many other collective bargaining agreements which include

increases in co-pays for prescriptions and restrictions on health care benefits for new hires.

The FMBA seeks the total rejection of the Town's health insurance proposal. The FMBA notes that:

[M]embers of the FMBA pay \$1.00 for generic drugs and \$5.00 for all other prescription drugs. The above sought increase in prescription drug cost results in an unwarranted and substantial increase of the prescription drug costs that FMBA members and their families are currently paying. The Town's second proposal seeks to implement a deductible of \$1,500 for the cost of coverage beyond the employee, as well as require new employees to pay the cost of the difference between the Traditional Plan and the HMO.

The above proposals are completely unreasonable, especially since the Town has failed to produce any evidence which demonstrates why it needs to implement such a harsh proposal. More importantly, however, it is abundantly clear that the Town is in the midst of an economic boom due to the large number of residential and commercial properties that are currently being built in the Town. Clearly, the above-requested proposals of the Town relating to health benefits is unreasonable and should not be awarded.

### **DISCUSSION**

The Town and the FMBA have submitted substantial documentary evidence, testimony and oral and written argument in support of their respective last offers. All submissions have been thoroughly reviewed and considered.

I am required to make a reasonable determination of the above 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 to

modify an existing provision, to delete that provision or to add a new term to the Agreement. I have applied that principle to my analysis of the issues in dispute, not only in this proceeding, but in the companion proceeding that concerns the PBA. The burden to be met must go beyond merely seeking a change in the absence of providing sufficient evidentiary support based upon an application of the statutory criteria. Any decision to award or deny any individual issue in dispute, especially those having economic impact, 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 awarding of any single change can reasonably impact upon the resolution of other issues. Put another way, 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.

I also note, at this juncture, that I have also issued an Award between the Town and PBA Local 22. The overall evidence concerning the Town's finances in each case is similar in nature prompting a similar analysis on economic issues due to the financial impact of the Award on the Town's budget and the longstanding relative comparability between the units. The interests and welfare of the public would not be served by ignoring the relative comparability that has evolved between the Township and each of its public safety bargaining units, despite the existence of individual differences that may exist due to the varying nature of the two services. I note that neither award is based upon tying one

unit's award to the other but rather upon an equitable distribution of the Town's funds to both public safety units in a manner that maintains pre-existing parity.

The Town and the FMBA have widely divergent views on what the terms of the new agreement should be, especially on the major economic issues. However, they share a common position on the issue of contract duration. Each proposes a term of January 1, 2007 through December 31, 2011. I accept their positions on contract duration as a stipulation (see N.J.S.A. 34:13A-16(g)(4) and accordingly award a contract term of January 1, 2007 through December 31, 2011.

I first address the proposals that each party has offered that I have decided to deny in their entirety because that proposal has not been supported by a sufficient level of credible evidence notwithstanding either party's sincere belief that a change may be warranted. These issues include the FMBA's proposals to eliminate job duties involving non-emergency transports, the assignment of a Town vehicle to the Deputy Fire Chief, the roll-in of clothing allowance limited to the Fire Inspector and Deputy Chief and the designation of a Training Officer, UFD at the Captain's rate of pay. These issues also include the Town's proposals to revise the grievance and arbitration procedure, to delete the current stipend programs by developing another method of fund distribution and to modify the existing method of determining vacation selection that includes a

limit on accrued vacation time. Each party has advanced rationale in support of these proposals but there is insufficient record evidence to support the awarding of any of the modifications that each party has sought.

I next address the proposals that each party has offered that I have decided to deny based upon the proposals either having undetermined economic impact or economic impact on unit employees or the Town that would not be in relative balance with the terms of the overall award. The arbitrator is required to consider the total annual net economic change caused by the award. I find that the awarding of any of the following proposals would yield a result inconsistent with the total annual net economic change yielded by the terms that I have awarded. These include the FMBA's proposals for Special Night Differential Pay, Senior Officer Pay and the receipt of Overtime at no less than the top firefighter's rate inclusive of longevity. These also include the Town's proposals to terminate the longevity program while red-circling existing payouts and the capping of the maximum payment for terminal leave at substantially reduced levels.

