STATE OF NEW JERSEY
PUBLIC EMPLOYMENT RELATIONS COMMISSION

IN THE MATTER OF THE INTEREST ARBITRATION	DOCKET NO.	IA-2012-045
between		
CITY OF ATLANTIC CITY,		
Public Employer,	**DECISION**	
-and-	**AND**	
IAFF LOCAL 198,	**AWARD**	
Employee Organization		

BEFORE: MICHAEL J. PECKLERS, ESQ., INTEREST ARBITRATOR

DATE(S) OF HEARING: June 13, 2012; June 19, 2012

POST-HEARING BRIEFS: June 26, 2012

DATE OF AWARD: July 12, 2012

APPEARANCES:

For the Public Employer

Steven S. Glickman, Esq., RUDERMAN & GLICKMAN

For the Employee Organization

Mark Belland, Esq., O'BRIEN, BELLAND & BUSHINSKY, L.L.C.
Jeffrey R. Caccese, Esq. "

I. BACKGROUND OF THE CASE

The official website for the City of Atlantic City remarks that it has had a long and varied history. Roughly 11 square miles, Atlantic City was formally opened on June 16, 1880, with fanfare the likes of which had not been seen before. A seaside resort had been born, and by count of the census of 1900, there were over 27,000 residents. This was up from just 250 in the 45 years before. Atlantic City became "the" place to go, with entertainers from vaudeville to Hollywood performing on the piers and at its glamorous hotels. The Miss America Pageant which had been held in Atlantic City intermittently from 1930 - 1935, began to be held at Convention Hall in 1940 and became synonymous with it. After the conclusion of World War II, however, the City suffered a general deterioration and decline in tourism. *See generally*, HISTORY OF ATLANTIC CITY, by Barbara Kozek, Union Exhibit 1.

In 1976, the legislature adopted the Casino Gambling Referendum, which resumed the upward battle that had begun more than 100 years earlier. According to the Official Tourism Site of the State of New Jersey, Atlantic City is the gaming capital of the East Coast, with 30,000,000 visitors per year, thus making it one of the most popular tourist destinations in the United States. The South Jersey Transportation Authority & NJ Transit reported that for 2011 this included 24,293 trips by automobile;

3,223 trips by casino bus; 449 trips by NJ Transit bus; 282 trips by air; and 205 trips by rail. There are also approximately 40,000 individuals who commute to work in the City on a daily basis Id. at Tab 15. In all, there are currently 12 high-rise casino hotel resorts employing 32,823 employees and generating $3,318,000,000 in revenue for 2011 prior to the opening of *Revel* last year. As such, Atlantic City ranks second only to Las Vegas, on the American Gaming Association's TOP 20 U.S. CASINO MARKETS BY ANNUAL REVENUE. *Id.,* at Tabs 9; 11; 12, 15. On February 1, 2011 New Jersey Governor Chris Christie signed into law sweeping legislation that was designed to revitalize the ailing gaming and tourism industries in Atlantic City. Bill S-11 authorized the creation of a tourism district, while S-12 provides for the modernization of New Jersey's casino regulatory structure. *Id.*, at Tab 18.

The City.Data.Com website reflects a 2010 population of 39,558 in Atlantic City, which dropped 2.4% since 2000. The estimated median household income for 2009 was $29,448, with median house or condo value estimated to be $227,069. Numerous casino properties are found within its borders, as well as the Atlanticare Regional Medical Center, the Atlantic City International Airport, and numerous heliports. Educationally, there is the Atlantic City High School, public & private elementary/middle schools, as well as the Atlantic City Free Public Library. The Richard

Stockton College of New Jersey and Rowan University are within proximity, in addition to several county colleges. Atlantic City additionally has an outlet shopping district, and many restaurants. *Id.,* at Tab 9.

The Atlantic City Department of Public Safety operates *inter* alia, a Fire Department, with IAFF Local 198 the majority representative for the purposes of Collective Bargaining. Upon the expiration of the January 1, 2000 through December 31, 2002 C.B.A., on October 16, 2006, P.E.R.C. Interest Arbitrator James W. Mastriani issued an Award on the open issues. The City Council thereafter adopted Resolution No. 852 on October 25, 2006, which authorized the Mayor to execute and City Clerk to attest to said C.B.A. On November 21, 2007 the parties entered into a MEMORANDUM OF AGREEMENT covering the period of January 1, 2008 until December 31, 2011, following negotiations over a successor agreement. The City Council then passed Resolution No. 902 on November 28, 2007, authorizing the execution of the same. *See,* Union Exhibit 1, at Tab 4.

When bargaining broke down following the conclusion of that contract after 3 negotiations sessions, on May 15, 2012, IAFF Local 198 filed a PETITION TO INITIATE COMPULSORY INTEREST ARBITRATION with the State of New Jersey Public Employment Relations Commission (P.E.R.C.), pursuant to N.J.S.A. 34:13A-15 *et seq.* On May 25, 2012, Steven S.

Glickman, Esq., Counsel for the City, supplied a response in accordance with N.J.S.A. § 34:13A-16 (d). After a fruitless mediation session, by letter dated May 29, 2012, P.E.R.C. notified me of my random selection and appointment to serve as the interest arbitrator in the dispute. *Id.,* at Tab 1. Hearings were convened at City Hall in Atlantic City, New Jersey, on June 13, 2012 and June 19, 2012. While mediation failed to resolve all issues, the items that were agreed to must be memorialized. These included the following:

- the City agreed to withdraw its proposal related to Article 27, PERSONNEL COMMITTEE;
- the City confirmed that it made no proposal with respect to Article 33, HEALTH BENEFITS;
- the City agreed to the Union's proposal on adherence to existing language in the FMLA and the NJFLA; NJPFLA.
- the City agreed to withdraw its proposals on Article 31, SUSPENSIONS AND FINES;
- the Union agreed to the City's proposal to delete Article 32, PAGERS.

At hearing, the advocates were provided with a full opportunity to engage in oral argument; to introduce voluminous binders of documentary evidence; and to examine and cross-examine witnesses under oath. IAFF Local 198 President Angelo DeMaio, Jr. and Chief Dennis Brooks (taken out of turn due to unavailability on the second hearing date) provided sworn

testimony on the initial day of hearing. Union Financial Expert Vincent J. Foti and Atlantic City Director of Revenue & Finance Michael Stinson appeared on the second date. At the conclusion of the hearings, comprehensive post-hearing briefs were filed and returnable June 29, 2012. In rendering the instant INTEREST ARBITRATION AWARD pursuant to my conventional authority under law, I have carefully reviewed and fully considered the Final Offers of the parties, in conjunction with the required statutory criteria. The same is issued within the 45 day time period prescribed by N.J.S.A. §34:13A-16f(5)

II. FINAL OFFERS OF THE PARTIES WITH SUPPORTING POSITIONS & AWARD ON EACH

For the sake of arbitral economy, the positions and Final Offers on all issues have been initially set forth at length. The opposing party's response or reply to the same then follows in italics. Finally, my AWARD on each issue appears in a text box. These considerations are then incorporated by reference and specifically addressed with regard to the articulated statutory criteria in Section III, STATEMENT OF THE CASE.

IAFF LOCAL 198

The members of the International Association of Firefighters Local 198 (hereinafter "IAFF" or "Union") are hard-working, dedicated public servants of the City of Atlantic City (hereinafter "Atlantic City" or "City") who regularly place their own lives at risk for the good of the City. It is these

heroic men and women who are the backbone that supports the health and welfare of the City. Nevertheless, the City administration is so vindictive and determined to prove a point that they are willing to gut the Collective Negotiation Agreement (hereinafter "CNA" or "Agreement") with the IAFF to the detriment of the City as a whole. In that regard, it is evident that the City is seeking to payback the IAFF by riding the tide of the current attack on public employees by the current administration in the State of New Jersey and the highly publicized siege on public workers collective bargaining rights in the State of Wisconsin.

The City's draconian final proposals seek concessions so outlandish that, if implemented, would make it impossible to recruit the high level firefighters necessary to properly serve the City, including the casino and tourism industry that it so heavily relies upon. Moreover, the proposed concessions would dramatically demoralize the current membership making it difficult to maintain the high level of service that these men and women currently provide.

Conversely, the IAFF has submitted modest proposals seeking only to update the current agreement, maintain a cost of living standard, and the status quo. As set forth more fully below, the IAFF has submitted the necessary and compelling evidence to warrant granting their proposals. On the other hand, the City's proposals will only serve as a detriment to the

IAFF and the City, and therefore the City's proposals must be denied.

The City's Department of Public Safety operates a Fire Department, which according to the City Fire Department's table of organization should be comprised of approximately two hundred eighty (280) employees. (U-2). The exclusive bargaining representative for the City Fire Department personnel is the IAFF. (U-1, Ex. 1). In that capacity, the IAFF and the City are parties to a CNA which expired on December 31, 2011. (U-1, Ex.4). In an effort to reach an agreement as to a successor CNA, the parties engaged in two (2) negotiation sessions and one (1) mediation session, but, unfortunately, the City was unnecessarily inflexible as to any modification or negotiation concerning its outlandish proposals. As a result, on May 15, 2012, the instant petition for interest arbitration was filed with the New Jersey Public Employment Relations Commission. (U-1, Ex. 1). Thereafter, final proposals were exchanged by the parties and the arbitration hearing was held on June 13, 2012 and continued on June 19, 2012. (U-1, Exs. 2 & 3).

IAFF Final Proposals

IAFF LOCAL 98 FINAL PROPOSALS
(Bold face type indicates a proposed change)

I. Article 36 – Duration of Collective Negotiations Agreement
Local 198 proposes a three-year Collective Negotiations Agreement with a term commencing January 1, 2012 through and including December 31, 2014.

II. Article 16 – Leaves

I. Funeral Leave: (Hereinafter "Funeral Leave Proposal"
1. Five (5) work days shall be granted in the event of the death of a member of the immediate family ***or domestic partner or civil union partner*** *of a firefighter. Immediate family shall include spouse, mother, father, sister, brother, child, mother-in-law, father-in-law, grandparent, grandchild, step-mother, step-father, step-sibling and step-children. These days are to be taken from either the date of death on or from the date of the funeral back.*

4. Travel time of two (2) work days maximum shall be granted to any member for an approved leave, as per subsection 1 and/or 2 above, who must travel more than two hundred fifty (250) miles round-trip to the funeral or viewing. ***For purposes of this provision, two hundred fifty (250) miles shall be calculated by means of vehicular travel.***

New Section *(hereinafter "Family Leave Proposal")*
J. Paid Family and Medical Leave including paid maternity and paternity leave. Local 198 proposes additional contract language confirming the City's obligation to comply with Federal and State Family Leave statutes and to provide paid leave in such instances inclusive of maternity and paternity leave. Paid leave in accordance with relevant law shall be up to twelve weeks in a calendar year and may be taken in whole or partial (intermittent) weeks. Local 198 proposes that the City adopt a written paid maternity and paternity leave policy.

III. Article 20 – Pay Scale (hereinafter "ATB Increase Proposal")

Section E shall read as follows: ***Effective January 1, 2012, an annual wage increase of four percent (4%) will be provided to all members of the bargaining unit, and the salary guides for each year of the contract shall be increased accordingly. Effective January 1, 2013 and January 1, 2014, annual wage increases of two percent (2%) will be provided each year to all***

members of the bargaining unit, and the salary guide shall be increased accordingly. *The increases shall be applied to the titles and ranks of Apprentice I, Apprentice II, Apprentice III, Journeyman I, Journeyman II, Journeyman III, Senior Journeyman, Fire Captain, Fire Inspector, Maintenance Repairs, Custodian, Air Mask Technician, Battalion Chief, Assistant Chief Fire Inspector, Deputy Chief, Chief Fire Prevention.*

New Section *(hereinafter "27 Pay Period Proposal")*

G. Salary shall be paid in bi-weekly increments. In the event there is a contract year with twenty-seven (27) bi-weekly periods, employees shall receive an additional bi-weekly payment in an unreduced amount.

IV. Article 29 – Exchanging Time (hereinafter "Exchanging Time proposal")

A firefighter has the option to exchange time of shifts with a fellow firefighter no more than ***three*** *hundred sixteen (**316**) hours in any single calendar year, taken in four (4) hour minimums, with prior approval of his/her superior officers. Under no circumstances shall the use of this option create any additional cost, through overtime or otherwise, to the City.*

STIPULATIONS

The parties entered into the following stipulations:

1) Base salary is inclusive of holiday pay, longevity, and educational increments.

2) The parties agreed to a three (3) year contract term.

3) The parties stipulated that the State of New Jersey reviews any settlement agreements between the Casinos and the City regarding tax appeals or potential tax appeals.

4) The City is withdrawing its proposal regarding the Article 27 Personnel Committee.

5) The IAFF agrees to the City's proposal to delete Article 32 Pagers.

6) The City agrees to IAFF's proposal regarding the Family Leave.

7) The City agrees to withdraw any proposal under Article 33 Health Benefits.

In general, interest arbitration is a statutory method of resolving collective negotiation disputes between police and fire department employees and their employers. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 80 (1994). The Employer Employee Relations Act (hereinafter "EERA") sets forth nine (9) factors that the arbitrator must consider in issuing an interest arbitration award. N.J.S.A. 34:13A-16(g)(1)-(9); see also Hillsdale, supra, at 82. The nine (9) factors are as follows:

1) The interest and welfare of the public.
2) Comparison of the wages, salaries, hours, and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and conditions of other employees performing the same or similar services 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 decision.
    b. In public employment in general, provided, however, each party shall have the right to submit additional evidence for the arbitrator's decision.
    c. In public employment in the same or similar comparable jurisdictions, as determined in accordance with N.J.S.A. 43:13A-16.2; provided, however, each party shall have the right to submit additional evidence for the arbitrator's decision.

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.
6). The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to N.J.S.A. 40A:4-45.45, and taxpayers.
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 the 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 N.J.S.A. 40A:4-45.45.

N.J.S.A. 34:13A-16(g)(1)-(9).

In general, the relevance of a factor depends on the disputed issues and the evidence presented. Hillsdale, supra, at 82. The arbitrator is not required to rely on all of the factors, but only the ones that the arbitrator deems relevant. *Id,* at 83. It is the arbitrator who should determine which factors are relevant, weigh them, and explain the award in writing. *Id.,* at 82. However, an arbitrator should not deem a factor irrelevant without first considering the relevant evidence. *Id.,* at 83. In issuing an award, arbitrators are required to weigh the relevant factors and explain why the remaining factors are irrelevant. *Id.,* at 84. In sum, an arbitrator's award should identify the relevant factors, analyze the evidence pertaining to those factors, and explain why the other factors are irrelevant. *Id.,* at 85.

Here, the IAFF has submitted sufficient evidence to support the award of all of its final proposals. Conversely, the City has failed to provide sufficient evidence, and often no evidence, to support its proposals, therefore, all of the City's proposals must be denied.

In a good faith effort to negotiate a successor CNA with the City, IAFF Local 198 presented modest proposals for a successor CNA. In more particular terms, the Union asked only that the City confirm that it will comply with federal and state family leave laws; revise the current CNA to reflect an accurate mechanism of calculating distances for funeral leave purposes; correct an inaccuracy by allowing for twenty seven (27) pay periods when such a situation arises; recognize civil unions and domestic partnerships for funeral leave purposes; increase the number of hours that firefighters can exchange time; and, lastly, a modest cost of living increase, which is below the rise in the cost of living. *See,* (U-1, Ex. 7 & 8). In short, the IAFF's proposal requested little more than the correction of certain "loose ends" and inaccuracies in the recently expired CNA and a modest wage increase in an attempt to keep up with the cost of living. Ibid.

In response, however, the City dropped a bombshell on its dedicated firefighters by essentially seeking to eviscerate the CNA in its current form and requiring the IAFF members to accept a significant pay decrease despite the acknowledgement of their hard work and dedication. In that regard,

the City took a hard line on their negotiating position and, in essence, collectively slapped the dedicated firefighters, who put their lives on the line everyday to protect and serve the City, in the face. Incredibly, the City has in bad faith proposed to reduce terminal leave benefits, reduce vacation leave, reduce overtime pay, freeze longevity, reduce educational incentives, and provide absolutely no raises for the current bargaining unit members--not to mention the proposal to reduce the wages and benefits of all future employees. Undeniably, the City is seeking to cut the pay of firefighters by not only offering absolutely no increase in pay, but also seeking to reduce educational incentives, reduce overtime pay, reduce out-of-title compensation opportunities, reduce vacation leave, and freeze longevity. In comparison to the IAFF's rather modest changes to the existing CNA, the City seeks to overhaul the entire agreement to the detriment of the IAFF in every way, as if there existed no history of bargaining for benefits at anytime between these two (2) parties.

While the City has virtually made it a practice to bargain in bad faith, the sheer breadth of its proposals goes beyond the bounds of bad faith and overflows into the category of retribution. It is evident that the City has been awaiting the opportunity to seek retribution for, amongst other things, the police and fire departments success in arbitration involving the City's refusal to pay contractually agreed upon terminal leave benefits. (U-1, Exs.

60-62). The City is further angered by the challenge of the Director of Public Safety's authority in a pending lawsuit. (U-1, Ex. 64). There can be no doubt that the City has been counting the days for the IAFF's CNA to expire so it can seek retribution by engaging in this vindictive and unfair conduct.

The City's ire was evident when it presented its slew of unnecessary and unconscionable proposals seeking significant concessions from the IAFF after the IAFF submitted minimal and very reasonable proposals. Importantly, the City refused to even negotiate its proposal, but, rather, held steadfast in their position on the concessions, evidencing its true desire to break the IAFF. Notably, the IAFF was forced to file an unfair practice charge with P.E.R.C. because the City failed to provide the necessary documents to engage in meaningful negotiations, including failing to provide a scattergram until the first day of hearing. (U-1, Ex. 65). As expected, the unfair practice charge is still pending and the IAFF is still awaiting documents.

Furthermore, but no less importantly, the City is keenly aware that the CNAs for Police Benevolent Association Local 24 (hereinafter "PBA") and the Superior Officers Association (hereinafter "SOA"), which are the bargaining units representing police officers and superior officers, respectively, in the City, are set to expire at the end of the year. The City undoubtedly is using the IAFF CNA as a template in order to attempt to unfairly and unnecessarily gut the contract of the other bargaining units of the City. The outcome of

this Arbitration will determine the wages, benefits, and working conditions for thousands of City employees.

However, the City's attempts must fail because the City is unable to produce any evidence to support their draconian proposals that, if implemented, would undoubtedly destroy the morale of the current membership and make it much more difficult to recruit highly qualified new employees to effectively serve the City and the businesses that support the City. This is especially disconcerting considering that all newly hired firefighters during the term of a successor CNA will be covered by the federal Staffing For Adequate Fire and Emergency Response (SAFER) grant awarded to the City in the amount of $9,726,403.00, which contemplates a four percent (4%) cost of living increase for employees covered under the grant. (U-9). On the other hand, the Union is able to produce evidence in support of its proposals and the small economic impact that will result if the economic proposals are implemented. Accordingly, the arbitrator should award IAFF Local 198 all of its proposals and strike down each of the City's proposals.

1. ***IAFF'S FINAL PROPOSAL SHOULD BE AWARDED IN WHOLE AS IT IS IN THE BEST INTEREST OF THE MEMBERSHIP, THE CITY, AND THE PUBLIC.***

A. The IAFF's Funeral Leave Proposal Is Reasonable, Prudent, And Of No Economic Impact To The City, Therefore, It Must Be Awarded.

The IAFF's funeral leave proposal is a two part proposal to amend Article 16 of the CNA. The first proposal is simply to insert language to include civil union partners and domestic partners into the group of employees entitled to funeral leave. During his testimony, IAFF Local 198 President Angelo DeMaio succinctly summarized the purpose of the proposal, which was to allow those groups recognized by the law to have the opportunity to have leave time to grieve for a loved one. This proposal is in reality an update that the City should have proposed on its own to recognize civil unions and domestic partnerships as it is the appropriate course and it is in the best interest of the City as an employer. To exclude the requested groups is, frankly, discriminatory and offensive, therefore, the City should be proposing to include these groups in the funeral leave provision. *See, New Jersey Law Against Discrimination*, N.J.S.A. 10:5-12. It is evident that this portion of the proposal is reasonable, has no economic impact on the City, and is in the best interest of the public, therefore, the proposal must be awarded.

The second part of the proposal involves the calculation of mileage. Under the CNA, an employee is permitted two (2) days of funeral leave if that employee must travel over two hundred fifty (250) miles round trip to attend a funeral or viewing. Currently, the City calculates the two hundred fifty (250) miles, in the words of President DeMaio, "as the crow flies."

Unfortunately, such a method is not a reliable indicator of the distance traveled to attend a funeral or viewing as none of the IAFF members are crows so they must rely on more traditional means of transportation. Instead, the IAFF reasonably is requesting that vehicular directions using an internet direction website such as "mapquest.com" be used to calculate the mileage. It is a much fairer means to calculate mileage for this purpose.

Neither of the aforementioned proposals have any real economic impact to the City. In addition, these proposals are fair and reasonable and will have no negative impact on the public. To the contrary, the proposals, especially the proposal seeking to make employees in domestic partnerships and civil unions eligible for funeral leave, is a public benefit because it recognizes such relationships and it protects the City from potential litigation for excluding the aforementioned legally protected groups. Therefore, there can be no real questions that the IAFF's funeral leave proposal must be awarded.

Atlantic City opposes the awarding of this proposal. The Employer argues that the IAFF has failed to meet its burden of proof to support these changes in the collective bargaining agreement. Further, Atlantic City cautions that this would grant IAFF Local 198 members a greater financial leave benefit than other City employees. There is accordingly no reason for the proposal to be awarded.

AWARD: The Union's Article 16 Leave proposal is awarded. President DeMaio provided credible testimony concerning the changes to *Funeral Leave which* explained that the inclusion of the terms *civil union or domestic partner* was designed to comport with existing law. This will be of minimal impact to the City and furthers the interest and welfare of the public. The testimony also explained the rationale for the calculation of the 250 miles, and attendant difficulties in the past using "as the crow flies." This is particularly relevant in Atlantic City and the surrounding area, where travel over bridges to attend funerals is often unavoidable. I am mindful of the City's argument that this will bestow leave benefits in excess of those enjoyed by other City employees, but find that is not a sufficient basis to reject the proposal. As to the FMLA language included in a new Section J of Article 16, the same was agreed to by the City during mediation.

B. The IAFF's Exchanging Time Proposal Has No Adverse Economic Impact And Creates Flexibility, Therefore, It Must Be Granted.

In its current form, Article 29 of the CNA allows firefighters the option to exchange time of shifts with a fellow firefighter, but exchange of time is limited to two hundred sixteen (216) hours in a single calendar year. The IAFF has proposed that Article 29 be increased to permit firefighters the option of utilizing up to three hundred sixteen (316) hours of exchange time.

President DeMaio clearly testified at the arbitration hearing that the additional time will not create any overtime and, in fact, will not have any economic impact for the City. Instead, it allows firefighters more flexibility and limits the need to utilize leave time unnecessarily. Since there is no economic impact, and the proposed change would benefit both the City and the IAFF membership, the proposal must be awarded.

