

NEW JERSEY PUBLIC EMPLOYMENT RELATIONS COMMISSION

In the Matter of Interest Arbitration Between:

TOWN OF KEARNY

"Employer,"

- and -

**KEARNY FIRE SUPERIOR OFFICERS
ASSOCIATION**

"Association."

**INTEREST ARBITRATION
DECISION AND
AWARD**

Docket No. IA-2001-13

**Before
James W. Mastriani
Interest Arbitrator**

Appearances:

For the Employer:

Frederick T. Danser, III, Esq.
Apruzzese, McDermott, Mastro & Murphy

For the Association:

Donald B. Ross, Jr., Esq.
Lindabury McCormick & Estabrook

I was appointed to serve as interest arbitrator by the New Jersey Public Employment Relations Commission in accordance with P.L. 1995, c. 425, pursuant to a petition filed by the Kearny Fire Superior Officers Association [the "KFSOA"] and the Town of Kearny [the "Town"]. The Town and the KFSOA are parties to a collective negotiations agreement [the "Agreement"] covering Lieutenants, Captains and Battalion Chiefs in the Town's Fire Department. This Agreement covered the period from July 1, 1996 through June 30, 2000. An impasse developed between the Town and the KFSOA resulting in the submission of the dispute to interest arbitration pursuant to the rules of the New Jersey Public Relations Employment Commission. I conducted pre-arbitration mediation sessions on June 7, 2001, February 4, 2003, July 10, and April 28, 2004 between the Town and the KFSOA. Because the impasse remained, the dispute proceeded to formal interest arbitration.

A formal interest arbitration hearing was held on July 26, 2004 at which time the parties examined and cross-examined witnesses and introduced documentary evidence into the record. Testimony was received from Captain Steve Dill, Deputy Chief Anthony Calabrese, Deputy Chief Stewart Docherty, and Chief Joseph M. Lapanski. Post hearing briefs were submitted by both parties on or about January 24, 2005. On June 2, 2005, the KFSOA moved to have the record re-opened for consideration of agreements entered into between the Town of Kearny and the Kearny Policeman's Benevolent Association and the

Kearny Policemen's Benevolent Association Superior Officers Association. On June 24, 2005, the Town objected to the motion. I have granted the motion and have applied the arguments made by the Town and the KFSOA in their post-hearing briefs regarding the weight to be given to internal settlements between units in the fire and police departments.

The terminal procedure was conventional arbitration because the parties did not mutually agree to an alternative terminal procedure. Under this process the arbitrator has broad authority to fashion the terms of an award based upon the evidence without being constrained to select any aspect of a final offer submitted by either party.¹

The statute requires each party to submit a last or final offer. I have set forth below the last or final offer of each party.

Final Offer of the KFSOA

1. **Contract Term** – July 1, 2000 through June 30, 2008
2. **Wages** – 4% across the board commencing on July 1 of each contract year.
3. **Work Schedule** – Implementation of the 24/72 work schedule immediately upon issuance of the award with conversion of time off as follows:

¹ By telephone conference with counsel, I have confirmed that the issue regarding the inclusion of holiday pay into base salary was inadvertently omitted from both final offers despite the fact that the issue was addressed at formal hearing.

- a. **Vacation** – current vacation amounts to be divided by 2; resulting days to be taken in full or one-half days; one-half days to be taken in increments of 10 or 14 hours at the option of the employee.
 - b. **Personal Days** – Convert existing total of two personal days to one personal day; to be taken in increments of one-24-hour day or two half days.
 - c. **Covers** – Continue current practice of covers taken in 10 or 14 hours counting as one cover; if cover is 24 hours, it shall be counted as two covers.
 - d. **Terminal Leave** – Convert current total of 45 days to a total of 22.5 days which may be taken in cash or time off as is the current practice.
 - e. **Emergency Leave** – To be converted to a total of three 24-hour work days.
4. **Clothing Allowance** – Effective July 1, 2005, increase clothing allowance by \$325.
 5. **EMT Compensation** – Effective July 1, 2000, each employee shall receive a one-time adjustment to compensation in the amount of \$1,650 which shall be part of base pay for all purposes.
 6. **Longevity** – Effective July 1, 2000 add a longevity step of 12% in the 22nd year and 14% in the 24th year.
 7. **Line Up Pay** – Increase from the current \$350 to a total of \$540 on 7/1/04, which shall be included in base pay for all purposes. On implementation of the 24/72 work schedule, the line up pay shall be reduced to \$270.

The Final Offer of the Town

1. **Term** – 5 years – July 1, 2000 through June 30, 2005.
2. **Recognition and Scope of Agreement** – Delete Lieutenants and Battalion Chiefs and add Deputy Chiefs.
3. **Wages and Miscellaneous Benefits**

- a) The Deputy Chief wage scale shall be incorporated into the new contract with adjustments abiding the results of this Interest Arbitration proceeding. The scale in effect as of June 2000 is:

First Step Deputy Chief	\$76,690
Second Step Deputy Chief	\$79,757
Third Step Deputy Chief	\$82,948
Fourth Step Deputy Chief	\$86,265
Fifth Step Deputy Chief	\$89,717
Sixth Step Deputy Chief	\$94,202

- b) There shall be general wage increases applied to each step of the salary guide for Captain and Deputy Chief as follows:

Effective July 1, 2000	—	3.5%
Effective July 1, 2001	—	3.5%
Effective July 1, 2002	—	3.5%
Effective July 1, 2003	—	3.5%
Effective July 1, 2004	—	3.5%

- c) In addition to and after application of the general wage increases there shall be a salary adjustment made throughout both salary guides as follows:

July 1, 2001	-	\$300
July 1, 2002	-	\$300
July 1, 2003	-	\$300
July 1, 2004	-	\$300
January 1, 2005	-	\$300
Total		\$1,500

- d) Effective January 1, 2005 wages shall be paid biweekly.
- e) Effective January 1, 2005 all active members to be included in Dental Plan No. 3090 with \$2,000 annual benefit.
- f) Clothing allowance to be eliminated and Town to supply newly promoted members with Dress Uniform and Cap and to indemnify for cost of any upgrade to station wear shirts and blazer jacket due to promotion to Captain or Deputy Chief and for cost to replace listed clothing items that become unserviceable.

4. Maintenance of Standards

Eliminate Section 2 of Article X – “covers.”

5. Longevity

- a) Effective July 1, 2004, new promotees will have cap on longevity of \$8,000 per annum for Captains and \$9,000 per annum for Deputy Chiefs.
- b) Effective July 1, 2004 – Longevity percentage to be modified to 9.25% from 10% at 20th year of employment for all employees in this unit.
- c) Effective July 1, 2004 – Longevity pay to be prorated and cease at termination of active employment.

6. Vacations

Conform contract to current practice and limit to 1 Captain off at one time for vacation.

The Town and the KFSOA have offered testimony and considerable documentary evidence in support of their final offers. Numerous Town and KFSOA exhibits were received in evidence. I am required to make a reasonable determination of the above issues giving due weight to those factors set forth in

N.J.S.A. 34:13A-16g (1) through (8) which I find relevant to the resolution of these negotiations. These factors, commonly called the statutory criteria, are as follows:

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

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

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

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

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

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

(4) Stipulations of the parties.

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

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

(7) The cost of living.

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

BACKGROUND

The Town of Kearny is one of twelve (12) municipalities in Hudson County. Its geographic location within the county is commonly referred to as

"West Hudson." The Town encompasses an area of approximately 47 square miles and has a population of approximately 61,605. According to the statistics of the U.S. Census Bureau, the median household income in the City is approximately \$47,757 per year. Per capita income in the Town is approximately \$20,886 and the Town's unemployment rate was 5.4% in 2003.

The municipal tax rate increased from 18.34 in 2003 to 20.25 in 2004 while the total tax rate increased from 66.09 in 2003 to 70.30 in 2004. In 2004, the Town used \$3.5 million of its \$4.3 million surplus to defray tax increases allocated to the municipal portion of its budget. Tax ratables increased from \$1,054,290,950 in 2003 to \$1,060,034,824 in 2004.

In an effort to increase its tax base, the Town has aggressively pursued redevelopment by creating new redevelopment zones at underused or abandoned industrial sites. The Town has also received over \$3 million in State and Federal grants for Streetscape projects and playground renovations.

The fire department contains two bargaining units. This unit represents fire superior officers. In January of 2004, the Town and FMBA, Local 18, the employee organization representing rank and file firefighters reached voluntary settlement over the terms of a new agreement for the period between July 1, 2001 through June 30, 2007. That agreement included a new 24/72 work schedule effective February 1, 2004. At that time, the work schedule issue was

an impasse issue for both rank and file firefighters and fire officers. That issue remains in dispute here.