In addition to the above, each party has offered proposals that can reasonably be characterized as personnel related or administrative in nature. These include the Town's proposal to assign staff personnel regardless of rank to the floor/shift rotation to fill vacancies caused by vacation, sick leave or any other absence in the line rotation. This category of issues also includes the FMBA's proposals to designate the Executive Officer position as a permanent Deputy Fire

Chief staff position, to designate the Fire Prevention Specialist, UFD as a regular Staff Firefighter position, and to eliminate the four (4) Battalion Chief positions while converting these positions to Deputy Chiefs. While there are no scope of negotiations petitions pending that I am aware of that would speak to the negotiability of any of these proposals, I am compelled to conclude that the interests and welfare of the public would not be served by this arbitrator venturing into issues such as personnel designation, creation or elimination. All of these proposals have implications that could affect departmental operations and some issues that more properly should be placed before the New Jersey Department of Personnel. Accordingly, I do not award any of these proposals.

There are proposals that concern the assignments that can be made to staff personnel and the resumption or expansion of time off on holidays for these staff personnel. The FMBA seeks to “enforce” the provisions of a prior interest arbitration award in 2004 with regard to the limitation of staff officers being pulled for line tour jobs and to restore all paid holidays for staff personnel. These are disputes that have arisen subsequent to the 2004 interest arbitration award. For the purpose of providing context to these issues. I first address them by way of background.

The 2004 Award, among other things set forth in Section 6, modified the then existing practice of allowing staff officers to take holidays in the form of a



day off or a day earned to a total of three (3) days annually. The rationale for this finding was set forth in that Award at pages 36-37:

Additional issues have been raised concerning the taking of holiday days off and the amount of vacation leave. There is no dispute that holiday pay was included in base salary for all unit members effective January 1, 2001. After this date, line officers were no longer able to take holidays. However, staff officers have continued to receive holidays off in addition to having holiday pay included in their base salary. The Town seeks to eliminate holidays for the steady day men on the same basis as all other members of the fire department except for Christmas day if it falls on a work day. According to the FMBA, staff officers have always enjoyed being off on holidays consistent with Town Hall employees and other Town office personnel. The FMBA also seeks to grieve a practice of receiving off on the following day should a holiday fall on a staff officer's scheduled day off. The FMBA further notes that this practice has since been changed to days earned to be used as a floating day within the year in which it was earned.

In evaluating the merits of this issue, I am compelled to conclude, given the system in place for line officers, that there is an incongruity to having holiday pay folded into base while retaining the ability to take a holiday and/or to "earn" a floating day in the event that a holiday falls on a staff officer's scheduled day off. However, I am persuaded that a modification of this practice rather than its elimination is appropriate during this contract term. Accordingly, I award the following procedure. The existing practice with respect to the taking of holidays in the form of a day off or a day earned shall be limited to three days total per year commencing January 1, 2004.

The 2004 Award also addressed the issue of staff assignments to line duty. The relevant portion of that Award is found at pages 41-42:

An additional issue raised by both parties concerns the deployment of staff officers. The FMBA seeks to prohibit the Town's assignment of staff personnel to fill in for line personnel except when an emergency occurs while on scheduled duty. The FMBA further seeks to prevent the Town from making a temporary transfer of a staff officer when the purpose of doing so is to save on overtime payments to maintain current set manning levels. The Town disagrees and asserts that its ability to assign a staff member to the line is a managerial prerogative which cannot be negotiated. The Town also asserts that it has made such assignments on many occasions in the past citing the certification of Chief Dolaghan. The FMBA, on the contrary, contends that there is a past practice wherein a staff officer will not be temporarily assigned to a line position unless he or

she voluntarily agrees except when there is an emergency. The record also reflects that there has been litigation on this issue during recent months in the form of an unfair labor practice. The parties have agreed to a "stand still" agreement during the pendency of the interest arbitration.

A reasonable balance must be struck on this issue which can accommodate the needs and protect the rights of all parties in the interests of economy, efficiency and safety. An additional factor is the acknowledgement of staff officer job descriptions. The Town has established circumstances under which departmental needs are served by assigning a staff officer to line duty. Such assignments should not be routine but circumstances may exist where the Chief should have the discretion to make such an assignment without having to declare an actual emergency. Thus, I award language which would allow for the Chief to make the assignment of a staff officer to a line position on a non-routine basis when the Chief determines that such assignment is required by departmental needs. Because staff officers will have a work schedule of 10 hours duration, the Chief's authority to make such assignments shall be limited to the normal work hours a staff officer is normally scheduled to work. This will protect the work schedule for staff officers who do not work a 24/72 hour schedule. Any such assignments must also be compatible and consistent with the job classification requirements set forth by the New Jersey Department of Personnel.