The Employer recognizes the testimony of the IAFF Local 198 President, that he is simply seeking to memorialize what he and Fire Chief Brooks work out informally. On this basis, Atlantic City urges that it is unnecessary and unfair to saddle the Fire Department contractually with an increased benefit that came about only because the Fire Chief worked with and accommodated the Association on occasions, when necessary.

AWARD: This proposal is not awarded, as the Union has not established by a preponderance of the credible evidence that there is a need to modify and enhance the existing 216 hours that is provided annually by Article 29. Instead, President DeMaio's testimony convinces me that he and Chief Brooks are working together well to accommodate any additional needs, as necessary. And while I fully appreciate the intent and efficacy of the language, no operational difficulty has been demonstrated with the current language. Under these circumstances, I accordingly agree with the Employer that it is unnecessary and unfair to attempt to add to the existing contractual obligations

C. The IAFF's Bi-Weekly Pay Proposal Should Be Awarded As It Is A Mechanism To Effectively Address An Outstanding Pay Issue.

While this is one of the more difficult proposals to grasp conceptually, it is one of the most critical. The proposal seeks to add a new provision to the CNA to address an inadequacy and patent unfairness in the City's payroll system. President DeMaio explained during the arbitration hearing that the firefighters are considered salaried employees, however, they are treated as hourly employees for payroll purposes. This creates a situation every eleven (11) years when there is a twenty seventh (27th) pay during the year. In order to address the 27th pay issue, the City has been paying the IAFF

membership on an hourly basis and reducing their rate, effectively causing the IAFF membership to lose pay. In an effort to correct this issue, the IAFF submitted this proposal, which would make the membership whole.

As a matter of equity, the IAFF's Bi-Weekly Pay proposal should be awarded so the payroll and pay inadequacies can be corrected going forward.

Atlantic City challenges the propriety of this proposal on several grounds. It preliminarily and substantially asserts that it is statutorily infirm, as an interest arbitrator is prohibited from considering labor organization proposals for new benefits. However, in the event that I find I have jurisdiction to entertain the same, Atlantic City finds that .5% must then be added to the IAFF Local 198 economic proposal for each year. Finally, the Employer lodges the practical complaint that to modify its payroll system for one bargaining unit would be absolutely unreasonable if not impossible to implement, as well as violative of the bargaining rights of other employees.

AWARD: This Union proposal is not awarded. I appreciate the inequity of this complex situation. However, a number of considerations militate against such a result. Initially, and most critically, N.J.S.A. 34:13A-16.7 (b) prevents interest arbitrators from considering new base salary items and other non-salary economic issues that were not contained in the prior C.B.A. Jurisdiction to award this proposal therefore does not exist. On a pragmatic level, to even attempt to modify the Atlantic City payroll to reflect the awarding of such a proposal would be an administrative nightmare if not an impossibility at best. The Employer has also pointed to the potential impact on other bargaining units that are not a party to the instant case. For all these reasons, the proposal is rejected.

D. *The IAFF's Proposed Across The Board Pay Increase Should Be Approved Because The City Has The Ability To Pay And It Benefits The Interest Of The Public.*

The IAFF has proposed across the board (hereinafter "ATB") salary increases for 2012, 2013, and 2014 in the amounts of 4%, 2%, and 2%, respectively. However, the IAFF made it abundantly clear during the arbitration hearing that the proposal is not meant to violate the hard cap provisions as set forth in N.J.S.A. 40A:4-45.45 (hereinafter "hard cap"). Moreover, the request for the four percent (4%) increase in 2012 is an effort to maintain parity with the police bargaining units, which have traditionally had parity with the IAFF. Pursuant to the hard cap, an arbitrator has limited ability to award increases above two percent 2% of the base salary items. N.J.S.A. 34:13A-16.7(b). "Base salary" is defined by the EERA as follows:

> The salary provided pursuant to a salary guide or table including any amount included for longevity or length of service. It shall also include any other items agreed to by the parties, or any other item that was included in the base salary as was understood by the parties in the prior contract.
>
> N.J.S.A. 34:13A-16.7(a).

With that understanding, the IAFF proposes that the award be provided within the bounds of the law. Accordingly, based on the information and documentation provided by the City, it is evident that there are sufficient funds within the hard cap to fund ATB raises for the IAFF membership. Moreover, there is sufficient flexibility within the tax levy cap and the appropriations cap to grant such a proposal.

Here the parties agreed that the calculation of base salary must include the salary, longevity, holiday pay (already included in salary), and education incentives. The salary guide, which does not include longevity or educational incentives, for the employees of the IAFF bargaining unit as of the expiration of the CNA on December 31, 2011 is as follows:

Apprentice I	$ 56,587.00
Apprentice II	$ 58,854.00
Apprentice III	$ 61,090.00
Journeyman I	$ 67,607.00
Journeyman II	$ 74,126.00
Journeyman III	$ 80,645.00
Sr. Journeyman	$ 91,575.00
Captain	$104,326.00
Battalion Chief	$118,997.00
Asst. Chief Fire Insp.	$118,997.00
Deputy Chief	$136,030.00
Fire Official	$136,030.00

As set forth more fully below, in calculating base salary the IAFF followed the statutory guidelines and properly calculated base salary and the costs of increments and longevity. Conversely, the City improperly calculated base pay by prorating the increases employees received in 2011; by failing to include the pay of employees whose employment was terminated in 2011; and by calculating increased increments and longevity for terminated employees.

1) The IAFF's Proposal Is Within The Statutory Hard Cap, Therefore, The Arbitrator May Award The IAFF's Proposal.

The IAFF's proposal does not violate the hard cap. The 9th statutory criteria requires that an increase must not violate that statutory restrictions imposed on the employer by N.J.S.A. 40A:4-45.45. N.J.S.A. 34:13A-16(g)(9). Here, it is evident that the IAFF's proposal is within the statutory limits. In comparison, the City's calculations must not be accepted because they are fatally flawed.

a. The City's Hard Cap Analysis For The IAFF Membership Incorrectly Calculates The Amount Of Available Money For Across The Board Cost Of Living Increase For The IAFF Membership.

Not surprisingly, the City's calculations are fundamentally flawed for several reasons. First, the City prorates the base salary in 2011 and carries over the increments for those employees who received salary increases in 2011, namely employees hired in 2005 and 2007. The definition of base salary specifically requires "the salary provided pursuant to a salary guide or table." N.J.S.A. 34:13A-16.7(a). It does not permit the City to prorate or exclude those salaries as it sees fit.

Moreover, the City provides increments and longevity to numerous employees who are no longer employed by the City or whose pay rate was increased. More specifically, the City improperly included increases for Kevin Evans (deceased), Pat Ruane (retired), Thomas Bell (retired), Matthew Fox (no longer working), William Case (no longer working), Shay Steele (salary was incorrect, he should have been at top step in 2011); Thomas Kearsley

(retired); Kevin Capone (retired); Jeff Harvey and Brad Cress (retired).

It is axiomatic that the City cannot include increments and longevity for employees who are not, in fact, receiving it. To hold otherwise would be a complete miscarriage of justice and fly in the face of the intent of a statute that already hamstrings police and fire personnel in their negotiating rights. Including the costs of increments and longevity is especially inappropriate in this circumstance because the cost of filling the positions vacated by the termination of these employees is covered by the SAFER grant.

The City's improper and self-serving calculations do not stop there. The City unbelievably omitted from its calculations the 2011 base salary for several employees who received pay but retired in 2011. Those employees are as follows:

Employee	Status	Date	Salary	Longevity
ALLEN, RICHARD	RETIRED	6/1/2011	91,575	9,158
ALLISON, BENNETT	RETIRED	6/1/2011	91,575	9,158
FRANCESCO, VICTOR	RETIRED	2/1/2011	136,034	13,603
HOLMES, GARY	RETIRED	2/1/2011	118,997	11,900
RUANE, JAMES	RETIRED	5/1/2011	91,575	9,158
SMITH, PAUL	RETIRED	5/1/2011	91,575	9,158
WILSON, ADRIAN	RETIRED	4/12/2011	104,325	10,433
TOTAL			**$725,656**	**$72,566**

See, Union Exhibits 5; 6.

By failing to include the above retirees in the calculation of base salary, the City failed to follow the statutory criteria by not including the salaries of all the employees in the salary guide in 2011. The above employees were unquestionably on the payroll in 2011 however, the City inexplicably does not include them in its base salary analysis. It is incomprehensible to suggest that employees who were employed in 2011 were not part of the base salary for that year. As such, the aforementioned terminated employees must be included in the base salary calculation.

In sum, the City's analysis must not be considered because the City prorated the salaries for the base year of 2011; the City included increment and longevity for terminated employees and employees not entitled to such increases in its calculations under the hard cap; and the City failed to include employees whose positions were terminated in 2011 as part of the base salary calculation.

b. The IAFF's Hard Cap Calculations Correctly Reflect The Amount That May Be Awarded Under The Law For Across The Board Cost Of Living Increases For The IAFF Membership.

The IAFF followed the statutory mandates by including the employees employed in 2011 in the base salary utilizing the salary guide salaries each employee received. *See,* U-5. Additionally, the IAFF calculated the amount allowable for an increase including only the employees entitled to an

increase. Additionally, the IAFF included the following employees employed by the Fire Department in 2011:

RETIREE/TERMS

Cress	91,575
Harvey	91,575
Ruane, P.	104,325
Bell	136,030
Capone	104,325
Allen	91,575
Allison	91,575
Francesco	136,034
Holmes	118,997
Ruane, J.	91,575
Smith	91,575
Wilson	104,325
Evans	74,126
Kearsay	74,126
Fox	58,854
Case	58,854
Total	**$1,519,445**

(U-6)

In addition to being included in the base salary, the City receives the benefit of not paying the salaries or benefits of these employees going forward. This should be considered when evaluating the City's ability to finance an ATB increase, and it should also be considered for the purpose of the hard cap analysis.

In that regard, P.E.R.C. recently held that retirements are too speculative for the purposes of providing a credit to a bargaining unit when determining the amount of available funds under the hard cap. See Borough of New Milford and PBA Local 83, PERC No. 2012-53, Docket No. IA-2012-

008, *15 (April 9, 2012). PERC's rationale for deeming retirements are too speculative appears to be the difficulty associated with calculating retirements into the hard cap understanding the potential to fill those positions through hiring, which would create unknown future costs. *Ibid.*

The concern of PERC in New Milford seemed to stem from the inability to determine the future costs of employees, therefore, PERC determined that the retiree costs should carry forward. PERC's position is wholly unfair to the bargaining unit members and is not consistent with the statutory intent of the hard cap. In that regard, the statutory intent is not to save the employer money at any cost. Instead, the intent is to temporarily limit the amount the employer is able to expend on salary increases to two percent (2%). Furthermore, PERC's analysis in New Milford is equally speculative in that it presumes new hires and promotions will be made during the course of a successor CNA and this decision is ripe for appeal. This is especially true because PERC's position in New Milford is not only speculative but creates a windfall for the employer that goes beyond what is provided for by the statute.

Although the New Milford decision is ripe for appeal, the instant matter is clearly distinguishable from New Milford because there is no uncertainty and there are no unknown future costs. In other words, no speculation is necessary. The cost savings have been achieved by the City

and the new hire salaries will be covered under the SAFER grant through the life of the CNA, if the term is accepted. To attempt to suggest that the City is not achieving a cost savings is factually erroneous.

The cost of the salary and benefits for retirees is eliminated from the amount paid by the City for the proposed length of the contract because the cost of a newly hired employee is covered under the SAFER grant. Since the employees whose employment was discontinued represent a significant cost savings to the City, which will not fluctuate and, in fact, will likely increase throughout the proposed term of the agreement, the City is realizing a substantial savings. Under any conceivable scenario, this matter is plainly distinguishable from New Milford as the City will receive a savings of a minimum of ***$4,558,335.00***, which will be demonstrated below, as a result of retirees and there is no speculative hiring that will in any way increase the money the City will be required to expend for salaries during the life of the CNA. This amounts to a minimum savings by the City of twenty five percent (25%) of the total base salary for employees in 2011. To find otherwise, would be legally and factually erroneous. It is with that understanding, that this case is distinguishable from New Milford, therefore, the IAFF must receive a credit under the hard cap for the ATB increases resulting from retirements and terminations.

In that regard, the chart below sets forth the amount of money

necessary to fund the maximum increase under two (2) separate scenarios. The first scenario reflects ATB increases of four percent (4%) in 2012, one percent (1%) in 2013 and one percent (1%) in 2014. The second scenario reflects ATB increases of two percent (2%) each year of the proposed term of the agreement. The available funds reflected in the chart are based on a base salary inclusive of the employees whose positions were terminated in 2011. Furthermore, the chart reflects the amount of the short fall to fund an increase under the hard cap as well as the additional money that will be saved through the vacancy of positions in 2011 and to date in 2012 that can be used to fund the full ATB increase.

Salary Cap Impact Summary [1]

Year	Base Salary (Excluding Retirees)	ATB Increase Requested	Needed For ATB	Available Funds [2]	Shortfall	Salary Funds Saved Through Retirees/Term [3]
2012	18,897,824	4%	755,913	183,411	(572,502)	1,519,445
2013	19,833,058	1%	198,331	118,316	(80,015)	1,519,445
2014	20,328,745	1%	203,287	289,961	86,674	1,519,445
			1,157,531	**591,688**	**(565,843)**	**4,558,335**
2012	18,897,824	2%	377,956	183,411	(194,545)	1,519,445
2013	19,455,101	2%	389,102	118,316	(270,786)	1,519,445
2014	20,141,560	2%	402,381	289,961	(112,870)	1,519,445
			1,169,890	**591,688**	**(578,202)**	**4,558,335**

1/ The purpose of this summary is to highlight the financial impact of the increases under an allowable ATB hard cap scenario.

2/ The available funds are calculated according to the base salary including employees who retired in 2011 as set forth in union Exhibit 5.

3/ This is the amount that the City will save over the course of the proposed term of the CNA for employees whose positions were terminated in 2011 and to date in 2012, understanding that the retirees will be replaced utilizing the SAFER grant.

As is demonstrated in the chart above, there is more than an overwhelming surplus of funds available from retirement savings, and other employment terminations to make up for any shortfall to fund a maximum allowable ATB increase under the hard cap. The City should not be permitted to have a windfall resulting from the SAFER grant while the IAFF membership is sucked into a statutory black hole. This is especially true considering that over the life of the proposed CNA, the City will save a minimum of ***$4,558,335.00*** as the result of retirements and other terminations, which does not include the potential additional separations or health benefit costs. As previously mentioned, the City cannot claim this is speculative because there are no increased future costs during the term of the CNA for new hires since they are covered under the SAFER grant. Accordingly, the IAFF should be awarded the maximum amount allowable under the hard cap for ATB increases.

2) The Modest ATB Increases Made By The IAFF Are In The Interest And Welfare Of The Public.

The proposals by the IAFF do not have an adverse effect on the public. Quite to the contrary, the public receives a benefit from this proposal. Indisputably, the public is a silent party to the interest arbitration process. Hillsdale, supra, at 82. The public is affected by police and fire salaries in many ways, but, most notably, in the cost and adequacy of police and fire protection. *Id.,* at 82-83.

The fire and police presence is particularly important in the City of Atlantic City considering the City is primarily supported by tourism and the casino industry. In order for Atlantic City to remain a viable tourist attraction, the City must be safe for visitors to the City. In that regard, the morale and the quality of the City's Fire Department is critical. In order to attract top tier talent to the Fire Department, and maintain an effective and efficient Department, the salary and benefits of the firefighters must be a means of recruiting such talent. Otherwise, potential recruits will simply seek other Departments with better wages and benefits. In order for the City to continue to provide a high level of service vital to the casino industry, the casino patrons, and other tourists, the City must continue to provide adequate wages and salaries to recruit firefighters and maintain the morale of the existing firefighters. For that reason, it is in the interest of the public to award the ATB increases to the IAFF.

THE RESPECTIVE POSITIONS WITH REGARD TO THE CALCULATION OF THE BASE SALARY, AND THE COSTING OUT OF EACH FINAL OFFER ON ECONOMIC ISSUES ARE DISCUSSED MORE FULLY IN SECTION III OF THIS AWARD.

3). 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 Other Employees Performing The Same Or Similar Services With Other Employees Generally.

In addressing the second and third criteria of the statutory analysis,

the evidence undoubtedly demonstrates that the IAFF bargaining unit has a wage and benefit package that is equal to and, in certain circumstances, less than the wage and benefit package of internal bargaining units and external bargaining units that most closely compare to Atlantic City. N.J.S.A. 34:13A-16(g)(2) and (3).

While the statute requires that the bargaining unit be compared to a similar private sector employer, the IAFF submits that it would be patently unfair and a waste of resources to attempt to compare the Atlantic City Fire Department to any private entity. See N.J.S.A. 34:13A-16(g)(2(a). It has been routinely held that police work cannot be compared to private sector employment. Borough of River Edge and PBA Local 201, PERC No. IA-97-20. Similarly, the arbitrator should not consider private employment as part of the analysis of the proposals under the statutory criteria for firefighters.

While internal and external comparability in the public sector should be considered, it is difficult to place great weight on these criterion because Atlantic City is a unique municipality. See N.J.S.A. 34:13A-16(g)(2(b) and (c). As previously stated, Atlantic City is less than eleven (11) square miles and is home to less than forty thousand (40,000) residents. (U-1, Exs. 6 &9). Yet, there are more than thirty million (30,000,000) visitors each year to the City and there are twelve (12) high rise casinos. Ibid. In addition to being a tourist attraction for its casinos, Atlantic City is a beach community

bordered by the Atlantic Ocean. (U-1, Ex. 5). Frankly, it would be difficult to point to another community like it in the country. Nevertheless, the IAFF compared Atlantic City to the other municipalities in Atlantic County that have a paid fire department. Also, the IAFF compared the Fire Department to other large municipalities that have tourist attractions such as Camden, Trenton, Newark, and Asbury Park. In these comparisons, the IAFF wages and benefits are equal or less than the external comparables, especially the larger municipalities, despite the unique situation that exists in Atlantic City.

Due to the City's uniqueness, the internal comparables are a better comparison than the externals because the other bargaining units within the City face similar challenges unique to Atlantic City. In Atlantic City there are six (6) bargaining units in addition to the IAFF, however, only three (3) of the bargaining units (PBA, SOA, and AFSCME Local 2303C) have CNAs that remain in effect. Notably, the PBA and SOA CNAs are set to expire at the end of 2012.

After reviewing the comparables below, it will be evident that overall, the IAFF has wages and benefits equal to or less than most of the other bargaining units in the City.

Bargaining Unit	CBA Effective Dates	% Increases	Salary Range
IAFF Local 98	January 1, 2008-December 31, 2011	January 1, 2008- 4.0% January 1, 2009- 4.0% January 1, 2010- 4.0% January 1, 2011- 4.0%	**Firefighters** $51,598.00-$93,964.00 **Fire Inspector** $83,158.00-$100,519.00 **Fire Official** $104,171.00-$108,641.00 **Captain** $104,171.00-$108,763.00 **Battalion Chief** $116,127.00-$120,993.00
PBA Local 24	January 1, 2008-December 31, 2012	January 1, 2008- 4.0% January 1, 2009- 4.0% January 1, 2010- 4.0% January 1, 2011- 4.0%	***Officers*** ***Steps 1-7*** ***(base w/ holiday)*** $48,397.00-95,231.00 ***Sergeants(base with holiday)*** $89,173.00-$108,493.00 ***Lieutenants (base with holiday)*** $97,304.00-$118,335.00
ACSOA	January 1, 2008-December 31, 2012	4.0%	
AFSCME Local 2303	2006 through 2009	2006- $1,300.00 added to annual salary 2007- $1,300.00 added to annual salary 2008- $1,900.00 added to annual salary 2009- $1,900.00 added to annual salary	N/A
AFSCME Local 2303 C	2009 through 2012	January 1, 2009- 4.0% January 1, 2010- 4.0% January 1, 2011- 4.0% January 1, 2012- 4.0%	N/A
Supervisors	January 1, 2008- December 31, 2011	January 1, 2008- 4.0% January 1, 2009- 4.0% January 1, 2010- 4.0% January 1, 2011- 4.0%	N/A
ACWCPA	2007 through 2010	January 1, 2007- 4.0% or $1,600, whichever is greater. January 1, 2008- 4.0% or $1,600, whichever is greater. January 1, 2009- 4.0% or $1,600, whichever is greater. January 1, 2010- 4.0% or $1,600, whichever is greater.	N/A

The chart above demonstrates that not only will the PBA and SOA receive a four percent (4%) increase in 2012, but the parity that currently exists between the police and firefighters will be affected by an award in 2012 for an ATB increase that is less than four percent (4%). Moreover, the other bargaining units, absent blue collar workers, while incomparable as far as salary range, also received a four percent (4%) increase.

As addressed more fully in the "Pay Scale Proposal" section of this brief, the IAFF's salary range is the same, similar, and in many instances less than larger municipalities. In fact, in certain municipalities in Atlantic County, the IAFF bargaining unit maximum pay rate is less than the maximum pay rate for other smaller municipalities.

Furthermore, PERC's salary analysis reflects an average increase resulting from interest arbitration awards in the amount of 1.82 in 2012 and 2.05 in 2011. *See,* U-1, Ex. 20. The analysis also reflects an average increase of 1.83 in 2012 and 1.87 in 2011 for settled agreements. Ibid. Critically, it demonstrates that even under a hard cap analysis other public sector municipalities are able to fund ATB increases.

Based on the fact that other comparable employees and departments are equal to or greater than the IAFF in terms of salary, and in general police and fire bargaining units receive increases in the range that the IAFF is requesting here, the IAFF's proposal is appropriate and should be awarded.

4) The City Is Within Its Lawful Authority To Provide For The Proposals Of The IAFF And The City Will Not Suffer Any Significant Financial Impact By Awarding the IAFF's Proposals, Therefore, The IAFF's Proposals Should Be Awarded.

The only proposal of the IAFF that must be considered in regard to the fifth (5th) statutory criteria is the ATB increases. The other IAFF proposals have no economic impact on the City. Among the factors to consider are the limitations imposed upon the employer by N.J.S.A. 40A:4-45.1 *et seq.*; N.J.S.A. 34:13A-16(g)(5). With that understanding, the IAFF has demonstrated that the City has the ability to pay based on the budget and within the statutory tax levy cap and appropriations cap limits.

The arbitrator must take into account, to the extent 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 required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for

which public monies have been designated by the governing body in a proposed local budget. Hillsdale, supra, at 82.

Here, the IAFF's financial expert, Vincent Foti, credibly testified that the City had the ability to fund the proposed increases within the limits of the statutory tax levy cap and appropriations cap. Mr. Foti found the City is in sound financial condition, and summarized his testimony regarding the City's financial condition and ability to pay as demonstrated in the charts below with explanations based on the documents provided to him.