The KFSOA's current collective negotiations agreement with the Town expired on June 30, 2000. That agreement covers approximately 25 Captains. Additionally, the Town employs approximately 5 Deputy Chiefs whose terms and conditions are at issue in this proceeding.

POSITIONS OF THE PARTIES

Kearny Fire KFSOA

The KFSOA urges adoption of each of its proposals and addresses the merits of these proposals in light of the statutory criteria. Starting with the interest and welfare of the public, the KFSOA focuses on both considerations of fiscal responsibility and the compensation package necessary to maintain "high productivity and high morale" in the Fire Department. With this in mind, the KFSOA urges adoption of its work schedule proposal because it is in the public's best interests to have the entire department on a single schedule. The KFSOA emphasizes that at present the Fire Department is operating under a situation where supervisors now work a different schedule from those whom they supervise. This is a result of the Town's new agreement with the rank and file. The KFSOA maintains that this situation, where Firefighters work a 24/72 work schedule, and KFSOA members work a 10 hour and 14 hour shifts is potentially dangerous to fire department employees and to the public. The KFSOA argues

that "continuity of communication, command, consistency, training and the like, together with concepts of teamwork and team building" support its proposal to have all members of the same fire fighting team working the same schedule.

The firefighters began working 24 hour shifts on February 21, 2004. The KFSOA cites examples of difficulties that have resulted from its members having to work a schedule that is different from the rank and file. For example, among the four work groups, the KFSOA points out that Group D works together only once every eight days and, in Group C, the Firefighters and Officers don't work together at all. The KFSOA also notes that Deputy Chiefs, who are responsible for arranging and regulating manpower, are now responsible for all four groups of firefighters. Additionally, the KFSOA points out that on a regular basis "written communications must be left for deputy chiefs working three days later" and "firefighters are being called at home to report to different stations". As a result, the KFSOA maintains that time is wasted, upper management is distracted, and costs are increased as a result of errors in overtime assignments. Addressing problems facing captains, the KFSOA asserts that captains now must deal with many more firefighters, resulting in a break down in continuity, a sense that everything is temporary, and accountability is lessened as a result of firefighters reporting to different officers during the course of a workday and then not seeing them at all for three days. Stressing that both firefighters and officers are working to minimize problems resulting from the different work schedules, the KFSOA asserts that awarding a 24/72 work schedule to Officers would allow the

Fire Department to return to work groups that have been developed over the years as part of a productive, safe and efficient organization.

The KFSOA observes that it would be irresponsible to bring every problem to the Chief's attention and asserts that problems resulting from split shifts are now addressed at the Company level. Citing a jail fire that occurred, the KFSOA points out that although there were no injuries or deaths, "operational deficiencies" resulted from the lack of opportunity for the crew to work together as a team. Additionally, the KFSOA points out that manpower problems occur when the rank and file shift changes at 0800 hours and, as a result, apparatus can be out of service for as long as 30 minutes while a firefighter is recalled or detailed from another station. The KFSOA places this staffing problem in context of a fire department that has seen a net loss of manpower from 122 to 88, a 27% decrease between January 1, 1994 and January 1, 2005.

The KFSOA asserts that its proposals for paid time off "conversions" to accommodate the 24/72 hour work schedule are reasonable and should be adopted as well as the holiday pay fold-in that was adopted for the rank and file.

Turning to comparability, the KFSOA contends that its members are most comparable to other units of fire superiors in Hudson County. The KFSOA asserts that, in the absence of a compelling internal pattern of settlement, its members must be compared to other fire superiors who also supervise and

manage their subordinates. The KFSOA also asserts that when compared to the Police Superiors Association, the Fire Officers lag in salary increases. The KFSOA settled the previous contract to this one in dispute in August of 1997. That four-year agreement provided for the following increases:

7/1/96 – 6/30/97	3.5%
7/1/97 – 6/30/98	3.8%
7/1/98 – 6/30/99	3.9%
7/1/99 – 12/31/99	2.0%
1/1/00 – 6/30/00	2.0%

In June of 1998 the Police KPSOA and the Town entered a six year agreement that provided for the following increases retroactive to January 1, 1995:

1/1/95 – 12/31/95	3.5%
1/1/96 – 12/31/96	3.5%
1/1/97 – 12/31/97	3.5%
1/1/98 – 12/31/98	3.5%
1/1/99 – 12/31/99	3.5%
1/1/00 – 12/31/00	3.5%

However, the KFSOA points out that the police superior agreement also provided for Muster/Line-Up Pay to be added to base pay for all calculation purposes at .6% of base salary after the contractual raise for each year of the agreement. The KFSOA argues that this resulted in annual increases of 4.10% for the KPSOA. For this reason, the KFSOA argues that the KPSOA received a 16.4% increase in the same time frame in which the KFSOA only received 15.2%. Accordingly, the KFSOA maintains that the 1.2% difference increased the salary disparity between the KFSOA and the KFSOA.

The KFSOA continues by pointing out that in 2001, the KPSOA along with all other Town bargaining units in town except the KFSOA and the FMBA entered into three-year agreements beginning January 1, 2001. Those agreements provided for the following increases:

1/1/01 – 6/30/01	2.5%
7/1/01 – 12/31/01	2.5%
1/1/02 – 12/31/02	3.8%
1/1/03 – 12/31/03	3.8%

Additionally, the KFSOA points out that the .6% Muster Pay has continued to be added to base pay each year after the contractual increases. According to the KFSOA, in the split year, the .6% was added twice, once after the first 2.5% and again after the second 2.5%. The KFSOA contends that the salary increases, which the Town is offering for the years 2000-2003, are substantially lower than the raises the KPSOA received. Additionally, the offer is substantially lower than the average awards and settlements throughout the state during the same time period. In its motion to re-open these proceedings, the KFSOA points out that the Town entered a new agreement with the police department units calling for 3.9% increases each January 1 from 2004 to 2008 among other improvements.

When comparison with private employment is considered, the KFSOA asserts that there is no comparable private employment that may fairly be compared to firefighting. The KFSOA points out that private sector employees do not perform a job that is "generally considered top two or three most

dangerous careers” and do not work “around the clock.” Additionally, the KFSOA emphasizes that private sector employees “run out of the building while firefighters run in.” Nonetheless, the KFSOA points out that a review of private sector wage data shows that wages are increasing at a higher rate than increases in the CPI. The KFSOA points out that its members work in an area with one of the highest standards of living “in the entire country.” According to the KFSOA, statewide awards and settlements as summarized by PERC show significant wage increases for the entire period at issue.

Addressing the uniform/clothing allowance, the KFSOA emphasizes the testimony of Captain Dyal regarding the maintenance of station uniforms. Specifically, the KFSOA highlights Captain Dyal’s testimony regarding actions a supervisor should take in the event there is a problem with his uniform. However, the KFSOA notes that problems arise because there is no procedure for determining if a uniform is defective or when it should be replaced. At this point, the only procedure addresses “how to have a uniform replaced, not when or what to look for.” The KFSOA also cites Chief Lapsanski’s testimony regarding the maintenance and supply of uniforms and equipment. According to the KFSOA, the Town supplies station-wear and turnout gear because it is mandated to do so by PEOSHA. The KFSOA also notes that turnout gear is not cleaned every six months as is recommended. Accordingly, the KFSOA has proposed what it considers to be a “proactive solution to the problem” because “when it comes to safety, nothing else is acceptable.” The KFSOA maintains that

its proposal to upgrade the uniform allowance will provide that funds will be available to upgrade and maintain their uniforms to ensure that fire officers do not wear uniforms older than three years, as outlined in the manufacturer's recommendations. Referring to Chief Lapsanski's testimony, the KFSOA notes that under the current program, a member would have to go to Jersey City to exchange his uniform. According to the KFSOA, this could require two whole trips to the vendor in Jersey City, one for sizing and alterations and then one for pick-up when the alterations are completed. The KFSOA notes that the Town's fire department does not have sufficient manpower to permit its employees to travel to Jersey City for a uniform exchange. Additionally, the KFSOA raises the issue of whether members would be compensated for overtime to go to Jersey City on their days off. For these reasons, the KFSOA urges that its proposal for uniform/clothing allowance should be awarded and the Town's rejected.