The language in the 2004 Award clearly did not contemplate the "routine" assignment of the Deputy Chief for Fire Inspectors to line duty, although it recognized the Chief's discretion to make such assignments where departmental needs are served, even in "non-emergency" situations. To the extent that such assignments may have been made on a "routine" basis, these assignments could stretch beyond the discretion noted in the 2004 Award. To the extent that such assignments can be found to represent the conversion of the staff personnel to line duty on a routine, or ordinary basis, the FMBA urges that the terms of the award limiting the taking of holidays in the form of a day off or a day earned to three (3) be re-evaluated. These issues require continued discussion between the parties for resolution or for the purpose of more fully developing a more complete factual foundation. Although I do not award any contractual changes

on these issues in this Award, I will award a time period to facilitate mutual discussion of these issues. In the event that either party deems that a clarification of the 2004 Award is required within the next six (6) month period, an application to do so may be filed by either party and the issues can be addressed based upon existing circumstances.

The FMBA's proposals concerning EMS must be reviewed in their totality. The record shows that the EMS service provided by the FMBA is substantial and further the interests and welfare of the public. The public, and the Town, is well served by the work that are performed. The number of runs within the Town have been documented as well as the service that extends to performing mutual aid to other communities. The Town also receives monies for such service through billing, although these sums are not always realized due to homeless patients and other circumstances that relate to servicing lower socio-economic geographic areas. The Town's calculation of actual monies received is well below the FMBA's estimates but, nevertheless, revenue is derived from these runs. The Town objects to the FMBA's proposal as unreasonable.

The FMBA has justified the basis for modifications to the various EMS payments and stipends but the increases sought are prohibitive and would cause adverse financial impact. Although the FMBA has submitted extensive comparability evidence on the various levels of EMS payments throughout the State, I am more persuaded that the increases to be awarded for these services

must relate more to providing reasonable rewards for the services rendered while accommodating the financial impact of increases within the total net annual economic changes that have been justified. Accordingly, I award the following:

Article XIX, Section 3 shall be modified retroactive to their effective dates to read:

Effective January 1, 2008, all unit employees with EMT certification shall receive a differential of 1.25%, effective January 1, 2009 a differential of 1.50%, effective January 1, 2010 a differential of 1.75% and effective January 1, 2011 a differential of 2.0%.

Emergency Medical Services: Effective 1/1/99, all unit employees shall be required to obtain and maintain EMT Certifications. Effective 1/1/99, the joint EMS stipend will be eliminated. Stipends for Emergency Medical Services shall be as follows:

	1/1/2008	1/1/09	1/1/2010	1/1/11
	Per Year	Per Year	Per Year	Per Year
Deputy Chief	\$1107	\$1132	\$1157	\$1182
Battalion Chief	\$1107	\$1132	\$1157	\$1182
Captain	\$999	\$1024	\$1049	\$1074
Firefighter	\$285	\$310	\$335	\$360

This stipend shall be payable the following February from the year in which it is earned. These payments shall be one time only, not included in base salary, and not subject to longevity or overtime or other rates. An employee who worked part of the year shall receive a pro rata stipend.

Effective January 1, 2008, firefighters who work the EMT program shall be paid \$55.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2009, firefighters who work the EMT program shall be paid \$57.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2010, firefighters who work the EMT program shall be paid \$59.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2011, firefighters who work the EMT program shall be paid \$61.00 per 24 hour period, payable in the next year after earned. This payment shall not be included in base salary, and not subject to longevity or overtime or other rates. An employee who works part of a 24 hour day shall be paid pro rata.

The costs required by the EMS adjustments, while not subject to precise calculation, reflect a total of approximately \$10,000 to \$11,000 annually for each of the four years for the EMT certification, a total of \$1,325 annually for each of the four years for the yearly EMS stipend, and a total of \$1,500 annually for each of the four years for the daily EMT stipend. I do not award any modification for contract year 2007.

I do not award any of the FMBA's proposals that are directed towards individual stipend increases for the Fire Prevention Specialist or Fire Official.