Results of Operations *(AFS Sheet 19)*

YEAR	*AMOUNT*
2011	*$200,495*

The Results of Operations indicates the ability to re-generate surplus. The City without a doubt has this ability. This is the equivalent of the "bottom line" in the private sector.

Unexpended Balance of Appropriation Reserves *(AFS Sheet 19)*

Year	***From***	***Amount***
2011	***2010***	***$1,664,733***

The City continues to generate excess budget appropriations. This affords them budget flexibility. Any agency would have negative numbers if they had serious financial problems. They have excess budgeted funds.

Sheet 17a of the 2012 Budget indicates Reserve balances $8,546,616 in Salaries and Wages of which $1,550,164 is from Fire Salaries (sheet 15a)and $1,959,674 in Other Expenses. Clearly Budget Flexibility.

Tax Rates *(2010 Report of Audit)*

Year	*Municipal*	*County*	*School*	*Total*
2012	***2.15 Est***	*n/a*	*n/a*	*n/a*
2011				*1.95*
2010	***0.93***	*0.26*	*0.58*	*1.77*
2009	***0.87***	*0.24*	*0.55*	*1.65*
2008	***0.80***	*0.26*	*0.52*	*1.59*

The Tax Rate had modest increases in each year, which is recommended by the credit rating agencies in order to maintain stability in the normal increases that every entity experiences on a yearly basis. The municipal tax rate has had the normal recommended increases.

TAX COLLECTION RATES *(2010 Report of Audit)*

YEAR	ACTUAL RATE
2011	98.76%
2010	99.29%
2009	99.83%
2008	99.48%
2007	99.90%
2006	99.22%

The Tax Collection rate is excellent. It is almost perfect.The State average is 93%

Debt Service *(2010 Report of Audit)*

EQUALIZED VALUATION BASIS	DECEMBER 31	$18,811,642,346
EQUALIZED VALUE	3.5%	$ 658,407,482
NET DEBT	**0.65%**	$ 122,437,267
REMAINING BORROWING POWER		$ 535,970,215

The City is well below the statutory debt limit and has more than sufficient borrowing power remaining. This is a clear indication of a sound financial condition.

CAP EXPENDITURE CALCULATIONS *(Budget sheet 3c 2012)*

Expenditure *CAP Total Allowable*	*$215,546,885.60*
Actual Budget Sheet 19	*190,311,968.00*
Available	***$ 25,234,917.60***

CAP LEVY CALCULATION ***(Budget sheet 3b(A) 2012)***

Levy CAP *Maximum Allowable*	*$ 215,415,717*
Amount to be Raised by Taxation	*198,563,049*
Below Allowable CAP Levy	***$ 16,852,668***

It is evident that the city does not have either a CAP LEVY or a CAP EXPENDITURE problem.

As the Foti testimony demonstrates, the City has flexibility under the

tax levy cap and the appropriations cap to fund the proposed ATB increase. Furthermore, the City's Fire Budget demonstrates that the City has budgeted for wages that were far in excess than were actually appropriated for the past several years. (U-1, Ex. 59). Most notably, last year the City budgeted $21,919,396 for wages, however, the City's actual appropriation for the 2011 year was $21,136,901, which is a difference of $782,495. Although the City failed to expend nearly $800,000 in salary and wages for Fire Department personnel in 2011, it incredulously suggests it cannot afford ATB increases.

It is also important to note that the City's argument that it has a significant increase in debt service presently, and on the horizon, because of casino tax appeals has no merit. First, the only tax appeals or settlements with casinos were included in the proposed 2012 budget. All other tax appeals and pending settlements are merely speculative, and, therefore cannot be considered as part of this arbitration. To do so, would open the door to suggest an arbitrator should speculate about potential non-recurring revenues (i.e. "one shot deals"). The parties are required to present evidence based on the facts at hand at the time of arbitration. It is an impossible task to make an award based on potential future debt that may or may not occur during the term of a CNA just as it would be to speculate upon future growth. To even suggest that prospective tax appeal costs

should be considered as part of this arbitration borders on desperation by the City.

Moreover, after the City provided Mr. Foti with the information concerning the tax appeals for the first time at the end of the last day of hearing on June 19, 2012, Mr. Foti had the opportunity to review the alleged debt service figures in light of the City's position. After he was able to review the City's documents in light of the City's argument that the debt service was going to increase due to the outstanding tax appeals, Mr. Foti properly found as follows:

> In the City's financial presentation their emphasis was on the tax appeals, which are being resolved through Bonding thereby avoiding a serious impact financially in one year.
>
> It is interesting to note that in the 2011 Annual Financial Statement page 3a there is a $7,700,000.00 Reserve for Tax Appeals and in the 2012 Budget page 10 they anticipate $5,700,000.00 as a Revenue, if the concern for Tax Appeals was as dramatic as the CFO eluded to in testimony I would think they would have left the Reserve in tact.

Based on the expert analysis, it is evident that the bonding of the amounts owed as a result of the tax appeals have been effectively addressed thus far. Furthermore, the parties through stipulation acknowledged that the State of New Jersey must review any settlement made by the City concerning the tax appeals. It would be difficult to conclude that the State

would permit the City to enter into a settlement agreement that would place the City in financial distress. This is especially true since the Governor of the State of New Jersey is making every effort, including legalizing sports betting, to maximize the potential of the City as a casino and tourist attraction. *See,* U-1, Ex. 18. Although the tax appeals are speculative, as are one shot revenue deals, the City has actually demonstrated the ability to effectively handle the tax appeals in the 2012 budget and there is no reason to believe the City will not be able to continue to do so going forward. Since the City has shown the ability to effectively resolve the tax appeal issues, the pending and potential tax appeals are purely speculative. Moreover, the City has the ability to pay increases despite the previous tax appeals. For these reasons the tax appeal argument proffered by the City should be disregarded as merit less and speculative.

Amazingly, the City claims financial distress yet it deemed it appropriate to give raises to several high level, non-bargaining unit employees in November 2011, including the Director of Revenue and Finance, who testified on behalf of the City as to the alleged economic condition of the City. (U-4). Not only did the City increase the Director of Revenue and Finance's salary ($10,000.00), it also raised the salary of the Director of Public Works ($15,798.12), Director of Planning and Development ($3,021.79), Director of Licensing and Inspection ($6,012.91)

and the Director of Health and Human Services ($5,945.07). (U-4) In total, the City saw fit to increase the aforementioned employees' salaries in the amount of $40,777.89. Ibid.

Furthermore, the City has a SAFER grant in the amount of 9.7 million dollars. (U-7 & U-9). This grant contemplates that salaries, including longevity, education incentive, and ATB cost of living increases in the amount of four percent (4%) in an effort to ensure that the City minimally staffs the Fire Department. Currently, there are fifty (50) employees' positions that are funded by the SAFER grant.

5) The Cost Of Living Must Be Considered And The Consumer Price Index (hereinafter "CPI") Demonstrates A Cost Of Living Increase Above The Hard Cap.

The statutory criteria used in making a determination of the financial impact of an interest arbitration award requires that the arbitrator consider the cost of living. N.J.S.A. 34:13A-16(g)(7). In this case, the analysis is simple. The CPI rose 3.2% from 2010 to 2011, which means that the cost of living has increased. U-1, Exs. 7 & 8. Yet the City, is seeking to cut the overall wages of the bargaining unit in the face of the rising cost of living. Even if the IAFF were to receive the maximum allowable percentage ATB increase, it would fall below the rise in the cost of living.

6) The Continuity And Stability In Employment Is A Significant Concern For The IAFF, Which Could Affect The Membership If The IAFF's Proposal Is Not Awarded.

An arbitrator must consider the continuity and stability of employment when determining whether to award a proposal. N.J.S.A. 34:13A-16(g)(8). In this case, it is of great concern to the IAFF that any failure to award the IAFF's proposal, and, conversely, award any of the City's proposals, will make it more difficult to fill already vacant positions with the level of candidates necessary to effectively perform the duties of an Atlantic City firefighter. The duties of an Atlantic City firefighter are vastly different than any other municipality in the State of New Jersey because the firefighters in Atlantic City must be able to work in high-rise buildings that are highly populated with tourists, as well as to perform their duties as a Fire Department serving a beach community. Additionally, it is necessary for the casino patrons, tourists, and casino industry to have faith that they are able to be competently protected by the City's Fire Department. It is vital to the City, the casino industry, the tourism industry, and the public in general that the City maintains a top notch Fire Department. If the City cannot present a salary and benefit package that meets or exceeds other fire departments in the State, the City will invariably be unable to recruit "the best and the brightest" to the Fire Department. Such a result could have a significant and lasting impact on the City, its residents, and the IAFF.

Based on the foregoing, the IAFF Local 198's Final Proposals should be awarded and the City of Atlantic City's proposals must be denied.

THE CITY OF ATLANTIC CITY

The City of Atlantic City (the "City") advances three significant preliminary contentions in this interest arbitration. First, because the International Association of Firefighters Local 198's (the "Association") wage demands exceed the statutorily mandated maximum, the Interest Arbitrator must bar its consideration. Second, the Interest Arbitrator must reject the Association's contention that savings due to a fire fighter's separation of employment frees up additional money to fund salary increases. Third, that Federal grant funds (SAFER Grant) cannot be incorporated into the parties' positions and/or incremental calculations.

As a preliminary matter the Interest Arbitrator must decline to consider the Association's wage demand, which on its face, fails to comply with the two percent (2.0%) cap and, as a matter of law, cannot be entertained by the Interest Arbitrator. Public Law 2010, c. 105, codified at N.J.S.A. §34: 13A-16, 16.7, 16.8 and 16.9 (the "2010 Amendments") requires that the award in this interest arbitration not exceed two percent (2.0%) of the "aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve (12) months immediately preceding the expiration of the collective negotiation agreement subject to arbitration . . . ." N.J.S.A. §34:13A-16.7(b). The Association submitted a wage demand averaging in excess of two percent

(2.0%) per year, exclusive of step and longevity increases. Because the Association's wage demand exceeds the two percent (2.0%) statutory salary cap, the Interest Arbitrator must reject it. Any award that exceeds the 2.0% statutory salary cap will be vacated on appeal.

Second, the Interest Arbitrator cannot consider retirements in 2011 when calculating the City's "ability to pay" under the statutory two percent (2.0%) "cap". The Association "recalculated" step increases by adjusting Exhibit U-5 after the hearing closed, which should not be considered. If it is considered, the calculation is contrary to law by considering retirements. In In the Matter of Borough of New Milford and PBA Local 83, Docket No. IA-2012-008, the New Jersey Public Employment Relations Commission held:

> Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not effect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.
>
> Id., at p. 15.

Finally, the Interest Arbitrator cannot consider Federal grant monies (SAFER Grant) when considering the parties' positions and/or calculating incremental costs. First, this grant, as most grants, represents dedicated funds. That is, any grant monies not used for the purpose expressed in the grant is not available to be used anywhere else in the City's budget. Second, if the expended grant monies are included in base salaries for the purpose of calculating incremental costs, then the increments for the fire fighters covered under the grant must also be included, which would improperly skew and inflate incremental costs.

1. 2012, 2013 AND 2014 SALARY PROPOSALS OF THE CITY

The City proposes a three-year agreement, with no salary increase for current employees for calendar year 2012, 2013, 2014 except for incremental and longevity increases. Because the City proposes no salary increases, there is no compounding cost. In accordance with Exhibit U-5 and discussions at the hearing, the City recalculated step increases. The Association has recently recalculated step increases as well. The Association's recalculation included retirements and adjustments for other employees where no evidence was presented at the hearing and the City has no opportunity to confirm or deny.

As stated above, the law precludes consideration of retirements/breakage. In addition, in Exhibit U-5, 2011 base salaries

include a salary of $91,575.00 for 28 employees hired in November, 2011, when they received an incremental increase to $91,575.00 in November, 2011, an increase of almost $1,000.00 per month. Therefore, the 2011 base salaries were "inflated" by 28 times $9,000.00, or $252,000.00. To avoid confusion and controversy, the City recommends the arbitrator consider the Association's recalculation (not including retirements/breakage) and the "inflating" of the 2011 base salaries as "a wash".

Based on the above, step increases are valued at one point four percent (1.4%) in 2012, one point thirty-nine percent (1.39%) in 2013, and point fifty-four percent (0.54%) in 2014. Per Exhibit U-5 and the explanation of base salaries referenced above, longevity increases are valued at point sixty-five percent (0.65%) in 2012, point thirty-two percent (0.32%) in 2013, and point forty-one percent (0.41%) in 2014. The City proposes to add steps to the existing salary guide, lower the starting salary, and lower the salaries for superior ranks. This proposal will only affect new employees hired on or after January 1, 2012. The savings to the City from this proposal are speculative because it does not know the number of officers, if any, it will hire during the remainder of the contract term.

The other City proposals do not decrease the compensation of current bargaining unit members. While future compensation for current employees and compensation for future employees will be effected, this has no impact

on the costing out of the City's proposals. These proposals will be addressed below with respect to the statutory criteria.

The City's package costs out as follows:

	2012	2013	2014
Salary Increase	0.00%	0.00%	0.00%
Compounding	0.00%	0.00%	0.00%
Step Increases	1.40%	1.39%	0.54%
Longevity Increases	0.65%	0.32%	0.41%
Step and Longevity Increases:	2.05%	1.71%	0.95%
Total:	2.05%	1.71%	0.95%

TOTAL STEP AND LONGEVITY INCREASES:	4.71%
THREE YEAR TOTAL:	4.71%
ANNUAL INCREASE:	1.57%

The City and the Association disagree on significant elements of the successor contract, including the amount of the wage increase, whether to increase the number of steps on the salary guide for new hires, whether to cap sick leave at $15,000 for existing employees, whether to freeze longevity benefits at present dollars, whether to eliminate longevity for new hires, etc.

The New Jersey Employer-Employee Relations Act (the "Act"), N.J.S.A. §34:13A-1 *et seq.* includes a compulsory interest arbitration

procedure for public police departments and the police officers' exclusive representatives who reach impasse in collective bargaining negotiations. On January 10, 1996, the Legislature passed the Police and Fire Public Interest Arbitration Reform Act (the "Reform Act") which implemented significant amendments to New Jersey's compulsory interest arbitration process. On December 21, 2010, the Legislature again passed significant amendments to the compulsory interest arbitration process (the "2010 Amendments"). This section describes New Jersey's compulsory interest arbitration process.

The Reform Act established conventional arbitration, instead of final offer interest arbitration, as the terminal procedure applicable to resolve impasse between parties who fail to agree upon one (1) of six (6) terminal procedures available under the Reform Act. N.J.S.A, §34:13A-16(d)(2). Conventional arbitration applies to this interest arbitration. The Interest Arbitrator must, therefore, determine "whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria," discussed below. N.J.S.A. §34:13A-16(d).

N.J.S.A. §34:13A-16(g) states that the Interest Arbitrator must determine the dispute based upon "a reasonable determination of the issues." Because reasonableness requires the Interest Arbitrator to apply a subjective standard, the Legislature enumerated nine (9) statutory criteria which the Interest Arbitrator must give "due weight" in determining the

appropriate award. More specifically, N.J.S.A. §34:13A-16(g), as amended, provides:

> The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of this subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:
>
> (1) The interest and welfare of the public. Among the items the arbitrator . . . shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).
>
> (2) 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 [N.J.S.A. § 34:13A-16.2],

provided, however, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.

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

(4) Stipulation of the parties.

(5) The lawful authority of the employer. Among the items the arbitrator . . . shall assess when considering this factor are the limitations imposed upon the employer by P.L. 1976, c.68 (C.40A:4-45.1 et seq.).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local units property tax levy pursuant to section 10 of P.L. 2007, c.62 (C40A:4-45.45), and taxpayers. When considering this factor in a dispute in which the public employer is a county or a municipality, the arbitrator . . . shall take into account, to the extent that the evidence is introduced, how the award will affect the municipal or county purposes element, as the case may be, of the local property tax; a comparison of the percentage of the municipal purposes element or, in the case of a county, the county purposes element, required to fund the employees' contract in the preceding local budget year with that required under the award for the current local budget year; the impact of the award for each income sector of the property taxpayers of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in 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 . . . 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).

[*emphasis supplied in original*].

A review of the enumerated factors reveals three underlying themes: (1) the financial ramifications of the offer; (2) comparability; and (3) the public interest. Before the Legislature passed the Police and Fire Public Interest Arbitration Reform Act, the New Jersey Supreme Court decided two (2) companion cases that significantly impacted the interest arbitration process. Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71 (1994); Township of Washington v. New Jersey State Policemen's Benevolent Association, Inc., Local 206, 137 N.J. 88 (1994). The Reform Act incorporated and codified the principles set forth in these decisions, and expressly added the following requirement:

> In the award, the arbitrator . . . shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor.

Therefore, the Interest Arbitrator's award must address all nine (9) statutory criteria.

The 2010 Amendments dramatically changed the interest arbitration process. It, among other things, emphasized that Interest Arbitrators must consider, among the other statutory factors, the impact of the New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. §40A:4-45.1 *et seq.* in rendering an award and the limitations imposed upon the local unit's property tax levy. N.J.S.A. §34:13A-16(g)(6). The tax levy cap limits the funds that municipalities can raise by taxation. The 2010 Levy Cap Law (the "2010 Cap") enacted on July 13, 2010 revised the 2007 Levy Cap Law (the "2007 Cap"). More specifically, to control cost increases, it reduced the 2007 Cap from four percent (4.0%) to two percent (2.0%) and amended exclusions. The 2010 Cap excludes pension contributions in excess of two percent (2.0%) and health benefit cost increases in excess of two percent (2.0%) and limited by the State Health Benefit rate increase (16.7% for 2011).

The 2010 Amendments addressed the interest arbitrator's duty to consider all the statutory factors. The law continues to require the interest arbitrator to consider each of the elements. The interest arbitrator can determine that a factor is not relevant, and if so, explain why it is irrelevant. The 2010 Amendments imposed one exception: paragraph 6, the financial

impact on the governing unit, its residents, the limitations imposed by the local units property tax levy and taxpayers. As to this subfactor, the 2010 Amendments require that the parties introduce evidence that addresses this subfactor. It further mandates that the interest arbitrator analyze and consider the elements of subsection 6 in any award.

Significantly, the 2010 Amendments demonstrate the Legislature's recognition of the need to control costs. The 2010 Amendments imposed a two percent (2.0%) cap on base salary increases. N.J.S.A, §34:13A-16.7. The two percent (2.0%) cap on base salary increases reflects the permissible two percent (2.0%) 2010 Cap under the Local Government Cap Law. More specifically, the law prohibits an arbitrator from rendering an award,

> which, on an annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer on base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration.

N.J.S.A. §34:13A-16.7(b). While the law precludes arbitrators from issuing more than a 2.0% increase in base salary, it does not bar unequal annual percentages. *Id.*

"Base salary" is defined as "the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. . . ." N.J.S.A. §34:13A-16.7(a). "Base salary" also includes "any other item

agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract." N.J.S.A. §34:13A-16.7(a). "Base salary" does not include "non-salary economic issues, pension and medical insurance costs." Non-salary economic issues are defined as "any economic issue that is not included in the definition of base salary." N.J.S.A. § 34:13A-16.7(a). Therefore, "base salary" includes salary increments and longevity increases but does not include pension or health and medical insurance costs. N.J.S.A. §34:13A-16.7(a). Additionally, "[a]n award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement." N.J.S.A. §34:13A-16.7(b).

The salary limitation applies to all collective negotiations between a municipal employer and the exclusive representative of its fire department that relate to a collective bargaining agreement that expires on or after January 1, 2011 but before April 1, 2014. N.J.S.A. §34:13A-16.9. Because the collective bargaining agreement at issue in this interest arbitration expired on December 31, 2011, the salary limitation applies to this interest arbitration.

Because the Association's package averages more than two percent (2.0%) per year, inclusive of salary increments and longevity increases, the Interest Arbitrator must reject the Association's demands. The Association's

package significantly exceeds the six percent (6.0%) maximum increase on a 3 year contract. The Legislature worded the statute in the obligatory. It provides, "An arbitrator shall not render any award . . . which, on an annual basis, increases base salary items by more than 2.0 percent." N.J.S.A. §34:13A-16.7(b). The language of the statute leaves no room for interpretation: any award must average not more than six percent (6.0%) inclusive of salary increments and longevity increases. In contrast to the Association's demands, the City's proposed increase does not exceed the two percent (2.0%) statutory cap. Any award that exceeds the two percent (2.0%) statutory salary cap will be vacated on appeal. Therefore, unlike the Association's demanded package, the City's offer reflects the restraints imposed by the 2010 Amendments.

The City's proposals obviously seek to "reign in" both compensation and the benefits package received by the Association's membership without reducing current compensation. It is the position of the City that it can no longer afford the excesses of the past based upon current legislation, the economy, and the interest and welfare of the public.

N.J.S.A. §34:13A-16g(5) requires the Interest Arbitrator to consider the "lawful authority of the employer" in determining a conventional award. The Reform Act specifically requires the Interest Arbitrator to consider, in evaluating this factor, "the limitations imposed upon the employer by [The

New Jersey Local Government Cap Law (the "Cap Law"), N.J.S.A. 40A:4-45.1 et seq.]" N.J.S.A. 34:13A-16(g)(5). The Cap Law restrains the lawful authority of the employer by limiting overall budget increases. It thereby restricts a municipality's ability to grant wage increases to its employees.

In enacting the Cap Law, the Legislature declared it to be "the policy of the [State] that the spiraling cost of local government must be controlled to protect the homeowners of the State and enable them to maintain their homesteads." N.J.S.A. § 40A:4-45.1. The Legislature also recognized, however, that "local government cannot be constrained to the point that it would be impossible to provide necessary services to its residents." *Id.*

The Cap Law controls the cost of local government by prohibiting a municipality from increasing certain appropriations, including the cost of police officer salaries, by more than the "cost of living adjustment" over the previous year's similar appropriations. Several amendments to the Cap Law placed even tighter caps on spending to control local government expenditures. In 2007, Governor Corzine signed into law Chapter 62 of the Laws of 2007 (the "2007 Cap"). This law implemented a property tax levy cap which limited municipalities to a four percent (4.0%) increase over the previous year's amount to be raised by taxation. This change in the law eliminated significant flexibility in municipal budgets by creating a strict limit on increases on the major revenue sources, making it more difficult to

balance the budget.

On July 13, 2010, Governor Christie signed into law Chapter 44 of the Laws of 2010 (the "2010 Cap"). The 2010 Cap reduced the 2007 Cap of four percent (4.0%) to two percent (2.0%) and modified exclusions, further increasing the limitation on major revenue sources. The 2010 Cap added several general exclusions. These include increases in debt service and capital expenditures, extraordinary costs related to emergencies, such as inclement weather, pension contributions in excess of two percent (2.0%) and health benefit cost increases in excess of two percent (2.0%) but limited by the State Health Benefit increase (16.7% in 2011). These limitations directly impact the City's ability to pay for the salary increases and accompanying increases in benefit costs for this bargaining unit.