In support of its proposal, the KFSOA compares its proposed increase in the clothing allowance to the clothing allowance provided by other Fire Departments in Hudson County. According to the KFSOA, the clothing allowance in other Hudson County Fire Departments is as follows:

- Harrison \$525
- Jersey City \$580 (plus the city provides station uniform, jacket, baseball cap, shoes, PPE)
- Bayonne \$850
- Hoboken \$800
- North Hudson \$600

Additionally, the KFSOA points out that the Kearny Police Superiors enjoy a Clothing Allowance of \$750 and employees represented by the Kearny Civil Service Council enjoy a clothing allowance of \$350. The KFSOA also points out that the Town does not have a plan for routine uniform replacement. According to the KFSOA, at present, uniforms are repaired or replaced at the discretion of the Deputy Chief or the Training Division with no established format or guidelines in place. According to the KFSOA, this practice resulted in a grievance from another union. The KFSOA also points out that some Fire Officers are wearing uniforms that have been in service since 1993, well in excess of the average useful life of approximately three years for a firefighter uniform according to the Lions Apparel User Information Guide. The KFSOA asserts that if the clothing allowance is increased as it proposes, it will guarantee compliance with the above guideline.

The KFSOA calculates that the additional items the Fire Officers are required to purchase and wear according to Department notice dated April 21, 1978 and reinforced by Special Notices dated February 11, 2002 and March 24, 2003 cost approximately \$300 per year.

The KFSOA notes that the Town Council is currently discussing a bond to finance the cost of uniform replacement, which could result in additional delay. The KFSOA also points out that the Town does not have a plan for the proper cleaning of uniforms as outlined in NFPA standard 1581 and manufacturers

recommendations regarding the cleaning of contaminated uniforms. According to the KFSOA, the cost to the individual would be approximately \$410 if dry cleaned and \$416 if brought to the laundry. Additionally, the KFSOA maintains that the cost of repair or replacement of protective equipment would be covered by the increased clothing allowance. The KFSOA also notes that additional recommended but not mandatory equipment includes the following:

1. Leather boots /\$180 (Department notice May 13, 1997 allows the firefighter the option to wear leather boots. The department will not replace damaged boots.)
2. Personal safety rope /\$90.00 (Must be replaced after single use)
3. Personal light /\$150
4. Tee shirts /\$50
5. Sweatshirts for warmth during the winter /\$55

Addressing its proposal to change the work schedule to a 24/72 schedule, the KFSOA emphasizes that its members supervise firefighters who work that schedule. Noting that the issue of "covers" has been raised by both parties, the KFSOA asks that a suitable 24/72 schedule be awarded in accordance with the PERC decision regarding negotiability. The KFSOA points out that PERC determined that a 24/72 schedule could be awarded so long as "such covers shall be subject to approval of the chief of the department, or his designee, which approval shall not be unreasonably withheld." The KFSOA acknowledges that the contract does not presently include such approval language but notes that, as a matter of past practice, such approval has been required before any cover is

granted pursuant to Article X, Section 2(A). The KFSOA points out that the use of “covers” is very important to its members because it provides significant scheduling flexibility at “literally no cost to the Town.” According to the KFSOA, this process has worked well for many years and the Town has not shown a need to change it.

Addressing the overall compensation package provided to KFSOA members, the KFSOA characterizes it as “substandard” and contrasts this package with the Town’s lack of justification under this criterion for its proposal. When looking to overall compensation, the KFSOA addresses the proposal to modify longevity compensation for new employees. While such a proposal may have merit in communities where the total compensation package is more attractive and results in higher rates of recruitment and retention of employees, the argument for modified longevity might be more compelling. Accordingly, the KFSOA asserts that the overall compensation factor militates against the “Draconian” proposal by the Town.

The KFSOA asserts that its proposal is within the Town’s lawful authority. Additionally, the KFSOA points out that the Town has not claimed that the Cap law presents any difficulty in this instance. The KFSOA notes that the Town has operated and continues to operate well within its “Cap” and the KFSOA’s proposal will not compel the Town to exceed its Cap. For these reasons, the

KFSOA asserts that the lawful authority of the employer criterion is irrelevant in this case.

Turning to the criterion addressing the financial impact on the governing units, its residents and taxpayers, the KFSOA explains that "It follows, from all of the foregoing, with near syllogistic precision, that the KFSOA's offer is closer to reality according to this and all of the other statutory criteria." The KFSOA argues that the Town can well afford and its citizens will be well served by an award of the KFSOA's proposal. Addressing financial reports from its financial consultant, Vincent J. Foti, the KFSOA concludes that the Town enjoys a modest overall tax rate, including a reasonable and well controlled municipal tax rate and a strong and stable ratable base. Again referencing both parties' financial analyses, the KFSOA notes that the Town has a strong cash position with a strong surplus and relatively low municipal debt. The KFSOA points to other indicators of positive fiscal performance including high rates of property tax collection, strong delinquent property tax collection, revenue collection rates that equal or exceed those in budget projections and a lack of evidence of over-expenditures or emergency appropriations. The KFSOA contends that the Town can readily afford and accommodate its proposals without undue burden to its taxpayers or any reduction in municipal services.

The KFSOA acknowledges that salary increases it has received in the past have consistently exceeded the increase in cost of living. But, the KFSOA

points out that the Town has provided no justification to change that. Asserting that the cost of living analysis cannot be evaluated in a vacuum, the KFSOA asserts that general trends, historical increases and other economic realities must also be considered. The KFSOA emphasizes the significance of the fact that both parties have proposed salary increases that exceed of the cost of living.

Turning to the eighth statutory criterion covering continuity and stability of employment, the KFSOA asserts that an award of its proposals would enhance the Town's ability to hire and retain personnel. Additionally, the KFSOA points out that its proposed change to the work schedule as well as its economic proposals, including the term of the contract, will enhance morale and thus support the continuity and stability of employment.

Position of the Town of Kearny

Initially, the Town proposes that salaries be increased by 3.5% per year from July 1, 2000 through June 30, 2005 with modest dollar adjustments in each year. In calculating the cost of these increases, the Town seeks credit for the incremental costs of unit members advancing through the salary guide. For example, the Town calculates that the first year cost of its proposal to increase salaries for Captains by 3.5% has an actual cost of 4.82% or \$77,510 when the cost of incremental advancement through the steps of the salary guide is included. Using this method, the Town calculates that the total increase over the term of its proposal for Captains would be 29.7% or \$477,513 and the total

increase over the term of its proposal for Deputy Chiefs would be 23.9% or \$109,165.

Similarly, the Town calculates the cost of the KFSOA's proposal for an initial increase of \$1650 across the board, followed by 4.0% annual increases. Based upon these calculations, the Town estimates that the total increase for Captains under the KFSOA's proposal would be \$538,034 or 33.4% and the total increase for the bargaining unit, including five Deputy Chiefs would be \$664,559 or 32.3% over five years.

The Town maintains that such increases are disproportionate to generally recognized measurements of salary increases, such as the cost of living, private sector settlements, and the agreement between the Town and its rank and file Firefighters. The Town points out that over the term of a five year agreement, its proposal would require a pay out of \$586,678 or a 28.4% total increase, or 5.68% per year. The Town calculates that the KFSOA's proposal would cost an additional \$77,881 or an average of \$2,685 per officer. The Town also points out that increases in base salary will result in increases in other economic components of the compensation package. Using holiday pay as an example, the Town calculates that the value of holiday pay will increase from \$6,013.75 for Captains at the top step on June 30, 2000 to \$7,478 as of July 1, 2004 and that the value of holiday pay for Deputy Chiefs at the top step will increase from \$7,608.82 as of June 30, 2000 to \$9,419.14 as of July 1, 2004. The Town

calculates that under the KFSOA's proposal the value of holiday pay at the top rate for Captain would increase by \$1,464.99 and at the top rate for Deputy Chief, by \$1,810.32. According to the Town, the impact of the KFSOA's wage proposal on longevity costs would be an increase of \$1,451 for a captain receiving 8% longevity as of July 1, 2004 and for a Deputy Chief, an increase of \$1,793.28. The Town notes that this problem would be exacerbated if the KFSOA's proposal to increase longevity payments to a maximum of 14% is awarded. The Town calculates that if the KFSOA's wage and longevity proposals were both awarded, a 24 year Deputy Chief would receive a base salary of \$116,618, plus holiday pay of \$9,419.14 and longevity pay of \$16,326.52 for a total compensation package of \$142,363.

The Town points out that the wage and longevity increases sought by the KFSOA are well in excess of the economic benefits received by rank and file Firefighters represented by the FMBA. According to the Town, these benefits include a switch from a 10 and 14 work schedule to a 24/72 as well as the following adjustments:

Adjustments Made in FMBA Contract

1. Clothing Allowance – Effective 2/1/04 and Coincident with the change in work schedule this \$525.00 benefit was removed from the FMBA contract.
2. Line Up Pay – Effective 2/1/04 this \$350.00 per annum benefit was removed from the FMBA contract.