The FMBA has proposed to modify the existing vacation schedule. After review of the FMBA's arguments and evidence in support of this proposal, and the Town's response, I find insufficient justification to award an increase in the vacation days. I have considered the fact that the FMBA work schedule requires an additional two hours per week when compared to the police department, but I do not find this fact supports a change in the vacation schedule. The comparison of the vacation schedules in the two departments reflects that a reasonable balance exists between days and hours worked and days and hours received in paid vacation time. The proposal is denied.

The Town has proposed to modify the medical insurance program set forth in Article XII. The Town has provided justification for a change in Article XII. The evidence submitted by the Town shows that a comprehensive program is

provided and that there has been substantial increase in premiums. The current program provides for a \$1.00 co-pay for generic drugs and a \$5.00 co-pay for brand name drugs. There are no employee contributions to medical insurance and the Town offers an array of plans, including the Traditional Plan. There have been no changes to Article XII for several years except for the inclusion of a "widow benefits" provision pursuant to the 2004 interest arbitration award. Some additional employee participation in costs is warranted and insufficient evidence exists in opposition to modification other than an unwillingness to increase that participation. A substantial number of the settlements and awards in evidence reflect some increase in employee participation in various forms even in communities who, unlike Harrison, do not receive substantial State subsidy in the form of Distressed City grants.

Based upon the above, I award the following modifications. With respect to Article XII, Section 6, prescription coverage, I award the Town's proposals as phrased in its submission except for a change in the exotic drug co-pay and the effective date:

Prescription co-pay: effective January 1, 2010 the co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$20.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program. The corresponding amounts for mail order shall be the same for a ninety (90) day supply.

I award the Town's proposal that employees hired after the date of the award would have access to the HMO option under the Plan. Existing

employees will retain all rights to scope and option of coverage under the existing Plan. Contributions toward the Plan, but more limited in nature than sought by the Town, would offset some of the burden of premium cost now entirely borne by the Town. Commencing January 1, 2011, unit employees shall contribute \$30.00 per month towards health insurance premiums regardless of plan selection or the extent of coverage. The Town shall provide a Section 125 Plan to allow for pre-tax deductions which will reduce the actual amount that an employee will be required to pay. This shared cost program shall be administered through payroll deductions.

The issue of salary remains a major issue in dispute. The submissions on this issue are very comprehensive. The FMBA focuses on external comparability and the findings of its expert's financial report which depicts the Town as being in a more favorable condition than described by the Town. The Town relies upon its posture as a distressed city, its dependence upon state aid, its rising tax obligations, budgetary pressures including rising pension obligations and its spending and tax levy caps. The Town disputes that the communities that the FMBA relies upon are, in fact, comparable to Harrison.

The record supports an award that is greater than the Town has proposed but less than what the FMBA has proposed. The FMBA's financial report comprehensively details the Town's revenues, its comparative tax structure and notes its trend towards redevelopment. It does support a finding that the Town

can fund this labor contract at a level beyond what the Town insists is the most reasonable sum that it can offer. The report identifies dollars within the budget that could theoretically support the FMBA's demands. However, it does not take into consideration the fact that the Town must allocate its limited resources among many legitimate competing factors and needs and, moreover, must do so without causing a potential for an increase in tax burdens that would be difficult for its residents to meet.

The Town's reliance upon State aid is heavy. The Town's argument that an increasing deficits in the State's budget could reduce the amount of aid that it has been receiving cannot be dismissed as being overly speculative given the State's declining revenues and increasing budget deficits. The Town's surplus, while relatively consistent, has been declining and is modest. The costs required by the FMBA's proposals could curtail the Town's ability to carry surplus funds into succeeding budgets to the extent that it has done so in the past. The terms of the award cannot and do not jeopardize the Town's statutory obligations under the budget cap and the tax levy cap. On the other hand, the comparability evidence introduced by the FMBA demonstrates that the Town's proposal would result in a salary schedule that would be at a competitive disadvantage with other paid fire departments, including some communities who also suffer some degree of financial distress. The FMBA has established that the Town has the capacity to allocate additional funds beyond the Town's proposal without jeopardizing its



finances. The interests and welfare of the public will be served by an award that meets these requirements.

Additional considerations include the cost of living data which is more closely aligned with the Town's proposal and well below the level of wage increases proposed by the FMBA. The record also reflects that there has been continuity and stability of employment within the department which weighs against an award that would require the substantial increases sought by the FMBA in order to hire and retain employees. I have taken into consideration the cost impact of step movement through the schedule and have awarded a differentiated percentage for steps one through seven.