Previously, municipalities had discretion and flexibility in dealing with budgetary issues. So long as a municipality had room within the "Cap", it had discretion and flexibility in the expenditure side of the budget. Without a tax levy cap, a municipality had greater discretion and flexibility in the revenue side of the budget because of its ability to raise revenue through taxes. With the implementation of the tax levy cap the discretion and flexibility of municipal budget strategies changed dramatically, with revenues playing a more significant role and expenditures becoming reactionary to the impact of revenues. This situation has been magnified for 2011 and beyond

with the modification of the tax levy cap downwards from four (4.0%) per cent to two (2.0%) per cent! Revenue inflexibility has also caused municipalities to consider long-range revenue projections when formulating current budgets.

Previous revenue analyses reviewed a municipality's surplus history, State Aid, and "one-shot deals", indicating that the inability of these revenue sources to fund budgetary expenditure increases left the remaining revenue burden to be shouldered by municipal taxes. With the statutory limitation on tax levy increases, there is virtually no revenue source over which the municipality has any control, discretion or flexibility to counter budgetary shortfalls in other revenue sources. This lack of control, discretion and/or flexibility requires municipalities to curtail expenditures in order to balance their budgets.

Due to the restrictions in New Jersey's "Cap" law, PL 1976, Ch. 68, as revised by PL 1990, Ch. 89 and PL 1990, Ch. 95, limiting increases within the Current Expense portion of the municipal budget to two and one-half (2.5%) per cent (three and one-half [3.5%] per cent with municipal approval), and due to the above-referenced recent legislation limiting municipal tax increases to four (4.0%) per cent and two (2.0%) per cent beginning in 2011, the traditional analysis does not apply to the City's ability to pay. As outlined below, the City's "ability-to-pay" argument centers

around the revenue portion of the City's budget. Additionally, there is no need to differentiate between Current Expense budgetary line items and expenditures excluded from the "cap", since the City's revenues are generated to cover both within "cap" and excluded from "cap" expenditures.

There are five (5) basic revenue sources: (1) surplus; (2) local revenues; (3) State Aid; (4) "one-shot deals", or non-recurring revenues; and (5) taxes. Surplus history is illustrative of the City's financial woes. As of January 1, 2007, the City's surplus balance was $14,492.907.00, allowing the City to anticipate $13,800,000.00 as revenue in its 2007 budget. (City Exhibit Book, Tab 1, subtab 1). Due to the beginning of an economic downturn in 2008, the City's surplus balance as of January 1, 2008 was $10,342,417.00, or a reduction of approximately $4,150,000.00. This forced the City to reduce its surplus anticipated by $4,000,000.00 to $9,850,000.00 in 2008. (City Exhibit Book, Tab 1, subtab 2).

The economic downturn was full blown in 2009, eliminating almost all opportunity to regenerate surplus. As of January 1, 2009, the City's surplus balance shrunk by approximately $8,700,000.00 to an anemic $1,641,980.00. Setting the stage for future years, the City's ability to anticipate surplus was reduced by $9,000,000.00 to only $850,000.00 in 2009. (City Exhibit Book, Tab 1, subtab 3).

Thusly, the City's ability to regenerate surplus slipped further,

reducing the City's surplus balance to $791,980.00 as of January 1, 2010 eliminating any opportunity to anticipate surplus in 2010. (City Exhibit Book, Tab 1, subtab 4). Over the next two (2) years, surplus balance increased slightly to $966,883.00 as of January 1, 2011 and $1,067,377.00 as of January 1, 2012. The City was only able to anticipate $100,000.00 in 2011 and nothing in 2012. (City Exhibit Book, Tab 1, subtabs 5 and 6). Just to maintain revenue anticipated in 2012, the City had to generate $13,800,000.00 more from other revenue sources than only five (5) years ago in 2007!

Revenue from local revenues further illustrates the City's revenue woes. In 2007, the City anticipated $11,401,000.00. (City Exhibit Book, Tab 1, subtab 1). In 2008, due to increases in fees and permits, municipal fines and costs, and interest on deposits, local revenues increased by approximately $2,700,000.00 to $14,027,898.00. (City Exhibit Book, Tab 1, subtab 2). This increase was insufficient to offset the above-referenced decrease in surplus balance.

In 2009, local revenues decreased by approximately $3,980,000.00 to $10,172,465.00 due to a decrease in revenue from interest on deposits (City Exhibit Book, Tab 1, subtab 3), further exacerbating the decrease in surplus balance. Although local revenues decreased in 2010 (City Exhibit Book, Tab 1, subtab 4), they increased to 2009 levels in 2011 due to

fluctuations in interest from deposits (City Exhibit Book, Tab 1, subtab 5). Unfortunately, local revenues further decreased in 2012 by approximately $1,300,000.00 to $8,802,111.00. (City Exhibit Book, Tab 1, subtab 6). With no anticipated surplus, the remaining revenue sources had to pick up the revenue slack

State Aid is a non-issue. From 2007 to 2012, State Aid was reduced by approximately $1,800,000.00 from $8,042,693 to $6,260,714.00. (City Exhibit Book, Tab 1, subtabs 1-6). State Aid is not a revenue source upon which the City can rely. Dedicated Uniform Construction fees are offset by appropriations and have no impact on the remainder of the budget. In any case, from 2007 through 2012, this revenue source decreased by $2,100,000.00 from $4,100,000.00 to $2,000,000.00. (City Exhibit Book, Tab 1, subtabs 1-6).

It is dangerous for a municipality to rely on "one-shot deals" to balance its budget since these revenues, by their very nature, do not regenerate. A steady increase in reliance on "one-shot deals" by increased contributions from the library and use of reserves and capital fund surplus resulted in a $2,200,000.00 increase in "one-shot" revenues from 2011 to 2012. All in all, the City's anticipated revenue in 2012, other than those generated from municipal taxes, increased by less than $800,000.00. (City Exhibit Book, Tab 1, subtab 6).

The most significant issue facing the City transcends from revenue into appropriations: Debt Service. The City was placed under State supervision by the New Jersey Local Finance Board ("Board") in November, 2010. The action of the Board was due in large part to extraordinary fiscal stress caused by the impact of tax appeals filed by casinos. A Memorandum of Understanding was executed by the State and the City to clearly delineate the parameters of State supervision and, in pertinent part, it required that fiscal distress be clearly communicated to interest arbitrators.

The City is unique amongst the 566 municipalities in that approximately seventy-five percent (75%) of its ratable base has come from only twelve (12) casino properties (2011 assessments totaled approximately $13 billion). These properties were assessed in 2008 and the subsequent economic downturn resulted in every casino filing tax appeals from 2008 to the present. Nine (9) of those appeals have recently been settled or are pending settlement and three (3) remain in litigation. These appeals/settlements cause fiscal distress in two ways: (1) large refunds are due for past years; and (2) the assessment value is greatly decreased moving forward. As the chart below demonstrates, of the nine (9) tax appeals recently resolved or pending settlement, the City must refund $136 million. The remaining three (3) tax appeals in litigation have the potential to increase the obligation to approximately $200 million.

Property Owner	Court Ordered Refund	
Resorts (DGMB)	$ 10,600,000	
Pinnacle	$ 8,200,000	
ACE Gaming	$ 1,700,000	
Prior Settlements	$ 14,000,000	(compilation of old appeals)
Bally's	$ 28,000,000	
Trump	$ 54,000,000	(Pending Settlement)
Hilton	$ 19,500,000	(Pending Settlement)
Sub-Total	**$ 136,000,000**	
Tropincana		(in litigation)
Borgata		(in litigation)
Revel		(in litigation)

Only approximately $35 million of the above refunds have been accounted for in the 2012 budget (and even then, the $35 million is being paid through a borrowing that is payable over five [5] years). The remaining refunds are not accounted for and still have to be paid.

As of 2007, the City's debt service was $21,464,470.00 (City Exhibit Book, Tab 1, subtab 1). Debt service increased by only approximately $160,000.00 in 2008 (City Exhibit Book, Tab 1, subtab 2); increased by only approximately $134,000.00 in 2009 (City Exhibit Book, Tab 1, subtab 3); decreased by only approximately $1,370,000.00 in 2010 (City Exhibit Book, Tab 1, subtab 4); and, increased again by approximately $1,280,000.00 in 2011 to $21,669,817.00 (City Exhibit Book, Tab 1,

subtab 5), virtually the same as in 2007.

However, due to the above-referenced tax appeals, the City's debt service in 2012 jumped to $32,510,182.00, an increase of approximately $10,500,000.00, or approximately fifty percent (50%)! Even though this increased appropriation is outside the "cap", the City must still consider debt service when attempting to balance its budget. This left the City with three (3) options: (1) reduce appropriations by the amount of the increased debt service; (2) maintain the same level of municipal taxes by shifting the tax burden, which will be discussed below, or: (3) a combination of (1) and (2). The City is attempting to implement the second option.

Only approximately $35 million of the tax appeals have created the $10,500,000.00 increase in the City's 2012 debt service. The remaining $100 million in tax appeal settlements, along with the outstanding casino tax appeals, will place the City in a similar situation in 2013 and 2014. If the $100 million outstanding tax appeal settlements are paid out over ten or even fifteen years, the City's debt service will increase by another $8.5 million to $10 million in 2013 and 2014. Add in a conservative $50 million liability for the outstanding casino tax appeals and the City's debt service will increase by an additional $3.33 million to $5 million in 2013 and 2014, for a total increase in debt service of $11.83 million to $15 million in 2013 and 2014 over and above the $10.5 million increase in 2012!!

The casinos totaled seventy-five percent (75%) of the entire City pre-tax appeal ratable base. After all the tax appeals are resolved, the casino properties will only make up about sixty-one percent (61%) of the ratable base! Even if the City is able to keep its spending perfectly stable with no increase in its levy, the City tax levy would remain $379 million and the tax burden shifts from casinos to residential home owners and other non-casino, commercial properties. Assuming the City budget stays the same as it is now and doesn't increase at all between now and 2014, the below chart illustrates that the taxes for all non-casino properties are going to increase by nearly twenty percent (20%).

The average home in the City is currently assessed at $252,445. Therefore, the tax bill on that average home will increase by $895 per year by 2014 because of the shift in ratables from casinos to non-casino properties. The State and the City are working together to try to control costs. However, with escalating debt service on recent and projected borrowings to facilitate resolution of tax appeals, it will be extraordinarily challenging to even keep the overall levy at its current level.

In summary, despite positive improvements, the City and its taxpayers face an unprecedented financial struggle because of the casino tax appeals. Even with no increases in the current budget, non-casino taxpayers are facing an approximate twenty percent (20%) increase. This will be made

more challenging with a need to refund a considerable amount to casino properties.

	RATABLES	Total Tax Levy	TAX RATE
2011 Actual	$ 19,457,830,928	$ 378,814,185	$ 1.95
Avg Home	$ 252,445		$ 4,915.10
Est. Loss	3,000,000,000		
2014 est.	$ 16,457,830,928	$ 378,814,185	$ 2.30
Value	$ 252,445		$ 5,810.59
Increase based only on burden shifting			**$ 895.49**
			18.22%

AS PREVIOUSLY HIGHLIGHTED, A GLOBAL DISCUSSION OF THE BASE SALARY CONSIDERATIONS UNDER NEW MILFORD AND THE COSTING OF EACH PROPOSAL IS INCLUDED IN POINT III OF THIS AWARD.

2. ARTICLE 3 — GRIEVANCE PROCEDURE

The City proposes to tighten up the definition of "grievance". Since it is a non-economic proposal, the statutory criteria do not apply. (City Exhibit Book, Tab 4, subtab 1). The justification of this proposal is that traditionally,

grievances proceeding to arbitration require the arbitrator to interpret the language of the collective bargaining agreement. The current definition of grievance is overly broad and vague, potentially placing before the arbitrator issues well beyond the realm of the parties' collective bargaining agreement.

IAFF Local 198 submits that the City's grievance procedure proposal has no merit, and accuses the Employer of presenting no evidence whatsoever to support the same. According to the Union, this proposal seeks to eliminate the language in the CNA that provides for the ability for individual employees to file a grievance for any action or non-action toward them that violates any right arising out of their employment. The proposal is also nothing more than an attempt to irritate and harass the Union, as even the City must recognize that it has no merit, since there was no evidence presented in support of the proposal and its effect thereof. IAFF Local 198 additionally points to a recent interest arbitration award in Borough of Ramsey, P.E.R.C. Docket No. IA-2012-015 (Westerkamp,2012) where the arbitrator denied a proposal because the union failed to provide any evidence or testimony.

AWARD: This Employer proposal is not awarded. At the risk of restating what is obvious, the proponent of a modification to existing language shoulders the burden of establishing entitlement to the same. Atlantic City provided no testimony or evidence in this respect. Conversely, the IAFF Local 198 president testified that there are not many grievances filed, and that members should be entitled to have recourse if they believe they are not being treated fairly. I agree and do not endorse the Employer's view that the current language is overly broad and vague, placing issues before a [rights or grievance] arbitrator that are beyond the realm of the C.B.A. Even if that were the case, there are of course avenues of redress available to the Employer both before P.E.R.C. and the arbitrator.

3. ARTICLE 13 — UNION RELEASE TIME

The City proposes to limit the amount of time off granted to Association members for the purpose of performing union business. (City Exhibit Book, Tab 4, Exhibit 2). While at first blush this proposal may seem

insignificant and "petty," it is of major concern. The taxpayer cost of compensation and benefits for public employee union leave is so significant that the issue was investigated and addressed by the State of New Jersey Commission of Investigation ("SCI"), which issued a report on the matter. (City Exhibit Book, Tab 4, sub. 2). In its report, the City of Atlantic City was specifically identified as a municipality granting this excessive benefit. On page 24 of its report, the SCI's first and foremost recommendation is to "Eliminate or Substantially Curtail Taxpayer Funded Union Leave" The SCI's report represents the interest and welfare of the public. The City's proposal is consistent with the SCI report and the interest and welfare of the public.

IAFF Local 198 describes this City proposal as "firing a shot across the bow of unions." The testimony of President DeMaio that there has never been a grievance concerning union release time is relied upon, with the conclusion drawn that it therefore follows that this has never been a concern of management. Furthermore, the president credibly testified that the Union officers the City is seeking to delete for union release time purposes are needed to resolve issues, so the officers must be afforded such time to address the needs of the membership. And while the City presented no testimonial evidence in support of this proposal, the Employer was able to muster 1 report regarding paid union leave in public sector employment. (City 1, Exhibit 2). This solitary report, however, focuses more on issues of abuse and misuse of paid union leave. Ibid. Importantly, there has been no evidence or even suggestion that there has been an abuse or misuse of union release time in this matter, which makes the report relied upon by the City irrelevant. The report does, however, recognize the benefit of paid union leave by permitting employees to quickly address contentious issues that may become protracted otherwise. Id., at p. 4. Moreover, the New Jersey Civil Service regulations specifically authorize the ability of appointing agencies to grant union leave to employees, which is legislative recognition of the need for such leave. See, N.J.A.C. 4A:6-1.16. Accordingly, as the City has not met its burden, its Union release Time Proposal must be denied.

AWARD: This Employer's proposal is not awarded, as Atlantic City has failed to carry its burden of proof. My analysis starts with the proposition that the taxpayers and residents of the State of New Jersey are the silent partners to every collective bargaining agreement that is entered into between a municipality and majority representative. No serious argument may be made that the misuse of Union release time is not a pernicious impediment to good government, which adds to the financial bottom line of the governing unit and ultimately the public. That said, as with any proposal, there must be a satisfactory demonstration of the need for change and not a scintilla of proof has been provided. Such is not found in the *State of New Jersey Commission of Investigation* UNION WORK PUBLIC PAY document upon which Atlantic City relies. Rather, the majority of the report addresses full-time union leave without accountability. Notice is taken that a reference is made to the Atlantic City Fire Fighters president receiving up to 15 hours per week. That must be viewed in tandem with the totality of the report, however, as essentially all big cities were scrutinized. It is also noteworthy that the precise accountability safeguards recommended by the SCI are found in the subject C.B.A. at Article 12.B + C. These provide for at least 24 hours notice to the Chief via Form 56, and permit administrative review of the leave without cost to the City.

4. ARTICLE 13 – WORK SCHEDULE

The City proposes additional flexibility in formulating the work schedule. (City Exhibit Book, Tab 4, subtab 3). This is a non-economic proposal in that it does not change the number of days or number of hours worked by any of the Association's members. As testified by Fire Chief Dennis Brooks, this proposal helps the Fire Department by allowing deployment of personnel in the most efficient and effective manner, while helping to decrease overtime.

Decreasing overtime helps the City's budget, thereby helping to

reduce, to whatever degree, additional tax increases and/or staffing reductions. This proposal, and the granting of same, addresses the statutory criteria of: (1) interest and welfare of the public; (2) lawful authority of the employer; (3) financial impact on the governing unit and residents; (4) continuity and stability of employment; (5) statutory restrictions on the employer.

The Union insists that the Employer's proposal is unnecessary and therefore must be denied. The IAFF Local 198 recalls that Chief Brooks testified that he needs the ability and the flexibility to change schedules to avoid potential overtime costs. The Chief explained that there is a Prevention Division and a Suppression Division within the Atlantic City Fire Department. According to the Chief, the Prevention Division performs "straight day work" and comprises a majority of the overtime. Chief Brooks testified that currently the Prevention Division works Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. He further testified that he wants the ability to change the schedule to require the employees in the Prevention Unit to work nights and weekends regularly. Ostensibly, the Chief's main contention was that manipulating the schedules would allow him to avoid overtime costs. However, during cross-examination, Chief Brooks was unable to identify with any specificity the cost of overtime that would be saved or the cost of the overtime in general. He provided no documentary support for his position and could not recall a specific amount of overtime costs associated with the proposal. Interestingly, Chief Brooks also acknowledged during cross that the casinos pay part of the overtime costs, however, could not identify how much of the overtime was paid. Furthermore, the City has provided no documentation to support the Chief's contention concerning the cost of overtime associated with the current schedules. Importantly, President DeMaio testified that the IAFF has always been willing to discuss schedule changes that would benefit the Fire Department within the CNA parameters.

AWARD: This Atlantic City proposal is denied, and is discussed in detail later. Suffice it to say that any cost savings were speculative, as the Employer was unable to provide real dollar figures. It also was not clear what the casinos paid the City for OT on the hood inspections, and the record supports the Union position that it works with the Chief on this.

5. ARTICLE 14 - OVERTIME PAY

The City simply proposes that the four (4) hour minimum for overtime call back be limited to circumstances when the call back is not contiguous with the employee's work schedule so that the City is not paying an employee the overtime rate for their regular work schedule. Related to this proposal is the City's proposal that the employee must work the entire four (4) hours to receive the four (4) hour call back minimum. Since this proposal only relates to overtime and the impact is speculative, it must be considered either a non-economic proposal or an economic proposal with minimal impact which cannot be calculated.

The reasonableness of these proposals is found simply in the testimony of IAFF President Angelo DeMaio. President DeMaio testified that this proposal is not unreasonable.

In reply to this proposal, IAFF Local 198 argues that first, the City seeks to eliminate the language of the CNA that calculates overtime on an employee's regular rate of pay inclusive of longevity and educational incentives by eliminating longevity and educational incentives from the regular rate of pay for this purpose. Second, the City seeks to add language that provides that overtime will not be paid if the employee does not work the hours. Under the CNA, the employee is entitled to at least 4 hours of OT if called back to duty. The City's proposed language would only allow 4 hours of overtime pay if the employee actually works those hours. Additionally, while the City's proposal appears to be economic in nature, there was no testimony or documentation presented as economic evidence of cost saving in support of the City's proposal. As to the second part of this proposal, President DeMaio reasonably and in good faith agreed that if the employee chooses to leave work before 4 hours are completed, the employee would only be paid for the overtime hours actually worked. However, as to the remainder of the proposed changes in the paragraph, the City presented no need for those

changes. Further, the president explained that longevity and educational incentives are normally calculated as part of the employee's base pay, so it should be no different for overtime calculations. Since the City has presented no evidentiary support for the need for the Overtime proposal and, if implemented, this proposal would result in a loss in overtime pay, this proposal must be denied.

AWARD. The proposal by Atlantic City is not awarded. The Employer appears to suggest that the IAFF Local 198 president agreed with the reasonableness of this proposal, when the testimony was limited to a situation where a fire fighter chose to go home but would be paid for the full 4 hours of OT. The scope of the proposal is much more far reaching, however, in that it seeks to carve out longevity and the education incentive from the base pay. No evidence has been produced to support a rationale for the same, as both are currently included in the base statutorily. The Employer's alternative characterization of this as an economic proposal with minimal impact that cannot be calculated is credited. The bottom line is that the rank and file will forfeit some OT, but how much is uncertain. As such, Atlantic City has not supported the request with any evidence of need.

6. ARTICLE 16 - SICK LEAVE

Sick Leave is a significant economic issue to the City. While not quite as bad as the collective bargaining agreement covering police officers, the Association's collective bargaining agreement provides that if in any year an Association member exhausts his or her sick leave, he or she shall remain on the City's payroll for a period of time when, combined with the sick leave used in the calendar year, totals one (1) year's leave.

For example, a twenty (20) year firefighter who has exhausted his accumulated sick leave during his or her twenty (20) years would receive their contractual allotment for their twenty-first (21st) year. If this sick leave

was exhausted and the employee was absent on extended sick leave, he or she could remain on sick leave for the remainder of the year **with pay!!** [*emphasis supplied in original*].

The City simply seeks to limit an employee's sick leave to the contractual amount, which can be accumulated without limit. When an employee exhausts his or her accumulated sick leave, they can use Family Leave (if qualified), leave of absence without pay, etc. The importance of this proposal is demonstrated by the City's submission of the Fire Departments sick leave logs for 2010 and 2011. (City Exhibit Book, Tab 4, subtab 5). Since a firefighter works a "4 on/4 off" schedule, a firefighter is scheduled to work an average of 182.5 days per calendar year. In 2010, the firefighters used 1,810 sick days, which computes to nine and ninety-two one hundredths (9.92) full-time firefighters. Using top firefighter salary of $91,575.00 (thus excluding those earning less in steps and those earning more being in rank), sick leave in 2010 cost the City ($908,424.00)!

Using this same analysis in 2011, the firefighters used 1,557 sick days, which computes to eight and thirty-four one hundredths (8.34) full-time firefighters. Using top firefighter salary of $91,575.00 (thus excluding those earning less in steps and those earning more being in rank), sick leave in 2010 cost the City ($763,736.00)! The substantial cost to the City of sick leave, primarily caused by the extended sick leave clause the City seeks to

eliminate, significantly impacts the following statutory criteria: (1) interest and welfare of the public; (2) lawful authority of the employer; (3) financial impact on the governing unit and residents; (4) continuity and stability of employment, and; (5) statutory restrictions on the employer. The granting of the City's proposal would address these criteria.