3. Shift Differential – Effective 2/1/04 this \$250.00 per annum benefit was removed from the FMBA contract.
4. Wash Up Time – Effective 2/1/04 this 30-minute benefit was removed from the FMBA contract.
5. Covers – Effective 2/1/04 forty-five (45) covers was limited to 15 per year with no more than 48 hours per month.
6. Personal Days – Effective 1/1/04 personal days converted from 2 days to 1 day for those working the 24/72; and all firefighters must use personal days during year of entitlement or lose them.
7. Holiday Pay – Effective 7/1/03 holiday pay was rolled into the base rate salary schedule consistent with the 3.5% per annum cost increase and this benefit was removed from the FMBA contract, including the obligation to pay 1 ½ time for hours worked on the holiday.
8. Longevity – Effective 7/1/03 the maximum payment on longevity was reduced from 10% to 9.25%, and longevity was rolled into the base rate salary schedule consistent with the 3.5% per annum cost increase, and this benefit was removed from the FMBA contract.
9. Vacation – Employees working the 24/72 shift receive 8 vacation days per year after 3 years of service and 1 additional vacation day for every 10 years of service.
10. Emergency (Family) Leave – Converted from 5 days to 2 days for employees working 24/72 shift.

The Town urges that considerable weight must be given to the FMBA settlement inasmuch as terms for fire department employees are more relevant than other comparisons.

The Town notes that there are cost containments included in its agreement with the FMBA. Instead of agreeing to such cost containments, the KFSOA seeks increases or enhancements, a position the Town urges should be

rejected. For example, the Town points out that the FMBA agreed to remove the clothing allowance from the agreement in exchange for a contract provision providing new uniforms to promotees and replacement of unserviceable articles. Instead, the KFSOA seeks to increase the clothing allowance from \$325 to \$525. Similarly, the Town notes that the KFSOA seeks to increase line up pay by 54% from \$350 to \$540, and then to reduce the benefit by 50% when the number of shifts is reduced by 50% under a 24/72 work schedule. The Town also notes that the FMBA agreed to eliminate its \$250 annual shift differential in exchange for the shift to a 24/72 work schedule and the KFSOA did not make a similar proposal, which the Town interprets to be a proposal to maintain the status quo. Similarly, the Town notes that the KFSOA seeks to maintain the 30 minute wash up time under a 24/72 work schedule, while the FMBA gave up wash up time with the switch to 24/72 work schedule.

Addressing the issue of “covers”, the Town points out that the FMBA agreed to decrease its contractual 45 covers to 15 covers with the switch to the 24/72 work schedule. But the KFSOA does not propose to limit its current entitlement of 18 covers per year, plus an additional five covers per month for July and August. The Town notes that it seeks to eliminate Article X, Section 2 which provides for “covers”. The Town cites the PERC decision in Town of Kearny and Kearny Fire Superior Officers, Docket No. SN-2001-11 where the Commission found Section 2(a) not mandatorily negotiable. The Town argues that Section 2(b) should be eliminated because it is tied to 2(a).

Turning to the issue of personal days, the Town notes that both the KFSOA and the FMBA agree that 2 personal days should be reduced to one 24-hour day with a switch to the 24/72 work schedule. However, the Town points out that while the FMBA agreed that a personal day must be used in the year in which earned or it will be forfeited. The KFSOA did not make such a proposal.

The Town points out that the KFSOA proposes to maintain the present holiday payment at time and one-half for up to 7 holidays worked. The Town notes that in its settlement with the FMBA, holiday pay was rolled into base pay and the holiday article was removed from the agreement.

Comparing the KFSOA's proposal to increase longevity to 12% at 22 years and 14% at 24 years effective July 1, 2000 to the Town's settlement with the FMBA, the Town proposes to reduce longevity at 20 years from 10% to 9.25%. The Town asserts that this is consistent with the reduction agreed to by the FMBA when it also agreed to roll longevity into the base rate consistent with the 3.5% cost increase factor.

The Town seeks to maintain the status quo on the vacation benefit but seeks to limit leave to one captain at a time. This benefit currently includes an enhancement provision of 1 additional vacation day per 5 years of service to its agreement. If the 24/72 work schedule is awarded, the Town seeks

comparability with the FMBA agreement. The FMBA agreement provides for 8 vacation days after 3 years and 1 additional day per 10 years of service.

The Town also compares the KFSOA's proposal for 3 days (72 hours) of emergency leave if the 24/72 work schedule is awarded with its agreement with the FMBA that provides for 2 days (48 hours) of emergency leave.

Addressing the interest and welfare of the public, the Town maintains that the KFSOA's final offer would result in disparate treatment of Firefighters compared to Superior Officers. The Town asserts that such a result is not in the public interest, citing Arbitrator Weisblatt's Award in In the Matter of Interest Arbitration between Township of Holmdel and PBA, Local 239, Dkt. No. IA 93-163, as follows:

The Township presents a compelling argument with respect to the reasonableness of consistency among bargaining units under the public interest criterion. Consistency in treatment among bargaining units of the same employer is unquestionably a generally accepted element of good labor relations policy. Sound and consistent labor relations is certainly in the public interest. It prevents "whipsawing" in negotiations and it reduces the potential for the decline in morale, which often accompanies the perception of disparate treatment....

The Town argues further that its proposals are more reasonable in light of financial difficulties experienced by the Town, its residents, and the State. The Town cites the unemployment level, weak tax revenues, and increasing deficits as evidence of financial difficulties. In this context, the Town notes that despite

the rising cost of health insurance premiums, it continues to fund the full cost of the health insurance plan for superior officers and their families.

Turning to the comparability criterion, the Town asserts that internal comparability should control in the Award in this instance. The Town maintains that its agreement with the rank and file firefighters represented by the FMBA forms the basis for its final offer in this proceeding. The Town reiterates that its settlement with the FMBA included 3.5% increases plus EMT compensation. Addressing the 24/72 work schedule included in the FMBA agreement, the Town points out Chief Lapsanski and Deputy Chief Calabrese both testified that no operational difficulties had resulted from the firefighters and the officers working different schedules, although there was some initial difficulty "keep[ing] track of covers." The Town sees no reason to alter the schedule that it submits is now working well.

Because the Fire Department seems to be operating smoothly and the KFSOA has been "unwilling to embrace the overall structure" of the Town's "settlement package" with the FMBA, the Town urges that the duration of the agreement should be through June 30, 2005 to allow a reasonable period to assess the work schedule issue and then return to it in the future.

The Town maintains that its agreement with the FMBA is most compelling when internal comparability is considered. But the Town also addresses its

settlement with the KPSOA. The Town notes that in its exhibits, the KFSOA points out that for the period July 1, 1996 through June 30, 2000 it received wage increases totaling 15.2% without compounding, while the KPSOA received wage increases totaling 14% without compounding for the period January 1, 1996 through December 1, 1999. Although the agreements have different start and expiration dates, the Town notes that the KFSOA received 1.2% more than did the KPSOA for a similar period, exclusive of muster pay. Continuing the comparison, the Town points out that through 2003, under its proposal, the KFSOA would receive 14% from July 1, 2000 through June 30, 2003, while the KPSOA received 16.1% for the period from January 1, 2000 through December 31, 2003. Accordingly, the Town calculates that from 1995 through 2003 there is a difference of only .9% in salary increases between the KFSOA and the KPSOA. Although the increases are not exactly the same, the Town maintains that the two bargaining units did receive comparable wages increases over an extended period of time.

Addressing the muster pay included in the KPSOA agreement, the Town points out that under their agreement, police officers may be required to work an additional 15 minutes at the beginning of a shift while, in comparison, the KFSOA members currently have a 30 minute wash up benefit. Additionally, the Town notes that superior officers receive line up pay of \$350 which equals 0.47% on the maximum salary for captain under the last agreement between the parties.

The Town compares the median wage increases for employees in the private sector with those received by the KFSOA and concludes that KFSOA members received average increases of 20.5% more than the nationwide median private sector wage increase and an average of 8.8% more than the median private sector wage increase in New Jersey for the years 1990-1999. The Town also points out that KFSOA wages increased at a faster rate than government employees in New Jersey generally. According to the Town, the median wage increase for state and local government employees on a national level was 3.0% for 2003 and 2004, which is well below the 3.5% offered by the Town for each year. The Town also notes that the State of New Jersey's settlement with CWA for the period from 2003 through 2007 provides for average wage increases of 2.825% with a wage freeze in the first year in the agreement.

Addressing comparability with other fire officers, the Town points out that the New Jersey Appellate Division and Supreme Court, and the executive and legislative branches of State government have rejected the over-reliance on comparability of police and fire salary increases with increases in other municipalities. For this reason, the Town argues that the concept of the "going rate" is no longer controlling interest arbitration. Nonetheless, the Town notes that when the 3.5% increase it proposes is factored in for 2000, the maximum salary for Captain is raised to \$77,062 which places its Fire Officers ahead of Harrison, North Bergen and Weehawken and comparable to West New York, and only slightly below Jersey City.