Based upon all of the above, I award the following salary increases and new salary schedule:

Effective January 1, 2007 – increase each rank and the top step of the salary schedule and rank by 3.5% across the board. Steps One through Step Seven shall increase by 3.0%

Effective January 1, 2008 – increase each rank and the top step of the salary schedule and rank by 3.5% across the board. Steps One through Step Seven shall increase by 3.0%

Effective January 1, 2009 – increase each rank and the top step of the salary schedule and rank by 3.5% across the board. Steps One through Step Seven shall increase by 3.0%

Effective January 1, 2010 – increase each rank and the top step of the salary schedule and rank by 3.5% across the board. Steps One through Step Seven shall increase by 3.0%

Effective January 1, 2011 – increase each rank and the top step of the salary schedule and rank by 3.25% across the board. Steps One through Step Seven shall increase by 3.0%

	<b>2006 Existing</b>	<b>2007 3.5%</b>	<b>2008 3.5%</b>	<b>2009 3.5%</b>	<b>2010 3.5%</b>	<b>2011 3.25%</b>
Deputy Chief	\$107,329	\$111,086	\$114,974	\$118,998	\$123,162	\$127,165
Battalion Chief	\$99,299	\$102,774	\$106,372	\$110,095	\$113,948	\$117,651
Fire Captain	\$91,269	\$94,463	\$97,770	\$101,192	\$104,733	\$108,137
Fire Prevention Specialist, UFD	\$76,729	\$79,415	\$82,194	\$85,071	\$88,048	\$90,910
Fire Sub-Code Official	\$13,475	\$13,947	\$14,435	\$14,940	\$15,463	\$15,965

	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Firemen Salary on Initial Appointment Year One Hire/Begin (Step A)	\$29,744	\$30,636	\$31,555	\$32,502	\$33,477	\$34,481
Beginning Year Two	\$41,510	\$42,755	\$44,038	\$45,359	\$46,720	\$48,121
Beginning Year Three	\$50,436	\$51,949	\$53,508	\$55,113	\$56,766	\$58,469
Beginning Year Four	\$53,878	\$55,494	\$57,159	\$58,874	\$60,640	\$62,459
Beginning Year Five	\$56,831	\$58,536	\$60,292	\$62,101	\$63,964	\$65,883
Beginning Year Six	\$60,286	\$62,095	\$63,957	\$65,876	\$67,852	\$69,888
Beginning Year Seven	\$64,535	\$66,471	\$68,465	\$70,519	\$72,635	\$74,814
Beginning Year Eight	\$70,500	\$72,968	\$75,521	\$78,165	\$80,900	\$83,530

The above terms have been calculated based upon data showing an end of 2006 gross salary level of approximately \$4,250,000. The annual cost of the salary portion of the Award in terms of gross salaries expended, as compared with how the parties' proposals affect gross salaries are set forth in the following chart.

	<b>FMBA Proposal</b>	<b>FMBA Gross Salary</b>	<b>Award</b>		<b>Town Proposal</b>	<b>Town Gross Salary</b>
2007	5%	\$4,462,500	3.5%	\$4,398,750	2.75%	\$4,366,875
2008	5%	\$4,685,625	3.5%	\$4,552,706	2.75%	\$4,486,964
2009	5%	\$4,712,050	3.5%	\$4,712,050	2.75%	\$4,610,355
2010	5%	\$5,165,901	3.5%	\$4,876,972	3.25%	\$4,760,192
2011	5%	\$5,424,196	3.25%	\$5,035,474	3.50%	\$4,926,798

The annual cost difference of the gross salaries is \$63,750, \$132,919, \$207,856, \$288,929 and \$388,722 less than the FMBA's proposals over the each year of

2007-2011 time period and \$31,875, \$65,742, \$101,695, \$116,780 and \$108,670 more than the Town's over each year of the same time period.

Based upon all of the foregoing, I respectfully enter the terms of the following award as a reasonable determination of the issues in dispute.

### **AWARD**

1. All proposals by the Town 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 five-year agreement effective January 1, 2007 through December 31, 2011.