IAFF Local 198 charges Atlantic City with taking a simple provision in the CNA, and unnecessarily complicating it. Currently, the CNA provides all employees with the ability to accumulate 140 hours or 100 hours annually, depending on the date of hire. It further allows employees to accumulate sick leave from year to year. Unfortunately, the City is not complying with the CNA and has unilaterally deprived employees of the full allotment of sick time hours. The City's proposal seeks to define the reasons sick leave is allowable, define the times that the employee must present a doctor's certificate verifying illness, and require employees, at the Employer's discretion, to undergo a fitness for duty examination. The City provided no testimony at the hearing establishing the need for the proposed changes. In fact, the only evidence presented was a list of employees who have utilized sick leave from 2010 to present. The documentation also indicated whether the employee presented a doctor's note. This evidence therefore shows nothing more than that bargaining unit members utilize sick leave and often provide a doctor's note when they utilize the leave. Simply put, there is no need to complicate such a simple provision of the CNA. In fact, the inclusion of such a proposal is baffling.

AWARD: Atlantic City's sick leave proposal is not awarded. Without the benefit of supporting testimony, it is extremely difficult to evaluate the merits of the Employer's admittedly cogent arguments made. I do not take issue with the notion that sick leave is a significant economic issue for the City. However, I do believe that the proofs submitted in support of this language proposal do not satisfy the Employer's burden of demonstrating entitlement to the same. Rather, the sick use logs in evidence merely show that sick leave was utilized by the Atlantic City Fire Department during 2010 and 2011, with frequent notations of "Doctor Note On File." And while I am fully aware that fire fighters in Atlantic City work a "4 on/4 off" schedule, thus exacerbating the impact of sick leave, there is no proof that any of these individuals were not legitimately ill, or that abuse was present. The justification for the proposed pro-rating of sick leave on a monthly basis during the employee's last year of service also appears punitive in light of the paucity of testimony related to the necessity of such a material change. Additional language dictating the uses of sick leave and monitoring is also cumbersome. Accordingly, no bases exist on this record evidence to modify the existing contractual language, and this award reflects that reality.

7. ARTICLE 16 – WORKERS' COMPENSATION

This proposal is simply to separate out the contractual provisions relating to leave time instead of lumping them in one article. As admitted by President DeMaio, this proposal simply reiterates current practice.

The Union adopts a jaundiced view of this City proposal, characterizes it as senseless, and suggests that it may not even be legal. Notice is taken that the State of New Jersey has an extensive and comprehensive workers' compensation statutory scheme designed to address injuries in the workplace. See, N.J.S.A. 34:15-1, et seq. The New Jersey Workers' Compensation Act effectively governs this area, therefore it is dubious whether this proposal is even viable as it may be inconsistent with or preempted, in whole or in part, by the statute. It may even be illegal. Even if it is not invalidated by statute, the City has presented no evidence whatsoever to explain or justify the need for this proposal. As such, it must be denied.

AWARD: The Employer's workers compensation proposal is not awarded. The Union has persuasively argued that the State of New Jersey has a comprehensive workers comprehensive statute. See, N.J.S.A. 34:15-1 et seq. It is not clear to me that this proposal may be preempted in whole or in part by that law. The bottom line, however, is that Atlantic City has not supported this proposal with any evidence that there is a need to amend the existing language. Instead, the C.B.A. at Article 16.C.1 provides for a Medical Review Board to be convened in the event that an employee suffers an illness or injury in the line of duty, in the course of employment, or as a result of his/her employment. The Medical Review Board is also empowered to review non-service related illness or injury under Article 16.C.2. Under these circumstances, there are sufficient safeguards in place, and no evidence was adduced at hearing in support of this proposal. At the risk of a brief editorial comment, there is certainly no need for the language proposed by the Employer permitting it to discipline any employees found to have abused his/her privileges, as it already has that right contractually and statutorily.

8. ARTICLE 16 – SICK PAY AT RETIREMENT

This is another of the more significant City proposals. The significance of this proposal is not simply the detrimental financial impact the current practice has on the City's budget, but also the recognition it has been given by the State, being one of the most visible excesses causing the public at large to turn against public employee unions.

The current contractual language places minimal limits on sick pay at retirement, while the City places a more reasonable limit of $15,000.00 as the maximum payout. The City has also proposed eliminating an employee's option to remain on the City's payroll to use the accumulated sick leave as "terminal leave" which, in addition to costing the City money, prevents the

City from hiring another individual in their place, reducing staffing.

In the City's Exhibit Book, Tab 4, subtab 7, behind the City's proposal, are a set of exhibits. The first exhibit shows that from 2007 through 2011, the City had paid forty-two (42) members of the Association a total of $5,737,264.00, or an average of $136,601.00 per firefighter!! This is an outrage!! Sick leave is to provide employees with a "safety net" when and if they get ill. They are allowed to accumulate these sick days to protect against a long-term illness. **Sick time is not for the purpose of providing public employees with "golden parachutes" upon retirement!!** [*emphasis supplied in original*].

In addition to the exorbitant payouts from 2007-2011, the City has already paid out $785,519.00 in sick leave in 2012, with projected increases so far of $521,017.00 in 2013 and $197,715.00 in 2014!! The City's budget cannot continue to sustain these exorbitant payouts! Finally, the Statewide notoriety of this excessive benefit was recognized by the SCI as far back as December, 2009, (under the auspices of Governor Corzine, not Governor Christie) when it issued its report entitled "The Beat Goes On – Waste and Abuse in Local Government Employee Compensation and Benefits". (City Exhibit Book, Tab 4, subtab7).

After the Executive Summary, is a section entitled "Key Findings", the SCI, in a subsection entitled "Excessive Benefits and Payouts". Only one

municipality was cited in this report: Atlantic City! Amongst the recommendations made by the SCI pursuant to their investigation were (1) limit sick leave payouts to $15,000.00 and (2) eliminate terminal leave, the two (2) proposals introduced by the City in these negotiations! The City has not proposed to "grandfather" current employees for a very valid reason. To do so would emasculate this proposal since it would have no impact for at least twenty-five (25) years!!

While the City recognizes that to implement this proposal for current employees without notice may be considered "Draconian" by the Association, current employees cannot be immune. The substantial cost of sick leave at retirement significantly impacts the following statutory criteria: (1) interest and welfare of the public; (2) lawful authority of the employer; (3) financial impact on the governing unit and residents; (4) continuity and stability of employment, and; (5) statutory restrictions on the employer.

The Union dismisses the concept of deducting from sick pay at retirement for any sick day used during the last year as absurd. An employee should not be punished for legitimately using sick leave they have accrued over the years of service to the City. The City should also not dissuade employees from using sick leave when they are legitimately ill or injured, and such a proposal borders on disability discrimination. The proposal seeking to cap sick leave at $15,000.00 is in direct response to the IAFF's arbitration victory in which Arbitrator Thomas Hartigan granted the IAFF's grievances and ordered the City to pay terminal leave. (U-1, Exs. 60-62) The chart below sets forth external comparability of other Atlantic County municipalities as well as municipalities of similar size and scope. The Union's chart demonstrates that most smaller municipalities within Atlantic County, such as Linwood and Northfield have slightly lower terminal leave caps than Atlantic City. Neighboring Brigantine has no terminal leave cap except to

limit the leave to seventy five (75) percent of unused sick leave and Pleasantville allows up to one hundred eighty (180) days of leave. Both are more generous than the IAFF Local 198 terminal leave cap. More comparable municipalities in size and scope, such as Newark, Hackensack, and Camden, have significantly higher terminal leave caps. Other than Linden and Trenton, Atlantic City comports with the remaining comparable municipalities, including Paterson, Edison, and Asbury Park. Internally, the City law enforcement bargaining units receive terminal leave benefits equal to the IAFF. Moreover, non-law enforcement bargaining units also receive terminal leave. In fact, the supervisors' bargaining unit receives terminal leave benefits arguably greater than those received by the IAFF.

Bargaining Unit	CBA Effective Dates	Terminal Leave
PBA Local 24	January 1, 2008-December 31, 2012	***Hired prior to 1984*** Paid up to 1 ½ years of sick leave for employees ***Hired in 1984*** Paid up to 16 months years of sick leave for employees ***Hired in 1985*** Paid up to 14 months of sick leave for employees ***Hired in 1986*** Paid up to 12 months of sick leave for employees ***Employees hired after October 16, 2006*** Paid up to 6 months of sick leave
ACSOA	January 1, 2008-December 31, 2011	***Hired prior to 1984*** Paid up to 1 ½ years of sick leave for employees ***Hired in 1984*** Paid up to 16 months years of sick leave for employees ***Hired in 1985*** Paid up to 14 months of sick leave for employees ***Hired in 1986*** Paid up to 12 months of sick leave for employees ***Promoted to Captain after December 31, 1999*** Paid up to 1 years of sick leave
AFSCME Local 2303	January 1, 2006-December 31, 2009	Upon retirement employees are eligible to receive 18 months of terminal leave. Employees have a lump sum payment option for all unused sick time at half of their daily pay rate capped at $15,000.
Supervisors	January 1, 2008- December 31, 2011	Employees hired before January 1, 1987 are entitled to a lump sum payment of all accumulated sick leave. Employees hired after January 1, 1987 are entitled to a lump sum payment of accumulated sick leave capped at 12 months.
ACWCPA	2007 through 2010	Employees hired before January 1, 1987 are entitled to a lump sum payment of all accumulated sick leave. Employees hired after January 1, 1987 are entitled to a lump sum payment of accumulated sick leave capped at 12 months. Terminal leave for new hires hired after January 1, 2000 capped at D.O.P. maximum for state employees.

While the City is attempting to limit terminal leave, there are several reasons why the City would likely save money in the event they had to pay terminal leave benefits during the proposed term of a successor CNA. First, the City only has to pay the maximum amount of allowable terminal leave if an employee has accrued a sufficient amount of sick leave to receive the maximum benefit. Second, if an employee had accumulated enough sick leave to receive the maximum terminal leave benefit, it would likely cost less than paying a new employee's full year of salary, inclusive of benefits and overtime. Moreover, replacing a retired employee during the proposed terms of the CNA will not cost the City any money because the newly hired employee would be covered under the SAFER grant. Finally, it is a benefit to the public that sick leave is not used during employment, but, instead, paid at the end of employment, which saves in overtime costs over the course of employment. (See generally City 1, Ex. 13, pg. 56).

There are other factors that must be considered when analyzing the terminal leave proposal. First, granting this proposal would result in the loss of a vested right. Employees have relied upon the terminal leave benefit and have spent their careers saving the taxpayers money by working when they could have utilized sick leave. To usurp such a vested benefit that employee's have relied upon is incomprehensible and potentially illegal. Second, New Jersey Governor Chris Christie is once again attempting to seize an opportunity to make public employment as unpalatable as possible by vetoing a bill that places a hard cap of $15,000 on terminal leave payouts. (See City 1, Ex. 7). Instead, Governor Christie is seeking to eliminate terminal leave benefits completely. Fairness dictates that we should not impose a cap for an agreed upon benefit that the employees have relied upon for many years and have made decisions with the understanding and belief that this benefit would be there for them. The IAFF has previously agreed to a terminal leave cap that is comparable, and, often more favorable to the City than is present in other jurisdictions. With public employees under siege, the City's proposal to eliminate a vested and relied upon benefit must not be granted.

AWARD: Atlantic City's proposal is awarded in part. The issue of sick pay and terminal leave payments to public sector employees at retirement has served as a lightning rod for controversy. Both sides have made compelling arguments in this regard. The Employer underlines that since 2007, it has paid 42 IAFF members a total of $5,737,264.00, or an average of $136,601.00 per fire fighter. See, City Exhibit 1, Tab 4, sub. 7. To date in 2012, $785,519.00 has been paid out, with projected costs of $521,017.00 in 2013 and $197,715.00 in 2014. Atlantic City also points to the well known 2009 SCI Report under Governor Corzine, recommending a $15,000.00 cap, and removal of terminal leave as an option. See, City Exhibit 1, Ibid. This topic is well known to the parties and other uniformed services and has resulted in protracted arbitration and litigation. [*citation omitted*]. The instant language essentially mirrors that of the PBA and ACSOA, and externally is consistent with most major cities, except Newark, Camden and Hackensack, which are uncapped. Of the smaller towns, Brigantine is uncapped with a 75% of unused days limit, with Pleasantville allowing up to 180 days. Linwood and Northfield have lower caps. It must be recognized that Atlantic City realized a substantial reduction in overtime and other costs when unit members diligently reported for duty. I am accordingly reluctant to disturb a vested benefit, and change the rules of the game after 20 years, as Angelo DeMaio cautioned. That task instead will be left to our Legislature. The Union has also worked with the Employer to gradually reduce this benefit. The fact remains, that this represents an extraordinary cost to the municipality and by extension the taxpayers of Atlantic City. I will accordingly award the City's language eliminating the terminal leave option with a $15,000.00 cap on any pay out, for new hires.

9. ARTICLE 17 – VACATIONS

The City has proposed to reduce the amount of vacation time allotted to Association members hired after January 1, 2012. Since this proposal has no impact on current employees, there is no economic impact to be considered. The amount of time off is exorbitant. It creates staffing issues and, if not staffing issues, overtime costs and overruns. Since firefighters

are involved in public safety, reduced staffing caused by excessive amounts of time off or staffing reductions due to budgetary restraints negatively impacts on public safety.

For its part, the Union accuses the City of once again offering no testimony or any other evidence to support its proposal. The argument is made that the City's vacation leave proposal is particularly disconcerting because it strikes at the heart of the benefits necessary to maintain morale within the Fire Department. There can be no real question that the occupation of fire fighting is a high stress occupation that is potentially life threatening on a daily basis. As such, fire fighters need the opportunity to decompress by having time away from the job to do so. To reduce a vacation leave benefit for firefighters is detrimental to morale and serves no real benefit to the City. The City may argue that vacation leave may create overtime costs. Such an argument is tenuous at best. Vacation leave is meant to be applied for in advance in order to provide management with sufficient time to create schedules which would avoid overtime issues. It is difficult to compare vacation leave with other municipalities' vacation policies due to varying work schedules and methods for calculating the amount of time that constitutes a vacation day. A better method is a comparison to the bargaining units within the City that receive vacation leave. Based on the Union's chart submitted, it is evident that the IAFF bargaining unit members vacation leave is certainly aligned with other bargaining units in the City. In fact, the PBA has greater vacation leave earlier in the career of a police officer. The Blue and White Collar Units both have more vacation leave as they accumulate service despite the fact that the positions cannot be considered as stressful or as dangerous.

AWARD: The Employer's proposal is awarded in part and modified. I credit the Union's arguments that the current vacation schedule is in line with other Atlantic City employees, and that fire fighting is an inherently stressful and dangerous occupation. Arbitral notice may be taken, however that there is a growing trend of reducing admittedly rich benefits for new hires. That said, the City's numbers are too low at the bottom and top ends and I have modified the same. As to the proposals related to the proration of vacation leave during the last year under proposed new Section D. and new language under proposed Section G., no testimony was provided in explanation of the need for the same and Atlantic City has therefore failed to carry its burden of persuasion in that regard.

10. ARTICLE 18 – ACTING OUT OF TITLE

The City's proposal is threefold: (1) eliminate the provision requiring the City to fill a promotional vacancy within fifteen (15) days; (2) commence acting out of title pay after the fifth consecutive shift of assignment, and; (3) granting the City the right to deny acting status to an employee who has previously failed to adequately perform in an acting capacity.

First, the City submits that the filling of promotional vacancies is a managerial right, and the current contractual language violates these management rights. There is no justification for preventing the City to leave a position vacant or to fill the position at a later date for whatever reason it so desires.

Because of the excessive amount of time off identified above, the City is always compensating employees for acting out of title. By requiring employees to be in an acting capacity for five (5) shifts before being compensated, the City will not be "nickeled and dimed" every time an employee is assigned to work in an acting capacity.

Most importantly, Fire Department management must be permitted to deny an employee the right to be assigned in an acting capacity if he or she has failed to adequately perform in an acting capacity. President DeMaio did not object to the concept or reasonableness of this proposal, but simply stated that there is no need for such language in the collective bargaining

agreement. It is axiomatic that if the City takes an action such as denying an employee the right to be assigned in an acting capacity, without contractual language permitting this action the City will be facing a grievance and subsequent arbitration.

IAFF Local 198 protests that to change this provision would be giving the Employer a free ride. An employee would not be paid for the work he or she was performing. If the City's language was adopted, the Employer could avoid paying an employee out-of-title pay infinitely by reassigning the employee to their permanent position on the fifth shift assignment and then requiring the employee to work out-of-title for the next four (4) consecutive shifts. Additionally, fairness dictates that an employee should be paid for the job they are performing when they perform it. The employee should not be forced to take on the responsibility and job duties of a higher title, and then allow the City off the hook by not compensating that employee for assuming the responsibility and job duties of the title. Finally, the City has again failed to provide any evidence that would offer a rational basis for such a proposal. In that regard, there is no evidence that paying an employee for working out-of-title has been an issue in the past.

AWARD: The Employer's proposal is not awarded. Notwithstanding seemingly persuasive arguments made after the fact, Atlantic City failed to introduce any evidence or argument this has been an issue in the past, or that a legitimate rationale exists for the proposal, which has the potential for abuse. As the Union has recognized, the City could remove a fire fighter from this work at the beginning of the 5th shift, and require him/her to continue working out-of-title for the next 4. The other Atlantic City proposals were also not developed at hearing, making it impossible to adequately consider them. Accordingly, the Employer has not satisfied its evidentiary burden of entitlement to the change.

11. ARTICLE 20 - PAY SCALE

The City has proposed a wage freeze for current employees covering the three (3) year term of this contract, exclusive of step and longevity

increases. The City has also proposed a new pay scale for newly hired employees with a lower starting salary, additional steps, and a lower salary at the maximum firefighter step and all superior ranks.

The IAFF Local 198 charges that changing the pay scale for new hires in the Fire Department during the proposed term of this contract is detrimental to the Union, with any savings to the City speculative. Any new hire during the term of this contract will be covered by the SAFER grant, so there will be no cost, and therefore, no benefit to the City. Even assuming arguendo that a new hire were not covered by the SAFER grant, such a savings is purely speculative. There is no guarantee that the City will hire any new employees. This would also create a situation where other municipalities could hire more desirable recruits. Additionally, the pay scale in Atlantic City is comparable to that of fire fighters in other larger municipalities. Admittedly, Atlantic City has a starting salary on the higher end of the pay scale, but the top end fire fighter is lower than the top end of many large municipalities. For instance, Newark, Linden, and Asbury Park firefighter have a higher top end pay than Atlantic City. Although Camden's top end pay is lower, it should be recognized that Camden fire fighters have been out of contract since 2008, so a comparison would be unfair. Under the City's proposal, the pay scale will be reduced to a minimum of $45,000.00, which is well below Asbury Park, Linwood, and Northfield. The maximum salary for a firefighter would be reduced to $75,000.00, which is lower than almost all fire departments reflected in the chart. It is significantly lower than Newark, Asbury Park, Trenton, Paterson and neighboring Brigantine. To put the City's proposal into perspective, it is proposing to increase the number of increment steps for an entry level step to the top step from seven (7) to eleven (11) steps. The salary from entry level step to the top step will decrease from a range of $56,875.00 - $91,575.00 to $45,000.00 - $75,000.00. This is a $20 % decrease. Additionally, the Captain's salary will decrease $14,236.00 which is nearly a fifteen percent (15%) decrease in salary. Furthermore, the Battalion Chief and Deputy Chief salaries decrease $13,997.00 and $27,021.00, which is nearly twelve per cent and eighteen percent, respectively.

AWARD: Atlantic City's proposal is granted in part. The proposal to freeze existing salaries is denied. However, curtailing the escalating costs of salaries for those newly hired and promoted is in the best interests of the statutory scheme. For this reason, I have awarded that portion of the City's proposal, but tweaked the salary guide. Atlantic City's starting salary of $56,587 eclipses that of most of the external comparables cited, including: Asbury Park ($51,598.00); Brigantine ($38,955.00); Camden ($51,387.00 as of 2008); Linden ($43,283.00); Margate ($42,722); Newark ($40,591.00); Paterson ($30,657.00); Pleasantville ($30,657.00); Trenton ($34,591.00); Ventnor ($33,677.00). At the top step, IAFF Local 198 also favorably compares and is exceeded only by Newark, Linden and Asbury Park. The new guide adds 4 steps, which will incidentally address in part, the incremental bubbles which limited my monetary award under the hard cap. The proposed top step of $75,000.00 however, places Atlantic City at a distinct disadvantage with its surrounding towns, that have a fraction of the fire suppression and other responsibilities of the bargaining unit: Brigantine ($87,431.00); Margate ($144,633.22); Pleasantville ($91,622.00); Ventnor (105,859.00). This may impact Atlantic City's ability to attract the most qualified recruits, as the Union argues. I have accordingly pegged the top step at $80,000.00, and modified the guide upward to maintain the roughly $15,000.00. separation between ranks.

Since the statutory criteria of (1) interest and welfare of the public; (2) lawful authority of the employer; (3) financial impact on the governing unit and residents; (4) continuity and stability of employment, and; (5) statutory restrictions on the employer have been addressed previously, they will only be mentioned below. The statutory criteria of comparability and cost of living will be discussed at length below.

The Act requires the Interest Arbitrator to consider a 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 in (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions. The Act also requires the Interest Arbitrator to consider the overall compensation presently received by the employees, inclusive of direct wages, salaries, vacations, holidays, excused leaves, insurance and pensions, medical and hospitalization benefits, and all other economic benefits received. As discussed below, the comparable and overall compensation exhibits submitted at the interest arbitration hearing demonstrate that the City extends more reasonable proposals than the Association.

In Hillsdale, the Court criticized the Interest Arbitrator for over-emphasizing comparability with, in the Hillsdale case, police departments in similar communities in rendering an award. Hillsdale, 137 N.J. at 86. The Court noted that the Legislature did not intend any one factor, including comparability to other police or fire departments in similar municipalities, to be dispositive. Id. In fact, section 16(g) "invites comparison with other jobs in both the public and private sectors." Id. at 85. As a result, the Interest Arbitrator should compare the City's fire compensation package not only to other municipal police compensation packages, but to other public and private sector jobs.

The amendment implemented under the Reform Act changes the weight the Interest Arbitrator should attribute to the consideration of compensation packages in private employment, public employment and in public employment in the same or similar comparable jurisdictions. Prior to the Reform Act, the Act required the Interest Arbitrator to consider a:

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

Under the Reform Act, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions.

Therefore, the Legislature altered the order of the three subfactors, moving comparability to employees in the private sector from the third subfactor to the first subfactor and moving comparability to public employment in the same or similar comparable jurisdictions from the first subfactor to the third subfactor. This amendment evidences legislative intent to reduce Interest Arbitrators' over-reliance on wage and benefit

comparability to public employees in the same or similar jurisdictions--an over dependence criticized by the Court in Hillsdale and Washington--and increase Interest Arbitrators' under emphasis of comparability to private employees in general. Consequently, the Interest Arbitrator must consider a comparison with other employees (a) in private employment in general; (b) in public employment in general; (c) in public employment in the same or similar comparable jurisdictions without unduly emphasizing comparability to public employment in comparable jurisdictions and without minimizing comparability to private employment in general.

As a result, this section compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the wage increases and benefits received by private and public employees in general. It also compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with the salary and benefits the City provides to its other unionized employee groups and to its non-unionized employees. Additionally, it compares the wages, wage increases and benefits demanded by the Association and the wages, wage increases and benefits offered by the City with those provided by similar municipalities to their fire fighters.