The Town asserts that the overall compensation package of its Fire Superior Officers is excellent. The Town points out that a 15-year Captain earns a base salary of \$74,456 and a 20-year Deputy Chief, which includes all five Deputy Chiefs, is paid a maximum base salary of \$94,200, with both rates based on salaries in effect before any increases for the year 2000 and forward that are included in this Award. Additionally, the Town notes that its benefits package includes full family coverage health insurance and prescription coverage through the State Health Benefits Plan without contributions from its employees. The Town notes that it is not currently seeking contributions from its employees despite the fact that its premiums have increased by 66.84% from 2000 through 2004 and the prescription plan has increased by 41.45% for the same period. The Town calculates that the total annual cost to the Town for a 15 year Captain is 112,578 and the total annual cost to the Town for a 20 year Deputy Chief to be \$138,709 based upon pay rates in effect in 2000.

The Town contends that an award of the KFSOA's final offer would have a significant negative financial impact upon the Town, its residents and taxpayers. According to the Town, if the KFSOA's final offer is awarded, it may result in employees in other bargaining units and those who are unrepresented receiving lesser increases or being laid off. Additionally, the Town maintains that an award of its final offer could require that it draw upon its "limited surplus to provide a safe level of fire services" without unreasonable cost increases to its budget and

associated increases in the Town's average tax bill. For these reasons, the Town asserts that its final offer is more financially responsible.

The Town, citing the report of its Auditor, Steven D. Wilkoetz, asserts that it is in a difficult financial position, with its FY 2005 budget including a proposed tax increase of \$4,918,900 or 47 points. The Town calculates that this proposed increase will result in a tax increase of \$419.35 to the average taxpayer for municipal taxes alone, and when school and county tax increases are included, the average homeowner will have a tax increase of approximately \$660. Placing this increase in context, the Town asserts that this most recent tax increase is the most recent in a series of significant tax increases over the past five years during which the municipal tax rate has increased by almost 19% and the total tax rate, including school and county taxes, has increased by 16.5%. At the same time, the Town points out that its surplus balance has decreased by \$2,684,000 from the previous budget due to lower tax collection and revenue shortfalls. When the increased costs associated with the KFSOA's final offer are added, the budget shortfall will only increase and the Town maintains that pressure will increase either cut services or raise taxes even more. The Town cites the conclusion in the Auditor's Report that, "[t]he Town is in no position to take on any new expenses and quite frankly will have a very difficult time paying for what they are required to pay presently." The Town notes that Mr. Wilkoetz stated that the Town "cannot even afford to pay its own proposal at this point, given that the proposed budget calls for a 25% increase in the tax levy."

Addressing the cost of living criterion, the Town points out that over the ten year period from 1990 through 1999 the salaries of its Superior Fire Officers have increased almost 22.6% more than the cost of living as reflected by the CPI-U. The Town calculates that if a Captain's maximum base salary in 1990 had increased by the cost of living it would have increased from \$46,816 in 1990 to \$59,722 in 1999 and instead increased to \$74,456 or \$14,734 more than the cost of living. According to the Town, the size of this increase is an explanation for the dramatic increase in municipal budgets and taxes. Comparing its proposal to increases in the CPI-U the Town asserts that under its proposal, its Superior Fire Officers would receive increases that are .1% above the increase in the CPI in 2000, 1.9% above the increase in the CPI for 2001, 1.1% above the increase in the CPI for 2002 and 1.6% above the increase in the CPI for 2003. The Town urges that this disparity not be perpetuated or enhanced by an award of the KFSOA's final offer.

Turning to the continuity and stability of employment, the Town asserts that the continuity and stability among its Fire Officers is excellent because they are well compensated and enjoy job security during a period when the local unemployment rate has increased from 3.9% in 2000 to 5.7% in 2003. The Town points out that unemployment rates have an impact on taxpayers who may be unemployed. Additionally, the Town points out that no Fire Officers have been laid off in recent memory. According to the Town, its Fire Officers have job

security and stability that is unmatched by other private and public sector employees.

DISCUSSION

I am required to issue an award based upon a reasonable determination of all issues in dispute after giving due weight to the statutory criteria that I judge relevant. The Town and the KFSOA have expertly articulated their positions on the issues and have submitted comprehensive evidence and argument on each statutory criterion in support of their respective positions. All of the evidence and arguments have been carefully reviewed, considered and weighed.

Both final offers include several economic proposals including wage and longevity proposals and numerous other proposals designed to address issues arising out of the proposed work schedule change to a 24/72 work schedule. In reviewing these proposals, I apply a principle which is ordinarily and traditionally considered in the determination of wages, hours and conditions of employment through the bargaining process; namely, that a party seeking such change bears the burden of establishing the need for such modification.

Clearly, all of the statutory criteria are relevant when making a reasonable determination of the disputed issues. But is equally clear that not all are entitled to identical weight. The statutory criterion that I believe is entitled to the most weight is the internal comparison between the fire officers and the firefighters

within the Town of Kearny. This does not exclude consideration of other evidence such as comparable terms for fire officers in other municipalities or comparable terms in the Town's police department. However, during this contract term, that evidence is less compelling than the terms that have been set within the department. The simple fact is that Kearny's fire department employs paid professional firefighters and fire officers who work in a unique environment, display similar skills and training, and interact on a round the clock basis for the common goals of fire prevention, firefighting, emergency response and the containment of hazardous materials. The relative terms and conditions of employment for those who work within the department must first be considered in the setting of new terms. Otherwise, internal conflict and discord would arise by splitting one group from another within their own community of interest. Professional identify within one department should not be undermined by linking one of two departmental units to a different profession, a different department or a different governmental entity when the most apt comparison at hand falls within one's own profession, department and municipality. Thus, while the arguments and evidence that fall beyond the Kearny Fire Department have been thoroughly considered and evaluated, the greater must be given to the terms that have been set within the department.

This conclusion does not compel identical terms between the non-supervisory and supervisory units. The evidence does not reflect that there has been identical treatment in the past. But the record does reflect that there has

been reasonable consistency and that terms that govern the fire service have served as a general parameter. Indeed, many of the issues in dispute in this proceeding center around a work schedule that is unique in the fire service and the impact of a change in the work schedule on other major terms and conditions of employment. With this background in mind, I proceed to decide the issues in dispute.

Duration

The Town and the KFSOA do not agree on length of contract term. The KFSOA seeks a contract expiration date of June 30, 2008 while the town proposes June 30, 2005. The Town's proposed expiration date is based upon its view that the work schedule should not be changed and that the parties could then revisit that issue immediately. I do not agree with this view. The Town and the KFSOA have engaged in a very lengthy negotiations process and should not have such an immediate return to collective negotiations. Further, the work schedule issue will be resolved by this award and will not need to be revisited immediately. An additional consideration is that the FMBA agreement extends to June 30, 2007 and the agreements in the police department extend to December 31, 2008. These facts require a contract of longer duration here. The parties and the public will be served by an agreement that expires on June 30, 2007. This will result in the same expiration dates for the two units in the fire department and a return to negotiations prior to the expiration of the police units.

Recognition

The Town seeks to amend the Recognition and Scope of Agreement clause to delete Lieutenants and Battalion Chiefs and add Deputy Chiefs. Article I of the parties' agreement presently provides as follows:

Section 1. The Town hereby recognizes the KFSOA as the sole and exclusive representative of all of the employees in the bargaining unit (as defined in Article I, Section 2 herein) for the purposes of collective bargaining and all activities and processes relative hereto.

Section 2. The bargaining unit shall consist of all sworn Lieutenants, Captains and Battalion Chiefs of the Fire Department of the Town of Kearny, New Jersey (now employed or hereafter employed).

At present, the bargaining unit consists only of Captains. There are no Lieutenants or Battalion Chiefs. The KFSOA does not object to modifying the agreement to include Deputy Chiefs. Accordingly, this proposal is awarded and Article I, Section 2 will be modified as follows:

Section 2. The bargaining unit shall consist of all sworn Captains and Deputy Chiefs of the Fire Department of the Town of Kearny, New Jersey (now employed or hereafter employed).

In the event that Fire Officer titles are recreated or added in the future that contain supervisory authorities, such titles would presumptively be included in the bargaining unit.

Work Schedules

The KFSOA proposes to modify the present work schedule. The KFSOA proposes to switch to a 24/72 work schedule as is currently being worked by the FMBA. The KFSOA points out that firefighters in the majority of fire departments in Hudson County now work a 24/72 schedule. The KFSOA asserts that modifying the work schedule to the same schedule worked by the rank and file firefighters will enhance accountability and communication, coordination and supervision. The Town does not propose to change the schedule but asserts that if the fire officer's work schedule changes to a 24/72 schedule, contract modifications that were included in the FMBA agreement to accompany the switch in work schedules should also be awarded for the fire officers.