3. **Salaries**

The top step and ranks on the salary schedule shall be increased by 3.5% effective on January 1, 2007, 3.5% effective January 1, 2008, 3.5% effective January 1, 2009, 3.5% effective January 1, 2010 and 3.25% effective January 1, 2011. The steps from Initial Appointment through Beginning Year Seven shall be increased by 3.0% in each year. The salary schedule shall read:

	<b>2006 Existing</b>	<b>2007 3.5%</b>	<b>2008 3.5%</b>	<b>2009 3.5%</b>	<b>2010 3.5%</b>	<b>2011 3.25%</b>
Deputy Chief	\$107,329	\$111,086	\$114,974	\$118,998	\$123,162	\$127,165
Battalion Chief	\$99,299	\$102,774	\$106,372	\$110,095	\$113,948	\$117,651
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	<b>2006</b>	<b>2007</b>	<b>2008</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>
Firemen Salary on Initial Appointment Year One Hire/Begin (Step A)	\$29,744	\$30,636	\$31,555	\$32,502	\$33,477	\$34,481
Beginning Year Two	\$41,510	\$42,755	\$44,038	\$45,359	\$46,720	\$48,121
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Beginning Year Seven	\$64,535	\$66,471	\$68,465	\$70,519	\$72,635	\$74,814
Beginning Year Eight	\$70,500	\$72,968	\$75,521	\$78,165	\$80,900	\$83,530

All economic terms, unless provided otherwise, are retroactive to each effective date for those presently employed and those who were employed on each effective date and retired on ordinary or disability pension prior to the date of the Award.

#### **4. Health Insurance**

Article XII, Section 6 shall be modified as follows:

Effective January 1, 2010, the prescription co-pay shall be \$5.00 co-pay for generic drugs; \$10.00 for brand name drugs and \$20.00 for exotic drugs. Prescription on maintenance drugs shall be ordered through the mail order refill program. The corresponding amounts for mail order shall be the same for a ninety (90) day supply.

Effective January 1, 2011, unit employees shall contribute \$30 per month towards health insurance premiums regardless of plan selection coverage. The Town shall provide a Section 125 Plan to allow for pre-tax deductions. Employees hired after the date of the Award shall be entitled to medical insurance under the HMO option.

5. **Payments for EMS**

Article XIX, Section 3 shall be modified retroactive to their effective dates to read:

Effective January 1, 2008, all unit employees with EMT certification shall receive a differential of 1.25%, effective January 1, 2009 a differential of 1.50%, effective January 1, 2010 a differential of 1.75% and effective January 1, 2011 a differential of 2.0%.

Emergency Medical Services: Effective 1/1/99, all unit employees shall be required to obtain and maintain EMT Certifications. Effective 1/1/99, the joint EMS stipend will be eliminated. Stipends for Emergency Medical Services shall be as follows:

	1/1/2008	1/1/09	1/1/2010	1/1/11
	Per Year	Per Year	Per Year	Per Year
Deputy Chief	\$1107	\$1132	\$1157	\$1182
Battalion Chief	\$1107	\$1132	\$1157	\$1182
Captain	\$999	\$1024	\$1049	\$1074
Firefighter	\$285	\$310	\$335	\$360

This stipend shall be payable the following February from the year in which it is earned. These payments shall be one time only, not included in base salary, and not subject to longevity or overtime or other rates. An employee who worked part of the year shall receive a pro rata stipend.

Effective January 1, 2008, firefighters who work the EMT program shall be paid \$55.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2009, firefighters who work the EMT program shall be paid \$57.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2010, firefighters who work the EMT program shall be paid \$59.00 per 24 hour period, payable in the next year after earned. Effective January 1, 2011, firefighters who work the EMT program shall be paid \$61.00 per 24 hour period, payable in the next year after earned. This payment shall not be included in base salary, and not subject to longevity or overtime or other rates. An employee who works part of a 24 hour day shall be paid pro rata.

6. **Staff Officers**

Issues relating to the staff officers concerning holidays and line assignments shall be the subject of continuing discussions between the Town and the FMBA for a period not to exceed six months. In

the event either party deems that a clarification of the 2004 award is necessary, as applied to existing circumstances, an application for clarification of the 2004 interest arbitration award may be filed.

Dated: September 19, 2009  
Sea Girt, New Jersey

/s/  
James W. Mastriani

State of New Jersey }

County of Monmouth } ss: \_\_\_\_\_

On this 19<sup>th</sup> day of September, 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.

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