Wage and benefit packages in the private sector highlight the

reasonableness of the City's proposals in contrast to the Association's demands. Wage increases in the private sector fall significantly below the annual increases demanded by the Association. All the City needs to support its proposal compared to wages and benefits in the private sector is its first exhibit behind its wage proposal in the City Exhibit book, Tab 4, subtab 10. This newspaper article cites a New Jersey Business & Industry Association Business Outlook survey. In 2011, less than fifty percent (50.0%) of private employers gave raises, with six percent (6.0%) implementing pay cuts. In 2012, less than fifty percent (50.0%) of private employers projected wage increases, with four percent (4.0%) implementing pay cuts. The City's proposal, unlike the Association's wage demands, is comparable with private sector wage and benefit actions.

Wage increases in the public sector highlight the reasonableness of the City's proposals. Voters have sent a strong message to local government that they will not support increases in property taxes to fund, among other things, salary increases for public employees. In 2011, under new law, municipalities who needed to exceed the two percent (2.0%) property cap have to put the issue before the public. Previously, local governments appealed to the State for approval if they needed to raise property taxes above the four percent (4.0%) cap. On April 27, 2011, in the first referendum of its kind, voters sent a strong message to local

government when they voted down proposals to increase the tax levy above the two percent (2.0%) cap in twelve (12) out of fourteen (14) municipalities. Almost all of the municipalities that voted the referendum down voted no by more than double digits. In two (2) municipalities, voters rejected the proposal by more than eighty percent. Only two (2) municipalities, Brick and Lambertville, passed the measure, which enabled residents to avoid the privatization of garbage collection. Although voters were aware that municipal jobs and services were at stake, the overwhelming defeat of the referendums emphasized the need to control public salaries. The recent deep economic recession caused a call for the reconsideration of public sector compensation packages.

It is axiomatic that benefit packages granted to non-public safety employees at best equal benefit packages granted to public safety employees. To the same degree, this holds true in Atlantic City. However, what must be taken into consideration is that while non-public safety employees may have the same percentage longevity and may have the same per diem payout for sick leave at retirement as public safety employees, the benefit is substantially less for non-public safety employees since their salaries are substantially lower, generating much lower dollar amounts on either a percentage or per diem basis.

The excessive annual salaries of Association members as compared to

non-public safety City employees is astounding. As demonstrated in the City Exhibit Book, Tab 3, subtab 2, Association members as far down as the rank of firefighter have greater base salaries than employees in titles such as Electric Subcode Official, Municipal Department Head, Municipal Prosecutor, **Director of Public Safety**, Assistant Municipal Engineer, and Assistant Municipal Attorney, just to name a few. [*emphasis supplied in original*].

It is common for each side in interest arbitration to create its own "universe" of allegedly comparable municipalities. It is presumed that each universe is skewed to support the position of the party developing that universe. To avoid such an allegation being proffered against the City, the City agreed to use the universe created by the Association to argue comparability.

In 2011, of the twelve (12) municipality universe, the City ranked first in starting salary and second in maximum salary. In 2012, without any increases, the City still ranked first in starting salary and third in maximum salary. The only municipality missing in 2012, Northfield, ranked sixth in starting salary and last in maximum salary in 2011. Even if the City's salary guide for new hires was implemented in 2012, the City would still rank second in starting salary and the city would rank eleventh in maximum salary. To place comparability in perspective, with municipalities bunched in the middle, a maximum salary of $75,000.00 would place the City sixth

amongst the comparable municipalities. (City Exhibit Book, Tab 3, subtab 1)

The documents presented by the City relative to this statutory criterion speak for themselves. Towards the back of City Exhibit Book, Tab 4, subtab 10, the City provided summaries and backup of the CPI versus raises for Association members. To be fair and accurate, the City used the national CPI figures as well as the regional CPI figures for the years 2002-2011.

Over the ten (10) year period, Association members outpaced the national CPI by fifteen and two-tenths percent (15.2%), or over one and one-half percent (1.5%) annually. Over the same ten (10) year period, Association members outpaced the regional CPI by twelve and one-half percent (12.5%), or one and one-quarter percent (1.25%) annually. It is about time that the cost of living, as slow as it is increasing, begin to catch up with Association salaries.

Based on the above, with respect to all of the statutory criteria other than stipulations of the parties, the City submits that the Interest Arbitrator has no choice but to award the City's proposals with respect to the pay scales for the duration of this collective bargaining agreement for both current Association members as well as new hires.

12. ARTICLE 22 – LONGEVITY

The City proposes to freeze longevity for current employees and eliminate longevity for new hires. While this proposal has financial consequences for current Association members and newly hired employees, it has no current negative cost factor and therefore is not included in the costing out.

Prior to being given the right to negotiate, the only avenue for public employees to receive compensation increases was through salary guides. Part of those salary guides were longevity increases. However, with the advent of the right to collectively bargain and subsequent to that the right to implement interest arbitration, the historical basis for longevity has disappeared. In fact, longevity has now become an impediment to negotiations.

At the back of City Exhibit Book, Tab 4, subtab 10, is a roster of current Fire Department employees. For 2012, longevity costs the City in excess of $1,224,000.00. This does not even include the fact that when added to base salary, these payments have an additional negative budget impact on overtime rates and pension payments! There is no rational basis for these payments except that the individuals receiving longevity have remained employed for a certain number of years.

Similarly, when longevity percentages were first implemented, public

employees' compensation was low and there was a valid argument for supplementing base pay. However, with the meteoric rise in the base salaries of public safety employees, besides eliminating the rationale for longevity, the actual longevity payments rose to unrealistic levels.

The exorbitant level of longevity payments is the basis for the City's proposal to freeze current employees at their present longevity levels. The exorbitant longevity totals in conjunction with the high base salaries is the basis for the City's proposal to eliminate longevity for employees hired after January 1, 2012. The calculation of longevity on a percentage basis has a further twofold effect. First, every time Association members receive a salary increase, longevity payments increase. Based upon the City's "ability to pay" argument presented earlier in this Brief, this "double whammy" has a negative budget impact, further impacting the City's ability to operate within its budgetary constraints. Second, since the Reform Act requires arbitrators to include longevity increases in calculating the two percent (2.0%) cap, longevity has a negative impact on the parties' ability to negotiate and the interest arbitrator's ability to formulate a wage package.

A trend is developing in the public sector to eliminate longevity. With respect to the "universe" of "comparable" municipalities, three (3) of the eleven (11), in excess of twenty-five percent (25.0%), of the municipalities have already eliminated longevity. (City Exhibit Book, Tab 3, subtab 1.).

Although the City does not agree, it does recognize the basis for the Association's objection to modifying longevity for current employees. However, the Association has put forth no valid argument against the City's proposal to eliminate longevity for employees hired after January 1, 2012. The only argument raised by the Association is against a two (2) tiered system. Not only can the arbitrator take "arbitrable notice" that two (2) tiered systems are prevalent throughout the public sector, but that they are present currently within the collective bargaining agreement between the City and the Association!

Based on the above, with respect to all of the statutory criteria other than stipulations of the parties, the City submits that the Interest Arbitrator has no choice but to award the City's longevity proposals for both current Association members as well as new hires.

IAFF Local 198 argues that while on its face, it appears to be a cost savings as to new employees, it is not a savings during the term of this agreement, because new employees would not receive longevity during its term. The proposed language would also effectively eliminate longevity benefits for any existing employee not currently receiving it, including employees who would be eligible for it under a SAFER grant. Furthermore, the longevity benefit received by the IAFF members is identical to the longevity benefits received by the Police bargaining units in the City, and very similar to the other bargaining units in the City. Furthermore, IAFF's longevity benefits are often less than those received by other external municipal fire departments, both in Atlantic County and outside of Atlantic County. As demonstrated by the Union's chart, fire departments such as Camden, Newark, Paterson, Trenton, and Ventnor all receive longevity benefits greater than those received by the IAFF in Atlantic City. It would accordingly be unfair to the IAFF and detrimental to the public, to freeze longevity benefits for current employees and eliminate longevity benefits for new employees. Such a devastating blow

to the compensation package of firefighters in Atlantic City would make recruiting fire fighters difficult and destroy the morale of current members. Therefore, the proposal must be denied.

AWARD: Atlantic City's longevity proposal is awarded in part. There is no justification for freezing the longevity of those unit members currently receiving it. Rather, it is consistent with the internal comparability of the PBA, ACSOA, and other municipal workers. The external data also supports the Union's argument that it is in keeping with most larger municipal fire departments, and inferior to others, such as Camden, Paterson, Trenton, & Ventnor. Only Linden, Linwood, and Northfield have eliminated the benefit altogether. As with the City's terminal leave proposal, I am hesitant to remove a vested benefit that employees have enjoyed during their tenure. However, the payment of exorbitant percentage longevity costs must be addressed with new hires. I do not credit the Employer's argument in favor of elimination of the benefit. Moreover, like other emoluments, longevity is merely a component of a larger salary package that permits this mega tourist destination to attract qualified fire fighters. I will therefore convert the percentages to lump sums, based upon the newly awarded salary guides, to eliminate the automatic escalation upon a salary increase. As to the Award of Arbitrator Mason in The Borough of Spotswood and PBA Local 225, P.E.R.C. Docket No. IA-2011-0048, that is factually distinguishable due to the unique circumstances expressed, and no detailed explanation was provided for the subsequent elimination of longevity.

13. ARTICLE 25 – EDUCATION

The City has proposed to totally revamp its educational incentive program, requiring course work to relate to a degree in Fire Science; basing incentives on achieving degrees as opposed to just levels of credits; basing incentive calculations on flat dollars instead of percentages, and; lowering the actual incentive compensation. While this proposal has financial consequences for current Association members and newly hired employees,

it has no current negative cost factor and therefore is not included in the costing out.

At the back of City Exhibit Book, Tab 4, subtab 10, is a roster of current Fire Department employees. For 2012, education incentives cost the City in excess of $1,355,000.00, even more than longevity. This does not even include the fact that when added to base salary, these payments have an additional negative budget impact on overtime rates and pension payments! Payments to individual Association members in a number of cases exceed $10,000.00. There is no rational basis for such excessive payments.

The City's proposal to require eligibility for education incentive to relate to obtaining a degree related to Fire Science is obvious. For the City to pay Association members to take credits for courses totally unrelated to their employment and for which the City gains no conceptual benefit is absurd and indefensible by the Association.

The exorbitant level of education incentive payments is the basis for the City's proposal to modify the education incentive program. As with the calculation of longevity, calculating education incentive payments on a percentage basis has a negative effect on the City's budget, further impacting the City's ability to operate within its budgetary constraints.

With respect to the "universe" of "comparable" municipalities, there is

absolutely no comparison between the City's education incentive program and the program of any of the other comparable municipalities. Not one of these comparable municipalities provides education incentives on a percentage basis. Very few of the comparable municipalities provide an education incentive for anything less than an Associate's degree. Not one of these comparable municipalities provides a dollar incentive anywhere close to that provided by the City to Association members, the closest maximum being almost $10,000.00 less than that provided to some of the Association members! (City Exhibit Book, Tab 3, subtab 1.)

Although the City does not agree, it does recognize the basis for the Association's objection to modifying the education incentive for employees who have already earned a degree. However, the Association has put forth no valid argument against the City's proposal to modify the education incentive program for employees who have not yet obtained a degree. The only argument raised by the Association, again, is against a two (2) tiered system which, as described above, is not a valid basis for rejecting the City's proposal.

Based on the above, with respect to all of the statutory criteria other than stipulations of the parties, the City submits that the Interest Arbitrator has no choice but to award the City's education incentive proposals.

The IAFF Local 198 emphasizes that the City's educational proposal must be denied for two (2) reasons: the City is putting less value on the need for education of its firefighters; it is reducing the salary of the employees who currently receive the benefit. Currently, the education incentive is a component of base salary on which longevity and pension are calculated. To eliminate the education incentive would reduce the employees' salary and longevity benefits. Furthermore, the City has offered no evidence in support of the proposal, so there is no rationale for the change. Notably, Atlantic City in continuing its bad faith conduct, has refused to pay the required education incentives, which has forced the IAFF to file a grievance and an unfair labor practice. It cannot be stressed enough that the City must maintain a perception of safety for casino patrons and tourists in order for the City to maintain its current status in the marketplace. Furthermore, the incentive associated with education is a benefit that will assist in the recruitment of high quality firefighters. The City must be aware of this fact, as the police receive a slightly better education incentive as demonstrated in the Union's chart. The City also provides an educational benefit to the other bargaining units. In sum, the City's Education Incentive proposal would effectively reduce the salary of those employees who currently receive it and would be detrimental to the public. This is likely the reason the City offered no evidence to support this position because it is indefensible. Accordingly, the proposal must be denied.

AWARD: Atlantic City's proposal is awarded in part. By any measure, the educational incentive payments received by the IAFF Local 198 unit members are exorbitant, and cost the City in excess of $1,355,000 in 2012. And because they are rolled into the base, it is inflated for longevity and pension purposes. No serious argument may be made that enhanced education does not benefit the Employer. One of the flaws in the current system, however, is that non-fire related courses may also be taken with the credits aggregated. The Union has made a compelling argument that reducing the benefit for current members would affect their base pay, and that will be left intact. I recognize that the IAFF plan also mirrors that of the PBA and ACSOA. And while the other Atlantic City employees receive an incentive, it is at a flat dollar amount that does not remotely approach that enjoyed by this unit. The same may be said of the external comparables. See, City Exhibit 1, Tab 3, sub. 1. I therefore will permit all employees currently receiving this benefit to retain it, but substantially adopt Atlantic City's proposal for those not currently receiving the same.

14. ARTICLE 31 – SUSPENSIONS AND FINES

Based upon the testimony presented at the hearings, the City withdraws this proposal.

Recent settlements and arbitration awards reflect the new economic reality and illustrate a restrained wage increase trend. The arbitrator can take "arbitrable notice" that in January 2012, two employee unions representing 5,000 state workers reached a four-year contract with the state providing for a 0% wage increase effective July 1, 2011, a 0% increase effective July 1, 2012, a 1.0% increase effective July 1, 2013 and a 1.75% increase effective July 1, 2014. The contract, therefore, provides for an average wage increase of 0.69%.

Recent interest arbitration awards also highlight the reasonableness of the City's offer. The City provided a copy of the Interest Arbitration decision between the Borough of Ramsey and Ramsey PBA Local No. 155, Docket No. IA-2012-015. This decision was presented to illustrate the calculation of the two percent (2.0%) cap under the Reform Act.

Even more significant and applicable to the present case is the arbitrator's decision in the Borough of Spotswood and PBA Local 225, Docket No. IA-2011-048, dated May 23, 2011, of which the arbitrator can again take "arbitrable notice". Interest Arbitrator Frank Mason awarded a three year contract effective from January 1, 2011 through December 31,

2013. The award provided for a wage freeze effective January 1, 2011, a 2% wage increase effective July 1, 2012, and a 2% increase effective January 2013. The wage increases average 1.33% over the contract term. The award included several additional money-saving modifications. First, the award froze and converted longevity benefits to flat dollars for current employees receiving longevity and eliminated longevity benefits for new hires, mirroring the City's longevity proposal in this interest arbitration. It also eliminated the education incentive plan, reduced vacation benefits for new hires. [*emphasis supplied in original*]. Clearly, recent Interest Arbitration awards support the City's proposals and run contrary to the demands of the Association.

In conclusion, the City's proposals more reasonably reflect the statutory criteria than the Association's demands. The City's proposals comply with the two percent (2.0%) statutory cap, and consider the City's ability to pay, the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers. The City's proposals also consider the interest and welfare of the public, the Association members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and fire fighters in other comparable municipalities.

The City's proposals further consider the modest increases in the cost of living, and take into account its impact on the firefighters' continuity and stability of employment. On the other hand, the Association's demands fail to comply with the two percent (2.0%) statutory cap; fail to consider the City's ability to pay, the impact of the Cap Law on the City's ability to grant wage increases, and the financial impact on the governing unit, its residents and taxpayers; fail to consider the interest and welfare of the public, the Association members' overall compensation package, salaries and benefits in the private sector, salaries and benefits in the public sector and the salaries and benefits provided to employees in the same jurisdiction and fire fighters in other comparable municipalities; fail to consider the modest increases in the cost of living, and; fail to take into account its impact on the firefighters' continuity and stability of employment. Accordingly, because the City's proposals more reasonably reflect the statutory criteria than the Association's demands, the City respectfully requests the Interest Arbitrator to issue a decision supporting the elements of the City's offer.

III. STATEMENT OF THE CASE

Effective January 1, 2011, the processing and adjudication of interest arbitration petitions was modified by the enactment of P.L. 2010, c. 105, as referenced in N.J.S.A. 34:13A-16 (2011). Pursuant to subsection d: "[t]he

resolution of issues in dispute shall be binding arbitration under which the award on the unsettled issues is determined by conventional arbitration. The arbitrator shall determine whether the total net annual economic changes for each year of the agreement are reasonable under the nine statutory criteria as set forth in subsection g. of this section and shall adhere to the limitations set forth in section 2 of P.L. 2010, c. 104 (C.34:13A-16.7)." *See also,* Hillsdale PBA Local 207 v. Borough of Hillsdale, 137 N.J. 71, 644 A.2d 564 (1994); Township of Washington v. New Jersey State Policeman's Benevolent Association, Inc., 137 N.J. 88, 644 A.2d 573 (1994).

At the outset of this discussion, it must be emphasized that by virtue of the December 31, 2011 expiration date of the C.B.A., this case falls under the "hard cap" provisions of P.L. 2010, c. 105, with N.J.S.A. 34:13a – 16.7, as amended, providing:

> a. As used in this section:
>
> 'Base salary' means the salary provided pursuant to a salary guide or table and any amount provided pursuant to a salary increment, including any amount provided for longevity or length of service. It also shall include any other item agreed to by the parties, or any other item that was included in the base salary as understood by the parties in the prior contract. Base salary shall not include non-salary economic issues, pension and health and medical insurance costs.
>
> 'Non-salary economic issues' means any economic issue that is not included in the definition of base salary.
>
> b. An arbitrator shall not render any award pursuant to section 3 of P.L. 1977, c. 85 (C.34:13A-16) which, on an

> annual basis, increases base salary items by more than 2.0 percent of the aggregate amount expended by the public employer for base salary items for the members of the affected employee organization in the twelve months immediately preceding the expiration of the collective negotiation agreement subject to arbitration; provided, however, the parties may agree, or the arbitrator may decide, to distribute the aggregate monetary value of the award over the term of the collective negotiation agreement in unequal annual percentages. An award of an arbitrator shall not include base salary items and non-salary economic issues which were not included in the prior collective negotiations agreement.

IAFF Local 198 has expressly accused the City of anti-Union animus in designing its proposals to eviscerate the benefits unit members enjoy under the C.B.A as a payback for the ULP filed with P.E.R.C., as well as other arbitration and litigation undertaken related to the payment of terminal leave and the duties of the former director of Public Safety. Atlantic City's Final Offer is further viewed as a continuation of the assault upon public workers begun in the state of Wisconsin.

The reality of the situation, however, is that in response to crushing property tax obligations, the New Jersey Legislature has enacted the current statute, and Governor Christie has made the reduction of perceived exorbitant public sector benefits with concomitant tax savings passed along to residents, the cornerstone of his administration. As such, any interest arbitrator who ignores this imperative without supporting the award with *substantial credible evidence* exposes himself to a collateral attack upon

appeal, and potential vacature by the Commission. See, In the Matter of Borough of New Milford and PBA Local 83, P.E.R.C. No. 2012-53; In the Matter of Borough of Ramsey, and Ramsey PBA Local No. 155, P.E.R.C. No. 2012-60; see also, In the Matter of Teaneck Tp. v. Teaneck FMBA, Local No. 42, 353 N.J. Super. 298, 299 (App. Div. 2002), aff'd p.b. 177 N.J. 560 (2003), citing Cherry Hill Tp., P.E.R.C. No. 97-119, 23 NJPER 287 (¶28131 P.E.R.C. No. 2012-53). This AWARD is carefully designed to adhere to this mandate.

Several threshold issues warrant my consideration. Initially, there are dueling scattergrams presented by the parties. The plain language of P.L. 2010, c. 105 allows that in addition to the inclusion of salary increments and longevity for "base salary" purposes, "[a]ny other item that was included in the base salary as understood by the parties in the prior contract." In this regard, it is clear that holiday pay has already been included in the base salary, and the parties further agree that the same is true of the education incentive received by some members.

The first point of contention pertains to the inclusion in the base salary computation of unit members whose salaries and benefits are paid under a SAFER grant from FEMA. See, Union Exhibit 7. I credit the position of the IAFF Local 198 via its Financial Expert, Mr. Foti, that the interest arbitration statute makes no distinction concerning the source of revenue received by

Atlantic City. That said, there are several factors that bar my acceptance and consideration of this evidence. In reply, the Employer argues that the grant represents dedicated funds not available to be used anywhere else in the City's budget. Second and most important, is the argument that if the grant monies are included in base salaries for the purpose of calculating incremental costs, then the increments for the fire fighters covered under the grant must also be included, which would improperly skew and inflate incremental costs.

There were several revisions to the scattergram. On the first day of hearing at my direction, Atlantic City provided Joint Exhibit 1, which was a Crystal Report run by MIS. This listed the unit members by title; as well as the 2011/2012 base salary; longevity; and education incentive percentage with dollar amount. No SAFER fire fighters were included. The caveat offered by the Employer was that the cost of increment would have to be added in for 2012 and 2013, by moving the employees up. At the second hearing, the IAFF Local 198 provided Union Exhibit 5. This scattergram enumerated the same employees as Joint Exhibit 1, and also did not include the SAFER fire fighters, as I independently verified at hearing. It added the incremental costs as well as longevity and educational incentive into the base.

The totals included on the final page of Union Exhibit 5, however, did

add a line item of $1,132,360 for SAFER grant employees, which was consonant with the later testimony of Mr. Foti. During the same, the financial expert explained that he had anticipated this number based upon 20 employees at the $56,618 starting salary. The Employer objected that the incremental costs associated with these fire fighters were not included in the Union's computations, and an Executive Session was convened to discuss the issue. At that time, I ruled that inclusion of the SAFER monies without providing incremental costs offered an incomplete picture.

The SALARY CAP SUMMARY at Union Exhibit 6, then rolled the $1,132,360 figure onto the 2011 base salary in arriving at a $19,674,164 base salary for 2012, without accounting for the cost of increment. The foregoing facts preclude my inclusion of the fire fighters salaries funded by the SAFER monies into the base pay computation required by N.J.S.A. 34:13a-16.7, because no incremental costs have been factored in. It should be noted that this conclusion is based upon an evidentiary ruling and not a global pronouncement on the propriety of including grant monies into the base salary in interest arbitration cases.