Switching the work schedule to a 24/72 schedule will place the fire officers on the same work schedule as firefighters. This will allow for enhanced communication, coordination and supervision. The record shows that since firefighters have begun working a 24/72 work schedule, some difficulties in communication, coordination and supervision have arisen as a result of fire officers remaining on the previous work schedule of four 10 ¼ days followed by four days off. It may be that these difficulties were only experienced in the initial stages of transition and would dissipate overtime. The issue here must focus on the long run. Placing fire officers on the same work schedule as firefighters makes sense. The enhanced coordination and accountability that will ensue will further the interests and welfare of the public and provide for a more cohesive,

effective and efficient department. Accordingly, effective no later than January 1, 2006, the Town shall implement 24-hour workdays followed by 72 hours off duty for fire officers. This effective date will be more administratively convenient for the purpose of transitioning to the conversions that need to be made to provisions dealing with paid time off. One such version is the removal of shift differential for fire officers working the 24/72 work schedule. Both parties acknowledge that this work schedule modification also requires the conversion of contract provisions addressing vacation, personal days, covers, terminal leave and emergency leave. I address those issues below.

Vacation Days

Both parties have proposed to modify the vacation provisions of the agreement. The KFSOA seeks to divide current vacation amounts in half to account for the changed work schedule. The KFSOA also seeks to ensure that resulting vacation days may be taken in full or one-half days; with one-half days to be taken in increments of 10 or 14 hours at the option of the employee. The Town seeks to add language in the vacation provision that would modify the current practice of limiting vacation leave to one Captain at a time. The Town also seeks a change in the amount of vacation time to result in conformity with the FMBA.

The Memorandum of Agreement between the Town and the FMBA included the following modifications to the vacation provisions of their Agreement upon the implementation of the 24/72 work schedule:

Article XV Vacation

Remove Section 1.

Add New Section 1. All employees covered by the Agreement shall receive working days vacation with pay annually following this schedule: Members working the 24 hr. shift, after three (3) years of service, shall receive 8 vacation days. Each member of the FMBA working the 24 hour shift shall receive one (1) additional vacation day for every 10 years of service.

The conformity sought by the Town would result in a reduction in the present amount of vacation time for the fire officers. Other than achieving a result of conformity, no additional justification is present for not preserving the present amount of vacation time. The conversion of the number of existing vacation days to the number of vacation days under the 24/72 hour work schedule as proposed by the KFSOA represents a reasonable determination of the vacation issue for the KFSOA and it is awarded. This would provide for nine (9) vacation days for those who work the 24 hour shift and one (1) additional vacation day for every ten (10) years of service thereafter. The KFSOA proposal to allow one-half days to be taken in increments of 10 or 14 hours is awarded subject to prior approval of the Chief or his designee. Up to one-half of an employee's vacation may be taken in individual days. The FMBA agreement contains a limitation of allowing vacation to two (2) unit members per tour. The Town has proposed that only one (1) Captain per tour be allowed to take vacation based upon departmental practice. I award this limitation.

Personal Days

The KFSOA proposes that the existing total of two personal days be converted to one personal day, to be taken in increments of one 24-hour day or two half days. This proposal mirrors the agreement between the Town and the FMBA and is awarded. The Town points out that its agreement with the FMBA also included a provision requiring that all firefighters must use personal days during the year they are received or they will be lost. The Town's proposal is reasonable. Personal days, under the FMBA agreement, allows for time off on an annual basis and to be used on an annual basis. Internal consistency on this issue will promote stability in staffing. This portion of the proposal is awarded prospectively. If personal days have been banked under the prior agreements, they shall be carried forward. Each proposal is awarded effective upon implementation of the 24/72 hour work schedule.

Covers

The KFSOA notes that the current practice of taking covers in 10 or 14 hours counts as one cover. If a workday becomes 24 hours, the time would be counted as two covers according to its proposal. The Town proposes to eliminate Article X, Section 2 addressing covers because aspects of it have been found non-negotiable. Article X, Section 2 now provides as follows:

- (a) Bargaining unit members shall be entitled to exchange tours of duty with other bargaining unit members ("covers") at the rate of

three (3) covers per month, not to exceed eighteen (18) covers per year. During July and August, members will be allowed five (5) additional covers for a total of eight (8) covers per month. These additional covers shall not be counted toward the total of eighteen (18) covers set forth above.

- (b) Additional covers may be granted only upon the prior approval of the Chief of the Department. In the event that a bargaining unit member requests approval to exceed the number of covers provided in Paragraph 1, he shall submit a written request to the Chief in advance of the applicable tour of duty.

In support of its proposal, the Town asserts that since PERC found that Section 2(a) is not mandatorily negotiable, the benefit of covers should be eliminated. Also, Section 2(b) should be deleted as it is dependent upon Section 2(a).

The Town further points out that the FMBA agreed to decrease its contractual 45 covers to 15 covers contemporaneous with the switch to the 24/72 work schedule while the KFSOA does not propose to limit its current entitlement of 18 covers per year, plus an additional five covers per month for July and August.

PERC, in its Scope of Negotiations Determination, found as follows:

Section 2(a) is not mandatorily negotiable because it does not condition the tour exchanges on the approval of the chief. Section 2(b), however, is mandatorily negotiable as the Chief's approval is required. The KFSOA Proposal (#5) to modify Section 2 to increase the number of tour swaps each year to 42 is mandatorily negotiable only if each swap is subject to approval. Town of Kearny and Kearny Fire Superior Officers Association, P.E.R.C. No. 2001-58, p. 7.

I have awarded the KFSOA proposal to change the work schedule to 24 hours on and 72 hours off. This, by necessity, requires a change in the practice and/or contractual language concerning the manner in which covers are taken. The Town's position to eliminate covers is rejected. The language that is non-negotiable shall be removed. On this issue, consistency between the FMBA agreement and the SOA agreement is warranted. Accordingly, effective upon implementation of the 24/72 hour work schedule, bargaining unit members shall be permitted to exchange tours of duty with other bargaining unit members ("covers") a maximum of fifteen (15) times per year. Covers will not be allowed for more than 48 hours in one month. Covers shall require prior approval of the Chief who may not unreasonably deny a request.

Terminal Leave

Article VII, Section 3(d) provides:

Each member covered by this Agreement shall be entitled to and granted terminal leave of forty-five (45) working days off with pay at the time of his retirement. Such leave may be taken for purposes of early retirement or any employee may work until retirement at which time he shall be entitled to forty-five (45) working days pay in lieu thereof.

The KFSOA proposes to convert the current terminal leave maximum of 45 days to a total of 22.5 days which may be taken in cash or time off as is the current practice. The Town has posed no objection to this proposal. Based upon the awarding of the 24 hours on and 72 hours off work schedule, the halving of the days is logical and it is awarded. Accordingly, upon implementation of that

work schedule, the terminal leave provision shall be modified to reflect a total terminal leave allotment at retirement of 22.5 days as follows:

Each member covered by this Agreement shall be entitled to and granted terminal leave of twenty-two and one half (22.5) working days off with pay at the time of his retirement. Such leave may be taken for purposes of early retirement or any employee may work until retirement at which time he shall be entitled to twenty-two and one half (22.5) working days pay in lieu thereof.

Emergency Leave

The KFSOA proposes to convert the existing five-day emergency (family) leave allotment to a total of three 24-hour work days. The Town compares the KFSOA's proposal for 3 days (72 hours) of emergency leave under a 24/72 work schedule with its agreement with the FMBA for 2 days (48 hours) of emergency leave. Consistency on this issue is appropriate. Based upon the awarding of the 24 hours on and 72 hours off work schedule, the appropriate conversion of time on this issue shall be two work days or 48 hours of emergency leave.

Uniform Allowance

The KFSOA seeks an increase in Uniform Allowance from \$525 to a \$850 per year. In return, the KFSOA agrees that Fire Officers will replace one complete uniform per year, if necessary, to insure no uniform is older than three years. According to the KFSOA, this standard complies with recommendations included in Lions Apparel User Information Guide and will provide the maximum safety for Fire Officers. The KFSOA also proposes that Fire Superior Officers will

maintain one complete uniform at work to comply with NFPA 1999 and to include the cost of repair to damaged uniforms within the uniform allowance.

The Town proposes to eliminate the clothing allowance and to indemnify employees for the cost of any upgrade to station shirts, blazer and jacket due to promotion to Captain or Deputy Chief and for the cost of replacement of listed clothing items that become unserviceable. The Town also proposes to supply all newly promoted officers with a Dress Uniform and Cap. The Town points out that the FMBA agreed to eliminate the clothing allowance coincident with the change to a 24/72 work schedule.