Based upon the figures in Union Exhibit 5, Atlantic City then revised its incremental and longevity costs, with the 2011 base salary properly calculated using the non-fire prevention salaries; fire prevention salaries; longevity cost and education incentive cost (holiday pay is already in the

base). For 2012 base salaries, the 2011 base salaries were added to the previous step increase calculation, and the Union's calculation for longevity. The same method was used for 2013 & 2014.

There is also scant support for the Union's position that a number of former bargaining unit members who either retired, were deceased, or were removed administratively during 2011 prior to the 8/1/11 run date of Joint Exhibit 1, should have been included in the computations. Once again, while this argument was peripherally raised at the hearings, the actual names and figures were not provided until a comprehensive spreadsheet was produced by the IAFF Local 198 *after* the record was closed. The Employer therefore had no opportunity to address and potentially rebut the same.

Notice is also taken with respect to both of these issues, that pursuant to N.J.S.A. 34:13A-16.f.(3) "[t]hroughout formal arbitration proceedings the chosen arbitrator may mediate or assist the parties in reaching a mutually agreeable settlement. *All parties to arbitration shall present, at the formal hearing before the issuance of the award, written estimates of the financial impact of their last offer on the taxpayers of the local unit to the arbitrator with the submission of their last offer.*" [*emphasis supplied*].

On April 9, 2012, the Commission issued its New Milford decision, P.E.R.C. No. 2012-53, *supra*, which for the first time provided arbitral

guidance for the necessary calculations in ensuring that any economic award does not exceed the 2% "hard cap." At pages 12-13, P.E.R.C. found:

> [t]his is the first interest arbitration award that we review under the new 2% limitation on adjustments to base salary. Accordingly, we modify our review standard to include that we must determine whether the arbitrator established that the award will not increase base salary by more than 2% per contract year or 6% in the aggregate for a three-year contract award. In order for us to make that determination, the arbitrator must state what the total base salary was for the last year of the expired contract and show the methodology as to how base salary was calculated. We understand that the parties may dispute the actual base salary amount and the arbitrator must make the determination and explain what was included based on the evidence submitted by the parties. Next, the arbitrator must calculate the costs of the award to establish that the award will not increase the employer's base salary costs in excess of 6% in the aggregate. The statutory definition of base salary includes the costs of the salary increments of unit members as they move through the steps of the salary guide. Accordingly, the arbitrator must review the scattergram of the employees' placement on the guide to determine the incremental costs in addition to the across-the-board raises awarded. The arbitrator must then determine the costs of any other economic benefit to the employees that was included in the base salary, but at a minimum this calculation must include a determination of the employer's cost of longevity. Once these calculations are made, the arbitrator must make a final calculation that the total economic award does not increase the employer's costs for base salary by more than 2% per contract year or 6% in the aggregate.

At page 15, the Commission went on to squarely address one of IAFF Local 198's contentions related to my consideration of "breakage:"

> **** Since an arbitrator, under the new law, is required to project costs for the entirety of the duration of the award, calculation of purported savings resulting from anticipated retirements, and for that matter added costs due to replacement

> by hiring new staff or promoting existing staff are all too speculative to be calculated at the time of the award. *The Commission believes that the better model to achieve compliance with P.L. 2010 c. 105 is to utilize the scattergram demonstrating the placement on the guide of all of the employees in the bargaining unit as of the end of the year preceding the initiation of the new contract, and to simply move those employees forward through the newly awarded salary scales and longevity entitlements. Thus, both reductions in costs resulting from retirements or otherwise, as well as any increases in costs stemming from promotions or additional new hires would not affect the costing out of the award required by the new amendments to the Interest Arbitration Reform Act.*

The Union has ably argued that the instant case is factually distinguishable from New Milford in that the actual savings from the SAFER grant and the retirements, etc are not speculative but real. Based on my prior evidentiary rulings, however, that issue has not been reached. In any event, I do not read this decision to permit my consideration of the same. And while it very well may be that New Milford is *ripe* for review as the Union suggests, unless and until it is set aside, I am bound by its parameters.

The remaining threshold issue which the Union takes the Employer to task with concerns the pro-rating and carryover of incremental costs by Atlantic City. Notice is taken, that pursuant to Article 22 of the C.B.A., longevity commences on the employee's anniversary date of employment. As such, inclusion of that amount for the entire calendar year would impermissibly inflate the base salary computation and not account for funds actually paid by the Employer, and I subscribe to the Employer's approach.

See generally, In the Matter of the Interest Arbitration Between Morris County Prosecutor's Office and Patrolman's Benevolent Association Local No. 327, P.E.R.C. Docket No. IA-2012-032 (Osborn, 2012). With these considerations in mind, the subject costing out of the base salary follows.

The existing salary guide for the Atlantic City IAFF Local 198, which does include holiday pay but is exclusive of longevity and educational incentive reflects:

RANK	SALARY
APPRENTICE I	$56,587.00
APPRENTICE II	$58,854.00
APPRENTICE III	$61,090.00
JOURNEYMAN I	$67,607.00
JOURNEYMAN II	$74,126.00
JOURNEYMAN III	$80,645.00
SR. JOURNEYMAN.	$91,575.00
CAPTAIN	$104,326.00
BATTALION CHIEF	$118,997.00
ASST. CHIEF FIRE INSPECTOR	$118,997.00
DEPUTY CHIEF	$136,030.00
FIRE OFFICIAL	$136,030.00

See also, TABLE OF ORGANIZATION, Union Exhibit 2.

As extrapolated from Union Exhibit 5 by the City, the following are the Employer's base salary costs for each year of the awarded 3 year contract, assuming the awarding of Atlantic City's 0%, 0%, 0% proposal for 2012-2014:

CITY OF ATLANTIC CITY

IAFF LOCAL 198

2011 BASE SALARY COSTS

NON-FIRE PREVENTION SALARIES	(EXHIBIT U-5)	$18,465,531.00
FIRE PREVENTION SALARIES	"	$ 1,208,633.00
LONGEVITY COST	"	$ 1,064,999.00
EDUCATION INCENTIVE COST	"	$ 1,333,009.00
TOTAL		**$22,072,172.00**

2012 INCREMENTAL AND LONGEVITY COSTS

Rank	No. of Ees.	Base Salary	Total Salaries
Fire Official	1	$136,030.00	$ 136,030.00
Deputy Chief	3	$136,030.00	$ 408,090.00
Asst. Chief Fire Insp.	2	$118,997.00	$ 237,994.00
Battalion Chief	9	$118,997.00	$ 1,070,973.00
Captain	49	$104,326.00	$ 5,111,974.00
Sr. Journeyman	112	$ 91,575.00	$10,256,400.00
Journeyman III	28x.67	$ 80,645.00	$ 1,512,900.00

Journeyman II	28x.33	$ 74,126.00	$ 684,924.00
	1x.67	$ 74,126.00	$ 49,664.00
Journeyman I	1x.33	$ 67,607.00	$ 22,310.00
	1x.5	$ 67,607.00	$ 33,804.00
Apprentice III	1x.5	$ 61,090.00	$ 20,160.00
	2x.67	$ 61,090.00	$ 81,861.00
Apprentice II	2x.33	$ 58,854.00	$ 38,844.00
	1x.67	$ 58,854.00	$ 39,432.00
Apprentice I	1x.33	$ 56,587.00	$ 18,674.00

2011 BASE SALARIES	**$22,072,172.00**
2012 INCREMENTAL INCREASES (CITY EXHIBIT)	**$ 309,808.00**
2012 LONGEVITY INCREASES (EXHIBIT U-5)	**$ 143,557.00**
2012 BASE SALARIES	**$22,525,537.00**
DOLLAR DIFFERENCE	**$ 453,365.00**
% DIFFERENCE	**2.01%**

2013 INCREMENTAL AND LONGEVITY COSTS

Rank	No. of Ees.	Base Salary	Total Salaries
Fire Official	1	$136,030.00	$ 136,030.00
Deputy Chief	3	$136,030.00	$ 408,090.00
Asst. Chief Fire Insp.	2	$118,997.00	$ 237,994.00
Battalion Chief	9	$118,997.00	$ 1,070,973.00
Captain	49	$104,326.00	$ 5,111,974.00
Sr. Journeyman	112	$ 91,575.00	$10,256,400.00
	28x.67	$ 91,575.00	$ 1,717,947.00
Journeyman III	28x.33	$ 80,645.00	$ 745,160.00

	1x.67	$ 80,645.00	$ 54,032.00
Journeyman II	1x.33	$ 74,126.00	$ 24,462.00
	1x.5	$ 74,126.00	$ 49,664.00
Journeyman I	1x.5	$ 67,607.00	$ 33,804.00
	2x.67	$ 67,607.00	$ 90,593.00
Apprentice III	2x.33	$ 61,090.00	$ 40,319.00
	1x.67	$ 61,090.00	$ 40,930.00
Apprentice II	1x.33	$ 58,854.00	$ 19,422.00

2012 BASE SALARIES	**$22,525,537.00**
2013 INCREMENTAL INCREASES (CITY EXHIBIT)	**$ 313,760.00**
2013 LONGEVITY INCREASES (EXHIBIT U-5)	**$ 71,601.00**
2013 BASE SALARIES	**$22,910,898.00**
DOLLAR DIFFERENCE	**$ 385,361.00**
% DIFFERENCE	**1.71%**

2014 INCREMENTAL & LONGEVITY COSTS

Rank	No. of Ees.	Base Salary	Total Salaries
Fire Official	1	$136,030.00	$ 136,030.00
Deputy Chief	3	$136,030.00	$ 408,090.00
Asst. Chief Fire Insp.	2	$118,997.00	$ 237,994.00
Battalion Chief	9	$118,997.00	$ 1,070,973.00
Captain	49	$104,326.00	$ 5,111,974.00
Sr. Journeyman	140	$ 91,575.00	$12,820,500.00
	1x.67	$ 91,575.00	$ 61,355.00
Journeyman III	1x.33	$ 80,645.00	$ 26,613.00
	1x.5	$ 80,645.00	$ 40,323.00

Journeyman II	1x.5	$ 74,126.00	$ 37,063.00
	2x.67	$ 74,126.00	$ 99,329.00
Journeyman I	2x.33	$ 67,607.00	$ 44,621.00
	1x.67	$ 67,607.00	$ 45,297.00
Apprentice III	1x.33	$ 61,090.00	$ 20,160.00

2013 BASE SALARIES	**$22,910,898.00**
2014 INCREMENTAL INCREASES (CITY EXHIBIT)	**$ 122,528.00**
2014 LONGEVITY INCREASES (EXHIBIT U-5)	**$ 94,768.00**
2014 BASE SALARIES	**$23,128,194.00**
DOLLAR DIFFERENCE	**$ 217,296.00**
% DIFFERENCE	**0.96%**

As set forth above, the 2011 base salary with included statutory criteria for the members of the IAFF Local 198 bargaining unit which serves as a constant amounts to $22,072,172.00 One (1) percentage point accordingly equals $220,721.00. Pursuant to the statutory criteria, the total cost of my AWARD may not on an annual basis increase base salary items by more than 2% of the aggregate expended by the Public Employer on this bargaining unit during the 12 months preceding the expiration of the contract. See, P.L. 2010 c. 105; N.J.S.A. 34:13.a.16-7.b. In real dollars, this equates to $441,443 for each year of the 3 years in the successor agreement ($22,072,172 X 2%) or $1,324,330 ($220,072,721 X 6%) in the aggregate.

Atlantic City has accurately computed the existing incremental and longevity costs for 2012; 2013; 2014, as indicated above. These consume much if not most of the allotted hard cap of 2% and in fact in the first year eclipse it, as follows:

2011 Base Salary	2012 Incremental Costs	2012 Longevity Costs	Dollar Difference	% of 2011 Base
$22,072,172.00	$309,808.00	$143,557.00	$453,365.00	2.05 %
	2013 Incremental Costs	2013 Longevity Costs	Dollar Difference	% of 2011 Base
$22,072,172.00	$313,760.00	$71,601.00	$385,361.00	1.75%
	2014 Incremental Costs	2014 Longevity Costs	Dollar Difference	% of 2011 Base
$22,072,172.00	$122,528.00	$94,768.00	$217,296.00	0.98%

(While not really statistically significant, I believe that Atlantic City utilized improper base salary computations for the years 2013 and 2014, in determining the available percentages under the cap by failing to use the 2011 base salary of $22,072,172. I believe that the above chart computes and correctly modifies the same, within the contemplation of the law, as well as New Milford.).

This makes it clear that even under a 0% increase scenario, of a potential sum of $1,324,330.00 (6% of $22,072,172) to fund salary

increases over the duration of this 3 year contract, $1,056,022 (4.78% of $22,072,172) must be allocated and offset to accommodate the increased costs of increment and longevity costs. Subtracting the future costs of increment and longevity from the hard cap maximum increases under law ($1,324,330 - $1,056,022) yields an available balance of $268,308 (1.22 %) over the 3 years, if awarded under the statutory criteria.

With this in mind, the Final Offers of the parties must be costed out. As a practical matter, the Employer's numbers are reflected above, by virtue of the fact that Atlantic City proposed 0%; 0%; 0%, with only the incremental and longevity costs absorbed. Notwithstanding its assertion that it does not seek a salary increase in excess of the statutory hard cap, even a cursory reference to the Union's proposal underpins the Employer's contention that I am enjoined from awarding it under the law.

This is of course primarily the direct result of the inclusion of the SAFER grant monies, which had the effect of artificially inflating the base, coupled with additional monies for employee salaries due to death, retirement or separation from employment during calendar year 2011. As previously addressed, the consideration of the same was excluded based on my evidentiary rulings.

Accordingly, on a 2011 base of $22,072,172.00, 4% for 2012 equals $882,887.00. When incremental increases of $309,808 (1.40%) and

longevity increases of $143,557.00 (.65%) are added, that brings the total cost to $1,336,252.00, which is more than 6%, without even accounting for compounding. Even reducing the IAFF Local 198 demand to 1% in 2013 and 2014 to comply with the 6% aggregate increase provided for by statute (and as the Union did in its cap analysis), with similar math still yields figures that are well in excess of my authority. On these bases, I find that as proposed, the Union's Final Offer on wages borders on 13% and may not be awarded.

However, the record evidence does not support the Employer's position that 0% raises are appropriate. Moreover, there is a well-developed internal pattern of settlement with the uniformed services within Atlantic City for over a 30 year period, as will be more fully discussed later. This demonstrates that the PBA and PSOA received a negotiated 4% increase for 2012. AFSCME Local 2303 C received a similar blessing by administrative fiat, and numerous white collar Atlantic City employees received a $10,000 increase for 2012. I will accordingly award the remaining $268,308 or 1.22% under the hard cap as a salary increase in January 2012, which will be followed by 0% in 2013 and 0% in 2014. The available financial data establishes that the Employer has sufficient flexibility to fund this award with little or no additional effect on the taxpayers, which is also discussed more particularly in the statutory criteria discussion. The same will also be in line

with both voluntary settlements and awarded interest arbitration cases reported by P.E.R.C. within the State of New Jersey (1.82%). See, Union Exhibit 1, Binder 1, Tab 20.

In so awarding, however, it must be remembered that because longevity is percentage based, it will go up each time the salary base is increased. It is therefore necessary to account for this, so that the cap is not exceeded. In determining the additional longevity costs, I have extrapolated the same on a percentage basis, relative to the Employer's figures. The operative numbers then become:

$1,324,330.00	— Total Available Over 3 Years (6% of $22,072,172.00);
– 746,096.00	— Increased Cost of Increment for 2012 ($309,808.00); 2013 ($313,760.00); 2014 ($122,528.00)
$ 578,234.00	
– 309,926.00	— Increased cost of longevity for 2012 ($143,557); 2013 ($71,601.00); and 2014 ($94,768.00) based on 0%, 0%, 0% projected by Atlantic City.
$268,308.00	— (1.22% of $22,072,172)

Of the $268,308.00 that is available, the additional longevity costs are:

2012

$143,557.00 X .065 ($143,557 ÷ $22,072,172) = **$9,331.10.**

2013

$71,601.00 X .032 ($71,601 ÷ $22,072,172) = **$2,291.23.**

2014

$94,768.00 X .041 ($94768.00 ÷ $22,072,172) = **$3,88548**

TOTAL ADDITIONAL COST OF LONGEVITY **$15,508.00**

The total hard cap computation accordingly provides:

$1,324,330.00 — Aggregate 6% of $22,072,172.00 (2011 Base Salary);
- 746,096.00 — Increased Cost of Increment for 2012 - 2014;

$ 578,234.00
- 325,434,00 (Increased Cost of Longevity for 2012, 2013, 2014, as follows: $309,926.00 from above + $15,508 additional)
$ 252,800.00 Available For Distribution To Unit Members

The computations prove as follows:

$ 252,800.00 Available $$ to Finance Salary Increase;
+ 325,434.00 Increased Cost of Longevity For 3 Year Duration;
+ 746,096.00 Increased Cost of Increment ";

$1,324,330.00 — Maximum Aggregate Amount of 6% Under Hard Cap

I have previously set forth the parties' Final Offers as to all other open issues in Section II, followed by my AWARD on each. Those findings are incorporated by reference into this section, which more particularly discusses the same in the context of the statutory criteria, and the relative weight accorded each under N.J.S.A. *§ 34:13A-16 (2011):*

* * *

g. The arbitrator shall decide the dispute based on a reasonable determination of the issues, giving due weight to those factors listed below that are judged relevant for the resolution of the specific dispute. In the award, the arbitrator or panel of arbitrators shall indicate which of the factors are deemed relevant, satisfactorily explain why the others are not relevant, and provide an analysis of the evidence on each relevant factor; provided, however, that in every interest arbitration proceeding, the parties shall introduce evidence regarding the factor set forth in paragraph (6) of the subsection and the arbitrator shall analyze and consider the factors set forth in paragraph (6) of this subsection in any award:

(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-45.1 et seq.),

There is a general recognition among my arbitral colleagues that this is perhaps the most important of the statutory criteria. The record is replete with myriad newspaper articles lamenting the perceived state of public sector employment, and the seemingly inexorable nexus to escalating property taxes. See generally, City Exhibit 1, Tab 2. The legislative intent in rectifying the interest arbitration statute has previously been recognized.

In the case at bar, the record evidence at hand leads to a finding that the roughly 11,000 residents and taxpayers of the City of Atlantic City as well as the 30,000,000 individuals who annually visit its casinos and other resort properties are well-served by the numerous and myriad operations conducted by the Atlantic City Fire Department. IAFF Local 198 President Angelo DeMaio provided detailed testimony concerning the 2011 ATLANTIC CITY FIRE PREVENTION BUREAU ACTIVITY REPORT by Incident Type (NFIRS), at Union Exhibit 3. This reflected a departmental response of 15,441 man hours to 4,636 incidents in such diverse categories as: Incident Type 11 Structural Fire (187 — 4%); Incident Type 30 Rescue, EMS, other (1,216 — 26.2%); Incident Type 31 Medical Assist (413 — 8.9%); Incident Type 32 EMS (534 — 11.5%); Incident Type 60 Good Intent Call (500 — 10.8%).

As previously discussed, on the question of an economic increase, I find that under the within statutory criteria neither of the Economic Final Offers is countenanced under existing law. The Union has proposed a wage increase of 4% for 2012, followed by 2% for 2013 and 2014. In response to the Employer's position that this violates the 2% hard cap on its face, IAFF Local 198 offers the caveat that it does not seek any economic increases that are in excess of the statutory constraints. On the other hand, Atlantic City seeks to hold the line with 0% raises for each year of the 3 year agreement, not including the cost of increments and longevity

In my view, this interest arbitration case could serve as a textbook example of the unintended consequences visited upon the labor relations community by the Legislature's enactment of the 2% hard cap. Simply put and as here, a municipality is free to agree to whatever economic increases it chooses to with a favored union during the course of negotiations, then adopt a financial hard line with another uniformed service under the comfort and protection of the new statutory scheme.

In this case, Atlantic City entered into agreements with several other bargaining units expiring in 2012, which provided for 4% increases. Most notably was the PBA Local 24, with which the Fire Department has had "lockstep" increases for approximately a 30 year period. Other units also received a 4% increase, including the ACSOA police superiors and AFSCME

Local 2303 C. This compelling internal pattern of settlement is subsequently discussed in greater detail. Further, while I accept the Employer's representation via the testimony of Finance Director Stinson that some white collar administrative employees had not received a salary increase since 2003 while others got promotions or were new hires, the fact that a $10,000.00 increase was agreed to with other individuals starting at $90,000.00 undercuts the stated position of financial urgency, and begs the question of why it is only fire fighters who should tighten their belts. See, EMPLOYEE DETAIL LISTING(S); REQUEST FOR PERSONNEL ACTION [Union Exhibits].

On balance and after verifying the required calculations several times, I awarded an increase of 1.22 %, which complies with the hard cap, after increased longevity and increments costs are paid. This will cost Atlantic City $268,308.00, with the permissible 6% hard cap figure $1,324,330.00. Prior to awarding this increase, I have determined that Atlantic City has sufficient flexibility to accommodate it. Accordingly, and by virtue of the internal pattern of settlement, I determine that a 3 Year contract at 1.22% for 2012; 0% for 2013, and 0% for 2014, along with the reductions in salary and benefits for future hires complies with the statutory criteria.

(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, that each party shall have the right to submit additional evidence concerning the comparability of jurisdictions for the arbitrator's consideration.*

The Employer urges that after Hillsdale, interest arbitrators must no longer give short shrift to comparisons with the wages and benefits of private sector employment. I agree that this is a consideration which warrants arbitral attention, and the record does support Atlantic City's claim that the bargaining unit has salaries and benefits that by far outstrip those of the private sector. Nevertheless, the inherent dangers associated with firefighting make any comparison of private sector employees inapposite for interest arbitration purposes, as the IAFF Local 198 correctly argues.

The record discloses that the Atlantic City PBA and ACSOA along with an ASCME Local, received a 4% increase in 2010. The internal pattern of settlement in a municipality is generally a potent argument to be made by a Union at interest arbitration, and this case is no exception. In that respect, President DeMaio testified that police and fire had received the same increases for a period of 30 years, except for this contract.

Such a lockstep internal pattern of settlement has been previously recognized in interest arbitration as dispositive. *See,* In the Matter of the Interest Arbitration Between the Township of Springfield and PBA Local 76, PERC Docket No. 1A-2012-003 (Gifford, 2011, at pages 32-33) (citing "lockstep" annual percentage increases for the PBA and the FMBA within the Township during the period of 1997 – 2006, with an exact 3.65% increase from 1997 through 2010.).

Section g.2. (b) requires the comparison of the Atlantic City Fire Department's wages, salaries, hours and conditions of employment with those of other public sector employees in general, and again the best evidence relates to fire departments. These external comparables not surprisingly establish that the bargaining unit is well compensated in comparison in most if not all categories, as previously detailed. On balance, and in conclusion of this point, the wages, salaries, and conditions of employment for the IAFF Local 198 compare favorably with the other

Atlantic County and major city departments cited by the Union.

(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 other economic benefits received.