In support of its proposal, the KFSOA compares its proposed increase in the clothing allowance to the clothing allowance provided by other Fire Departments in Hudson County. According to the KFSOA, the clothing allowance in other Hudson County Fire Departments is as follows:

Harrison \$525
Jersey City \$580 (plus the city provides station uniform, jacket, baseball cap, shoes, PPE)
Bayonne \$850
Hoboken \$800
North Hudson \$600

Additionally, the KFSOA points out that the Kearny Police Superiors enjoy a Clothing Allowance of \$750 and employees represented by the Kearny Civil Service Council enjoy a clothing allowance of \$350. The KFSOA also points out that the Town does not have a plan for routine uniform replacement. According

to the KFSOA, at present, uniforms are repaired or replaced at the discretion of the Deputy Chief or the Training Division with no established format or guidelines in place. According to the KFSOA, this practice resulted in a grievance from another union. The KFSOA also points out that some Fire Officers are wearing uniforms that have been in service since 1993, well in excess of the average useful life of approximately three years for a firefighter uniform according to the Lions Apparel User Information Guide. The KFSOA asserts that if the clothing allowance is increased as it proposes, it will guarantee compliance with the above guideline.

The KFSOA calculates that the additional items the Fire Officers are required to purchase and wear according to Department notice dated April 21, 1978 and reinforced by Special Notices dated February 11, 2002 and March 24, 2003 cost approximately \$300 per year.

The KFSOA notes that the Town Council is currently discussing a bond to finance the cost of uniform replacement, which could result in additional delay. The KFSOA also believes that the Town does not have a plan for the proper cleaning of uniforms as outlined in NFPA standard 1581 and manufacturers recommendations regarding the cleaning of contaminated uniforms. According to the KFSOA, the cost to the individual would be approximately \$410 if dry cleaned and \$416 if brought to the laundry.

I do not recommend a change in the method of clothing allowance and maintenance at this time nor in the amount currently received. There is only one full year left in this contract term. The department's experience with the change in the FMBA unit will provide a basis to examine the feasibility of adopting a similar change in the next fire officer agreement.

Line Up Pay

At present, fire officers receive a \$350.00 stipend for line-up pay, payable in the third pay each August. According to the KFSOA, line-up allows for the exchange of information between incoming and outgoing tours, reading and delivering all orders, oral instructions, directions or special notices as necessary. Line up is also used to inspect the personal appearance and physical condition of Firefighters and to assign them to their riding positions for the tour. The KFSOA maintains that line-up pay is essential at the beginning of each shift. According to the KFSOA, line-up allows for an overlap of shifts, properly preparing the oncoming shift for duty and ensuring the safety of Fire Fighters and Superior Officers as well as providing uninterrupted service to the public.

The KFSOA seeks to increase line-up pay to \$540.00 and to have this sum added to base pay effective July 1, 2000 for all calculation purposes. According to the KFSOA, under the current 10 1/4 hour shift, KFSOA members line-up 180 times or approximately 15 hours per year. The KFSOA calculates that multiplying the 1999 hourly rate of \$35.80 by 15 hours would result in a

payment of \$540.00 rather than the \$350.00 currently received. According to the KFSOA, if the work schedule change to 24-hour shifts were awarded, line-up time would then be halved, and line up pay of \$270.00 should be added to base pay effective July 1, 2000.

The Town disagrees. It notes that the FMBA agreed to eliminate line up pay in the last agreement. Additionally, the Town points out that the current payment of \$350 equals .47% on the maximum salary for a Captain under the last agreement between the parties and need not be changed to \$540 in 2000 as proposed by the KFSOA.

Although this payment has been eliminated under the FMBA agreement, I decline to give governing weight to that fact in my assessment of the merits of this issue. The continuation of this payment for this unit has merit given the supervisory and/or managerial duties of the fire officers duties that necessitate the devotion of time to ensure the orderly overlap in the discharge of supervisory duties. Retroactively, the amount of that payment shall be adjusted by \$10.00 annually from July 1, 2000 through July 1, 2004. The sum of \$200 shall be then added to base pay for all calculation purposes effective July 1, 2005. Thereafter, the separate payment of line-up pay shall be eliminated from the contract.

Dental Insurance

The Town proposes that effective January 1, 2005, all active Superior Officers be included in Dental Plan No. 3090 with \$2,000 annual benefit. The KFSOA does not object to this proposal. Accordingly, effective January 1, 2005, all active Superior Officers are included in Dental Plan No. 3090 with a \$2,000 annual benefit.

Holiday Pay

Holiday pay now appears in Article VII, Section 5. Section 5(a) provides for fourteen (14) paid holidays and Section 5(b) provides that a full day's pay for the holiday be at the rate of 12 hours pay. Section 5(e) provides that the payments be made in equal payments on the first pay days in June and December. In the FMBA agreement, holiday pay was rolled into the base rate salary schedule and removed from the agreement. The removal included the elimination of the Town's obligation to pay time and one-half for hours worked on the holiday. The adoption of a similar arrangement for the KFSOA is warranted especially in light of the implementation of the 24/72 hour work schedule. The roll in to base pay will provide an enhancement in pensionable income at a reasonable cost to the Town. The elimination of the overtime obligation will assist in the payment of the additional costs associated with the implementation of the roll-in. For reasons of administrative efficiencies, the effective date for the implementation shall be July 1, 2005. The Town and the KFSOA shall jointly

calculate the revisions that need to be made to the salary schedules effective July 1, 2005 to accommodate this implementation.

Longevity

Both parties propose to modify the current longevity provision. The present longevity schedule provides the following longevity payments:

<u>YEARS OF SERVICE</u>	<u>PERCENTAGE</u>
4 through 7	2
8 through 11	4
12 through 15	6
16 through 19	8
Beginning 20	10

The KFSOA seeks to add two additional steps to this schedule, providing 12% in the 22nd year and 14% in the 24th year. The Town proposes that effective July 1, 2004, newly promoted Fire Officers would have a cap on longevity payments of \$8,000 per year for Captains and \$9,000 per year for Deputy Chiefs. Additionally, the Town proposes that effective July 1, 2004 the longevity percentage at the 20th year should be modified to 9.25% for all employees in the bargaining unit.

The agreement between the Town and the FMBA, representing rank and file Firefighters provided that the maximum longevity benefit be reduced from 10% to 9.25%, that longevity pay be rolled into base pay and the longevity contract provision be removed from the agreement.

The Town also seeks to add a provision that effective July 1, 2004 longevity pay be prorated and cease at termination of active employment.

Article XXII, Section 2(a) currently provides:

Longevity shall be considered earned as of January 1st of each year, if the employee shall have completed his necessary years of service during said calendar year and longevity shall be paid as part of the regular weekly pay. In the event of retirement or death, the employee or his estate shall receive his longevity pay.

The KFSOA points out that its members earn a maximum longevity benefit of 10% after 20 years as compared to 16% after 24 years in Bayonne and Hoboken, 16% after 28 years in Jersey City, 14% after 25 years in North Hudson Regional, and 14% after 24 years in Harrison. The KFSOA provided the following chart comparing longevity benefits in Hudson County fire departments:

HUDSON COUNTY FIRE LONGEVITY COMPARISON

	3	4	5	7	8	9	10	12	13	14	15	16	19	20	21	22	23	24	25	28
Keamy		2%			4%			6%				8%		10%						
Bayonne		2%				5%				7%			9%		12%			16%		
Jersey City		2%			4%			6%				8%		10%			12%		14%	16%
No Hudson			4%		6%			8%				10%		12%					14%	
Hoboken		2%		4%			6%		8%			10%	12%			14%		16%		
Harrison	2%		4%				6%				8%			10%			12%	14%		

I do not award the KFSOA's proposal to add two additional steps to the existing longevity schedule nor do I award a cap on longevity payments in dollar amounts for newly promoted fire officers as has been proposed by the Town. Substantial weight must be given to a comparison of longevity schedules within the Town's fire department. The maximum longevity percentage has been

adjusted to 9.25% for rank and file firefighters. This is a 0.75% reduction but allows for the roll-in at a high level. Based upon this, I award the change to 9.25% as proposed by the Town with one modification discussed below. I also award the rolling of longevity pay into base pay coupled with the removal of the longevity contract provision from the Agreement. The effective date for this modification shall be July 1, 2005. The salary schedules at that time shall be adjusted by this percentage amount at each step of the Captain and Deputy Chief salary schedules.