The expired collective bargaining agreement provides a 16 step salary schedule, commencing at $56,587 and culminating at $91,575 for a Senior Journeyman. Other rich benefits are also included. The holiday pay computation is rolled over into the base salary, as well as the educational incentive. Percentage based longevity pay is then calculated based upon the same. Captain's and others of comparable rank currently have a $104,326 base, exclusive of the above, while a Battalion Chief has a base of $118,997, with Deputy Chiefs and Chief Fire Prevention at $136,030. The scattergram and TO have been previously set forth.

In addition to the foregoing and to just name a few, there is also hospitalization, and generous sick and vacation benefits as well as paid holidays. There is a comprehensive terminal leave and accumulated sick leave pay-out plan, and funeral leave benefits. Finally, unit members are enrolled in the PFRS, which allows retirement after 20 years of service at 50% of base pay, or at 25 years with 65%. See, N.J.S.A. 43:16A-11.1.

(4) Stipulations of the parties.

During pre-hearing mediation and thereafter, a number of things were agreed to. The parties acknowledged that the base salary is inclusive of holiday pay, longevity and educational increments. They agreed that the State of New Jersey reviews any settlement agreements between the City of Atlantic City and the casinos with regard to tax appeals or potential tax appeals. Additionally, the City withdrew any potential proposal under Article 33, HEALTH BENEFITS, as well as its Article 27 PERSONNEL COMMITTEE and Article 31 SUSPENSIONS AND FINES proposals. The Employer concomitantly agreed to the Union's FAMILY LEAVE PROPOSAL language, while the IAFF Local 198 agreed to Atlantic City's proposal to delete Article 32, PAGERS. This criteria was accordingly afforded great weight, with the changes incorporated into the AWARD.

(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 P.L. 1976, c. 68 (C.40A: 4-45.1 et seq.).

The original 1977 municipal appropriation and county levy cap, as amended, still remains in effect. The Local Government Cap Law is codified at N.J.S.A. 40A:4-45 et seq., and states that: "[i]t is hereby declared to be the policy of the legislature that the spiraling cost of local government must be controlled to protect the homeowners of the state and enable them to

maintain their homesteads." Section 10 of the P.L. 2007 act originally established a Tax Levy Cap of 4% above a municipality's prior year tax levy. The 2007 cap was subsequently amended to 2% under legislation signed into law by Governor Christie in July 2010, with exclusions also modified. While Chapter 44 changed the 2007 cap, there was no change to the 1977 cap. Municipalities are accordingly subject to both the 1977 Appropriations Cap of 2.5% and the 2010 Tax Levy Cap of 2%.

As highlighted by Mr. Foti during his testimony, Atlantic City does not have either an Appropriations Cap or Tax Levy Cap problem that would serve as an impediment to my AWARD, and has the ability to fund the increase. Moreover, the total allowable expenditure cap is $215,546,885 with an actual appropriation of $190,311,968.00. See, BUDGET SHEET 3c 2012; ACTUAL BUDGET SHEET 19. This leaves $25,234,917.60 available. A similar situation exists with the Tax Levy Cap, as records demonstrate $215,415,717 allowable, with $198,563,049 to be raised by taxation. See, BUDGET SHEET 3b(A) 2012. Atlantic City is accordingly $16,852,668 below its allowable Cap Levy. The 2010 REPORT OF AUDIT goes on to illustrate very favorable Tax Collection Rates, including:

YEAR	ACTUAL RATE
2011	98.76%
2010	99.29%
2009	99.83%
2008	99.48%
2007	99.90%
2006	99.22%

The Tax Rates have also remained within the limitations routinely recommended by Moody's and Standard and Poors rating agencies, to maintain municipal stability:

YEAR	MUNICIPAL	COUNTY	SCHOOL	TOTAL
2012	2.15 Estab.	N/A	N/A	N/A
2011				1.95
2010	0.93	0.26	0.58	1.77
2009	0.87	0.24	0.55	1.65
2008	0.80	0.26	0.52	1.59

Atlantic City's Debt Service according to the 2010 REPORT OF AUDIT reflects:

EQUALIZED VALUATION BASIS	DECEMBER 31	$18,811,642,346
EQUALIZED VALUE	3.5%	$ 658,407,482
NET DEBT	0.65%	$ 122,437,267
REMAINING BORROWING POWER		$ 535,970,215

These figures show that Atlantic City is well below the statutory debt limit, with more than sufficient borrowing power for the future. The Employer has undertaken a full-court press on the issue of debt service. This concerns tax appeals filed by each casino within recent years, as a result of the economic downturn experienced by our country, and is discussed in greater detail in the discussion of criteria g(6).

(6) The financial impact on the governing unit, its residents, the limitations imposed upon the local unit's property tax levy pursuant to section 10 of P.L. 2007, c62 (C.40A:4-45.45), 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 of the local unit; the impact of the award on the ability of the governing body to (a) maintain existing local programs and services, (b) expand existing local programs and services for which public monies have been designated by the governing body in a proposed local budget, or (c) initiate any new programs and services for which public monies have been designated by the governing body in a proposed local budget.

Atlantic City argues that its surplus history is illustrative of its financial woes. As of January 1, 2007, the surplus balance was $14,492,907.00, allowing the City to anticipate $13,800 as revenue in its 2007 budget. See, City Exhibit 1, Tab 1. sub. 1. Because of the beginning of the economic downturn in 2008, this surplus figure dropped to $10,342,417.00 as of January 1, 2008. This required the reduction of anticipated surplus by $4,000,000.00 to $9,850,000.00 in 2008. See, City Exhibit 1, Id., at sub. 2. Thereafter, the City's ability to regenerate surplus slipped more and as of January 1, 2009 it was reduced by $8,700,000.00 to $1,641,980.00. This was later reduced to only $850,000.00 and to $791,000.00 in 2010. See, City Exhibit 1, Id. at sub. 4. Over the next two years, the balance increased a bit to $966,883.00 as of January 1, 2011 and $1,067,377 as of January 1, 2012. See, City Exhibit 1, Id., at subs. 5, 6.

To offset the surplus dilemma, the City had to generate $13,800,000.00 more from other revenue than in did in 2007. This took the form of increases in fees and permits, as well as municipal fines and costs, as well as interest on deposits. This raised approximately $2,700,000.00 in 2008, but was still insufficient. In 2009, revenue decreased by approximately $3,980,000.00 to $10,172,465, by virtue of a decrease in revenue from interest on deposits, which further exacerbated the surplus shortage. See, City Exhibit 1, Id., at sub. 3. After revenue decreased in

2010, it increased to 2009 levels in 2011, due to fluctuations in interest based on deposits, but decreased in 2012 by around $1,300,000.00 to $8,802,111.00. See, City Exhibit 1, Id., at sub. 6.

Atlantic City goes on to lament the dearth of State Aid, with this revenue stream reduced by roughly $1,800,000.00 from 2007 to 2012. See, City Exhibit 1, Id., at subs. 1-6. Dedicated Uniform Construction fees are offset by appropriations, and therefore have no impact on the remainder of the budget, and decreased from $4,100,000.00 to $2,000,000.00 from 2007 through 2012. See, City Exhibit 1, Ibid. According to the City, in all, anticipated revenue increased by less than $800,000.00 in 2012, exclusive of taxation. See, City Exhibit 1, Ibid.

Despite this dire financial forecast, from my perspective the Employer's able cross-examination of Mr. Foti did little to dissuade me from my belief that the City has sufficient flexibility to fund the cost of the 6% aggregate award. The fact remains that the 2011 Results of Operations indicates $200,495.00. See, AFS Sheet 19. This document additionally references a UNEXPENDED BALANCE OF APPROPRIATION RESERVE in the amount of $1,664,733.00, which shows excess budget appropriations. Finally, Sheet 17a of the 2012 Budget demonstrates reserve balances of $1,550.164 for Fire Salaries.

The gravamen of Atlantic City's financial argument is that due to tax

appeals filed by each casino, it has been ordered to both refund prior payments and issue future tax credits. These figures are certainly substantial. As an example, the chart in the Employer's brief reflects that there were court ordered refunds in the following amounts: Resorts (DGMB) $10,600,000.00; Pinnacle $8,200,000.00; ACE Gambling $1,700,000.00; Bally's $28,000,000, as well as prior settlements totaling $14,000,000.00. Mr. Stinson provided comprehensive and credible testimony at the hearing in this regard.

While accepting that these costs are outside of the relevant caps, the City nevertheless asserts that they must still be paid. The further argument is made that even if the City is able to keep its spending perfectly stable with no increase in its levy, the tax levy would remain at $379,000,000.00, with the tax burden shifted from the casinos that pay 75% of the same, to property owners. The end result according to the City is an increase of 20% in taxes. Therefore, with the average home assessed at $252,445.00, the tax bill would increase by $895.00 per year by 2014 due to the shift in ratables from the casinos to the home owners.

This is a compelling argument on its face, which I find unpersuasive for a number of reasons. Initially, the record indicates that Atlantic City intends to address this situation via bonding over an extended time horizon. As previously discussed, its debt service is very favorable, with an equalized

value of 3.5% and a net debt ratio of .065. There is also remaining borrowing power of $535,970,215.00. Mr. Foti also remarks that it is interesting to note that in the 2011 ANNUAL FINANCIAL STATEMENT at page 3a, there is a $7,000,000.00 reserve for tax appeals. Then in the 2012 BUDGET, page 10, $5,700,000.00 of that is anticipated as revenue. The obvious conclusion to be drawn then, per Foti, is that if the City's concern for tax appeals was as dramatic as Mr. Stinson alluded to, the reserve would have been left in tact.

In conclusion, and based upon these considerations, I find that Atlantic City has abundant flexibility to fund this AWARD based on this statutory criteria, which will have little or no effect upon its taxpayers. Parenthetically, the two-tiered plans ordered may result in additional cost savings throughout the life of the contract, although I recognize that this is speculative.

(7) The cost of living.

The Consumer Price Index ("CPI") tracks the cost of living, and is a measure of the average change in prices for goods and services purchased by households over time. The index currently utilizes the period between 1982 and 1984 as the base year, with a value of 100 established. The cost of the same goods and services is then calculated for each following year, which establishes an "index" for easy comparisons of purchasing power.

The Bureau of Labor Statistics publishes the CPI for 2 population groups: (1) the CPI for Urban Wage Earners and Clerical Workers (CPI-W), which covers households of wage earners and clerical workers that comprise approximately 32 percent of the total population; and (2) the CPI for All Urban Consumers (CPI-U), which cover approximately 87 percent of the total population and include in addition to wage earners and clerical worker households, groups such as professional, managerial and technical workers, the self-employed, short-term workers, the unemployed, and retirees and others not in the labor force. See generally, USDOL Bureau of Labor Statistics *NEWS RELEASE USDL-11-1748*, December 16, 2011.

According to the same, the All Urban Consumers (CPI-U) was unchanged in November on a seasonally adjusted basis. Over the last 12 months, the all items index increased 3.4 percent before seasonal adjustment, which was slightly below the 3.5 percent figure for the previous month. Additionally, the food index declined slightly from 4.7 percent to 4.6 percent, and energy declined from 14.2 percent to 12.4 percent. However, the 12 month change in the index for all items less food and energy continued to rise, reaching 2.2 percent in November of 2011. Ibid.

The Employer has raised the common sense argument that over the years, the increases received by the bargaining unit have outstripped the CPI.

That is a fair point, however, the Union's contention that its members are now behind the 8 ball with the CPI over 3% and the hard cap of 2% ends the discussion. These facts warrant the conclusion that while the CPI is statutorily significant in my decision to award the instant salary increase under my conventional powers, it is not dispositive of the same.

(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.

Atlantic City has proposed numerous modifications to the benefits package currently received by its firefighters, as well as schedule change and other language impacting upon the conditions of employment and the continuity and stability of employment. These include: the deletion of the first sentence of Article 3, GRIEVANCE PROCEDURE; the deletion and replacement of Section A of Article 12, UNION RELEASE TIME; deletion and replacement of Article 13, WORK SCHEDULE; Article 14, OVERTIME PAY; deletion, replacement and revision of sections of Article 16, LEAVES; inclusion of new sections on SICK LEAVE, WORKERS' COMPENSATION, SICK PAY AT RETIREMENT; deletion and replacement of language in ARTICLE 17 VACATIONS; deletion and re-computing of days in Article 18 ACTING OUT OF TITLE; deletion and revision ARTICLE 20 PAY SCALE;

revision and freezing of LONGEVITY pursuant to Article 22; deletion and replacement of Article 25, EDUCATION.

IAFF Local 198 globally, categorically and emphatically opposes the Employer's application, maintaining that the cumulative effect of such an award would undermine the morale of the work force, and make it impossible for the City to attract qualified applicants in the future.

As previously discussed, the suppression end of the Atlantic City Fire Department currently works the same standard work schedule proposed by the Employer under Article 13. This consists of two (2) ten (10) hour days of duty (8:00 a.m. until 6:00 p.m.), immediately followed by two (2) fourteen (14) hour nights of duty (6:00 p.m. until 8:00 a.m.), immediately followed by four (4) consecutive days off. Moreover, via subsection A3, this proposal goes on to permit the Employer to change that work schedule in its sole discretion upon forty-eight (48) hours written notice to the Association. And with respect to personnel staff scheduled to work an average of forty (40) hours per week, proposed subsection B2.b. provides for the assignment of these staff personnel to work four (4) out of seven (7) days.

Fire Chief Brooks provided credible testimony at the first hearing as to his need for flexibility in assigning the Prevention Division, which comprises the majority of the overtime work. As a practical matter, I endorse the chief's common sense proposition that overtime will be reduced if the

personnel assigned to this unit may now be assigned to what are generally casino "hood inspections" at times other than their normal Monday through Friday 9:00 a.m. to 5:00 p.m. schedules.

The difficulty with this proposition is that as the Union emphasized, during cross the chief was unable to identify what the cost savings would potentially be if this proposal were awarded, There also was an acknowledgement that the casinos pay part of the overtime costs at issue, but no figures were provided for the same.

President DeMaio also testified without challenge that the Union has always been willing to discuss schedule changes that would assist the Fire Department, within the confines of the C.B.A. IAFF Local 198 additionally pointed out that the chief testified that there had been no such issues with the Union in the past. Therefore, when viewed in burden of proof terms, the Employer has not demonstrated that there is a need to change the existing language on schedules as significant flexibility already exists.

A parallel finding also issued, as it pertained to Atlantic City's request to modify the UNION RELEASE TIME provisions of Article 12 and the GRIEVANCE PROCEDURE provisions at Article 3 of the contract. No testimony was provided in support of these changes, with the Employer instead relying upon a report by the SCI to underpin the latter. The Union articulated its opposition to these proposals during the testimony of Mr.

DeMaio. Accordingly, since the proponent of the change has failed to navigate its burden, these proposals are rejected and any other result would have an unnecessary corrosive effect upon the continuity and stability of employment within the contemplation of this statutory criteria, which already appears compromised. The same is also true of the Employer's proposals on overtime, sick leave, workers compensation, and out-of-title pay.

The Union makes the often-heard argument that any reduction or modification of a benefit in the future will result in a reduction in morale, as fire fighters working side by side will be compensated differently. That is certainly a valid claim, however, the record evidence makes it abundantly clear that the City Administration and the taxpayers can no longer sustain the modified benefits at existing levels. I have accordingly imposed two-tiered plans related to salary guide; terminal leave with a cap on sick pay-out; vacation leave; longevity and the educational benefit. Notice is taken that such a contractual scheme is not unusual in many municipalities, and certainly not in the private sector, to wit, the auto industry. In my view, this harmonizes the competing interest of maintaining vested benefits for the rank and file, while attempting to hold the line in the distant future.

(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).

I believe that this criteria has previously been addressed with great specificity in the discussion of g(1), g(5) and g(6). Suffice it to say that based upon the totality of the foregoing circumstances, the City of Atlantic City has adequate flexibility within its budget and under the hard and soft caps to finance the awarded economic package. This result is consonant with the required statutory criteria and is awarded pursuant to my conventional authority. In so concluding, I have carefully considered and discounted Atlantic City's arguments to the contrary. This AWARD is accordingly rendered pursuant to my statutory authority.

IV. CONCLUSION

In issuing this AWARD, I have carefully and fully considered and deemed relevant each of the statutory criteria. However, the greatest weight was afforded to the interest and welfare of the public; the lawful authority of the Employer; the financial impact on the governing unit, its residents, and the statutory restrictions imposed upon Atlantic City by the hard cap language of P.L. 2010 c. 105; the overall compensation currently received; the internal comparability of the Atlantic City Fire Department with law enforcement and other personnel within the City; the external comparability of settlements reported by P.E.R.C. within the State of New Jersey and the County of Atlantic.

Accordingly, upon the foregoing considerations, I find that in accordance with N.J.S.A. 34:13A-16.d, the total net annual economic changes for each year of the agreement as well as the non-economic changes are reasonable under the 9 statutory criteria set forth in subsection g., and certify that pursuant to subsection 5.f the statutory limitations imposed on the Local Levy Cap were taken into account.

V. AWARD

1. All open proposals submitted by the IAFF Local 198 and the City of Atlantic City that are not awarded herein are denied. Additionally, any initial proposals that were not raised at hearing and discussed in the briefs have been considered abandoned, and have not been addressed. All provisions of the existing Collective Bargaining Agreement shall be carried forward except for those that have been modified by the terms of the instant AWARD.

2. Duration — The new C.B.A. shall be for a 3 year term, encompassing the duration of January 1, 2012 through December 31, 2014.

3. Wages — 2012 — 1.22% Salary Increase (Retroactive to JANUARY 1, 2012, Inclusive of Additional Longevity Costs)

   2013 — 0%;

   2014 — 0%.

4. Article 16 LEAVES —

   Section F. Terminal Leave Options, shall be amended to include language eliminating the option to use any accumulated sick time as terminal leave at retirement,

with a maximum payout cap of $15,000.00 for all employees hired after January 1, 2012.

.

Section I Funeral Leave, shall be amended to read:

1. Five (5) work days shall be granted in the event of the death of a member of the immediate family or domestic or civil union partner of a firefighter. Immediate family shall include spouse, mother, father, sister, brother, child, mother-in-law, father-in-law, grandparent, grandchild, step-mother, step-father, step-siblings and step-children. These days are to be taken from either the date of death on or from the date of the funeral back.

* * *

4. Travel time of two (2) work days maximum shall be granted to any member as approved leave, as per section 1 and/or 2 above, who must travel more than two hundred fifty (250) miles round-trip to the funeral or viewing. For purposes of this provision, two hundred fifty (250) miles will be calculated by means of vehicular travel utilizing MapQuest.

New Section J. Family and Medical Leave

The City will comply with its obligations under the *Family Medical Leave Act,* 29 U.S.C. 2601 *et seq.*; the *New Jersey Family Leave* Act. N.J.S.A. 34:11B-1 *et seq.*; and the *New Jersey Paid Family Leave Act*, N.J.S.A. 43:21-39.1 *et seq.*, as agreed to by Atlantic City during mediation.

5. Article 17 VACATIONS —

Section A.1 Delete this paragraph in its entirety.

Renumber Section A.2 to A1, and amend to read

This paragraph shall apply to all employees hired prior to January 1, 2012.

New Section A.2

All employees hired on or after January 1, 2012 shall be entitled to vacation and personal days as follows:

YEARS	VACATION DAYS	PERSONAL DAYS
1-3	10	0
4-10	12	0
11-20	16	0
20 -retirement	18	2

Section B.1 is renumbered as Section B.1.a to read All *current* Captains ***.

New Section B.1.b to provide that all individuals promoted to Captain on or after January 1, 2012 shall be entitled to twenty (20) actual working days paid vacation.

Section B.2 is renumbered as Section B.2.a to read All *current* Battalion Chiefs ***.

New Section B.2.b. to provide that all employees promoted to Battalion Chief on or after January 1, 2012 shall be entitled to twenty (24) actual working paid vacation days.

Section B.3 is renumbered as Section B.3.a. to read All *current* Deputy Chiefs ***.

New Section B.3.b to provide that all employees promoted to Deputy Chief on or after January 1, 2012 shall be entitled to twenty-four (24) actual working days paid vacation.

6. Article 20, PAY SCALE — Section D. shall be renumbered as Section D.1, and state:

Effective January 1, 2012 through December 31, 2014, the salaries for all bargaining unit members hired before January 1, 2012, inclusive of holiday pay, shall be as follows:

It shall thereafter be modified to include the pay increase awarded above.

New, Section D.2, which shall read:

Effective January 1, 2012 through December 31, 2014, the salaries for all bargaining unit members hired on or after January 1, 2012, inclusive of holiday pay, shall be as follows:

Title	Salary
Apprentice I	$45,000
Apprentice II	$48,000
Apprentice III	$51,000
Apprentice IV	$54,000
Apprentice V	$57,000
Journeyman 1	$60,000
Journeyman II	$63,000
Journeyman III	$66,000
Journeyman IV	$69,000
Journeyman V	$72,000
Sr. Journeyman	$80,000
Fire Captain	$95,000
Fire Inspector	$95,000
Maintenance Repairs	$95,000
Custodian	$95,000
Air Mask Technician	$95,000
Battalion Chief	$110,000
Asst. Chief Fire Inspector	$110,000
Deputy Chief	$125,000
Chief Fire Prevention	$125,000

7. Article 22, LONGEVITY —
New Section A.1 shall be created to state:

All employees hired before January 1, 2012 shall be entitled to receive longevity as follows:

The current longevity schedules should then be plugged in.

New Section A.2, which shall provide:

The following longevity schedule shall apply to all employees hired on or after January 1, 2012:

Years of Service	PAYMENT
5 years	$1,140
10 years	$2,880
15 years	$4,880
20 years	$8,000

8. Article 25, EDUCATION — Employees currently receiving the educational incentive shall continue to do so at existing levels now and for any future credit hours/degrees achieved.

Section C.1 shall be modified to read:

Fire science or related training and educational achievements are considered an important factor in the professional development of a firefighter. Achievements in these areas shall be acknowledged with special salary increments, *which shall apply to any employees receiving this benefit on* or *before December 31,2011*, based upon the following scale: ***

New Section C.2 shall be inserted, which reads:

a. Upon the completion of an Associate's Degree from an accredited college or university in Fire Science, or other related degree approved in advance, in writing by the Administration, the employee shall receive a $2,500.00 additional

increment on his/her base salary.

b. Same language but insert Bachelor's Degree and $1,000.00 additional increment.

c. Same language but insert Master's degree and $1,000.00 additional increment.

9. Article 32 PAGERS — This language shall be deleted from the new C.B.A., as agreed to by the Union during mediation.

Dated: July 12, 2012
NORTH BERGEN, N.J

MICHAEL J. PECKLERS, ESQ., ARBITRATOR

STATE OF NEW JERSEY

SS:

COUNTY OF HUDSON

ON THIS 12TH DAY OF JULY, 2012, BEFORE ME PERSONALLY CAME AND APPEARED **MICHAEL J. PECKLERS, ESQ.**, TO BE KNOWN TO ME AS THE INDIVIDUAL DESCRIBED HEREIN AND WHO EXECUTED THE FOREGOING INSTRUMENT, AND HE DULY ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME.

NOTARY PUBLIC

ANGELICA SANTOMAURO
ID # 2387931
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 7/29/2014