The one modification referred to above applies to fire officers who have entered twenty or more years of service as of July 1, 2005. Fire officers who have entered twenty (20) or more years of service as of July 1, 2005 shall be "red-circled" and shall continue to receive the maximum longevity percentage of 10% prior to the change, in their base pay, until their last date of employment. Upon the retirement of all fire officers who, as of July 1, 2005, have entered twenty (20) or more years of service, this provision shall cease to exist and shall be removed from the Agreement. This provision shall not apply to any fire officer who, as of July 1, 2005, has not entered twenty (20) years of service prior to that date. They, as well as newly promoted fire officers, shall receive the maximum of 9.25% that has been rolled into base pay. This modification will result in a permanent reduction in maximum longevity to 9.25% but a retention of the prior percentage limited only to those fire officers who have lengthy service to the

Town and an expectation of a retention of that benefit level through point of retirement.

Given the roll-in of longevity pay into base pay and a removal of the longevity provision from the Agreement, there is no reason to address the Town's proposal for a proration of longevity pay upon termination of active employment.

Payment of Wages

The Town proposes that wages be paid bi-weekly instead of weekly. The KFSOA does not object to this proposal. Accordingly, as soon as administratively practicable, wages shall be paid bi-weekly.

Salary and EMT

I next turn to the proposals concerning salary and EMT compensation. These issues, while articulated separately by the KFSOA, cannot be properly evaluated as completely independent issues. The KFSOA points out that it has not received any such EMT payments while in 1998 the FMBA settled a 5-year contract retroactive to July 1996 that included a productivity stipend of \$300 added to the annual percentage raise in each of the 5 years of the contract. These stipends are said to represent consideration for a workload increase for performing EMT services. The KFSOA calculates that as of July 2000 that stipend, with compounding, was worth approximately \$1650 in firefighters' base

pay. The KFSOA also points out that the Fire Chief reached an agreement with the Town that included \$1500 added to his base pay before contractual raises for steps 1 and 2, and \$2120 added to base for step 3. These sums, according to the KFSOA, were in lieu of the First Responder stipend given to the FMBA. The fact that these payments are all in base pay reflect the fact that they also must be considered as a salary compensation issue.

The KFSOA asserts justification for similar payments. It points out that Section 10 (Training) of the Town's SOP states; "All members of the Kearny Fire Department who provide EMS First Responder Medical Services shall be trained and certified to the level of Emergency Medical Technician – Ambulance (EMT-A) as regulated by the New Jersey State Department of Health – Office of Emergency Medical Services." Additionally, the KFSOA points out that an April 11, 1995 ordinance provides that that the Kearny Fire Department personnel, shall be authorized and empowered to provide emergency medical service in conjunction with their duties of employment.

The KFSOA notes that since the inception of the First Responder Program and the adoption of the SOP, the Kearny Fire Department has increased total annual runs by 20 to 25%. The chart below exhibits an increase in total runs from 2000 through 2003.

Year	Fire Runs	EMS Runs	Total Runs	% Increase
2000	2262	591	2853	21%
2001	2234	646	2880	22.50%
2002	2033	649	2682	24%
2003	1774*	549	2323	23.50%

*The decrease in total runs for the year 2003 can be directly attributed to the Chief of Department Special Notice dated April 17, 2003. See attached notice for additional information.

The KFSOA also asserts a comparability with other departments argument. It submits the chart below that includes First Responder/EMT Stipend for fire departments with similar EMS duties.

MUNICIPALITY	FIRST RESPONDER/EMT STIPEND
West Orange	2% stipend added to base pay
New Brunswick	1.25% stipend added to base pay
Teaneck	2% stipend added to base pay
Westfield	\$750*
Roselle	2% stipend added to base pay plus \$1,000 annual stipend added to base pay
Clifton	\$2700**
Belleville	\$2,560 for both the maintenance of the EMT certification and for firefighters assigned to the first line ambulance duty
Elizabeth	\$900
Maplewood	\$1,444
Linden	8% of base pay
Hillside	6% of base pay
Ventnor City	\$1,500
South Orange	\$1,250
Wildwood	\$1,000
N. Wildwood	\$1,000
Bergenfield	\$1,362
Hackensack	\$1,250
Ridgewood	\$3,471

* Effective January 1, 2003

The KFSOA emphasizes that it is the only group of Kearny Fire Department employees who are not being compensated for the First

Responder/EMT duties. Based upon the above, the KFSOA proposes that effective July 1, 2000, each fire officer shall receive a one-time salary adjustment of \$1,650 which shall be part of base pay for all purposes.

The Town objects to adding \$1650 to base pay before any wage increase, calculating that when considered with the 4.0% increases proposed by the KFSOA, it would result in a total increase of 33.4% for Captains over five years or over 6% per year in annual salary increases, a level it deems excessive.

As I have stated above, this issue must be considered not only on its own merits but also in conjunction with salary increases. Because EMT money has been put in base pay for the FMBA and would be here as well, it must be considered as a compensation issue both in terms of the merits of the amount, if any, awarded as well as the impact of the amounts awarded on total net annual economic change. As the Town correctly notes, the KFSOA proposal on salary and EMT in the first year would yield a result of approaching 7%. The financial impact retroactively on the governing body, its residents and taxpayers would be so substantial that it would be adverse to their interests. However, the KFSOA has met its burden to establish that payments for EMS are warranted during this contract term and should approximate payments received by the firefighters and the Chief. Before determining the amounts and the timing of those sums, an examination of the salary issue is required.

Calculations for salary increases shall be based upon a total annualized base salary figure of \$2,063,188 on June 30, 2000. One percentage point is worth \$20,631.88. The Town has proposed 3.5% annual increases. The Town has also proposed annual adjustments of \$300. The KFSOA has proposed 4% annual increases after the inclusion of a one-time addition of \$1,650 into base pay.

Addressing comparability, both the KFSOA and the Town acknowledge and emphasize internal comparability. However, the KFSOA also focuses on comparability mainly with the Police Superiors Association and to a lesser extent with fire officers in Hudson County municipalities. The KFSOA asserts that when compared to the Police Superiors Association, the Fire Officers lag in salary increases. Based upon Muster Pay of .6% of base salary after the contractual raise for each year of the prior agreements, the KFSOA argues that over the same period the Police Superiors received a 16.4% increase while the KFSOA received a 15.2% increase.

The KFSOA points out that all of the Towns' bargaining units except the FMBA settled for the following wage increases during the time periods January 1, 2001 through December 31, 2003:

1/1/01 – 6/30/01	2.5%
7/1/01 – 12/31/01	2.5%
1/1/02 – 12/31/02	3.8%
1/1/03 – 12/31/03	3.8%

Additionally, the KFSOA points out that the .6% Muster Pay has continued to be added to base pay each year after the contractual increases. According to the KFSOA, in the split year the .6% was added twice, once after the first 2.5% and again after the second 2.5%. The KFSOA contends that the salary increases that the Town is offering for the years 2000-2003 are substantially lower than the raises the Police Superiors received. According to the KFSOA, the offer is substantially lower than the average awards and settlements throughout the State during the same time period.

The KFSOA also provided the following comparison with Fire Officers throughout Hudson County.

HUDSON COUNTY SOA SALARY COMPARISONS

	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
Kearny	71,585	72,996	74,456								
Jersey City		77,262	79,966	82,765	87,836	90,778					
Bayonne							86,659	89,766	95,720	102,720	107,173
Hoboken	64,775	67,042									
Harrison			73,254	76,185	78,394	81,334	84,384	87,759	91,269		
North Hudson	XXXX	XXXX	XXXX	XXXX	XXXX	XXXX	89,906				
Union City			82,277	84,745	87,287	89,906	XXXX	XXXX	XXXX	XXXX	XXXX
North Bergen			75,234	77,491	79,816	82,211	XXXX	XXXX	XXXX	XXXX	XXXX
West New York			77,365	79,686	82,076	84,538	XXXX	XXXX	XXXX	XXXX	XXXX
Weehawken			75,740	78,013	80,353	82,764	XXXX	XXXX	XXXX	XXXX	XXXX

The Town maintains that its agreement with the rank and file firefighters represented by the FMBA should form the basis for an award in this proceeding. The Town reiterates that its settlement with the FMBA included 3.5% increases as part of an overall package that implemented a 24/72 hour work schedule.

On the issue of EMT payment, an award of a \$350 annual payment commencing July 1, 2000 through July 1, 2005 (a 6 year period) prior to annual salary adjustments during those years would result in an annual EMT payment that would be generally consistent with the FMBA (as compounded since inception) by July 1, 2005 but at an incremental level that can be expended by the Town over several budget years and without adverse financial impact. The Town has proposed \$300 annual payments for five years. This proposal appears to be an implicit recognition of the merits of the KFSOA position on EMT but is at a level, even incrementally, that does not sufficiently close the gap between the FMBA and the KFSOA. A \$350 payment in each of the first six years accomplishes that goal.

Turning to the issue of salary, I am persuaded that after the award of a \$350 annual payment for each of the first six years, an award of annual increases of 3.5% for each of seven years represents a reasonable determination of the salary issue. The net result of the annual dollar payments into base pay, the annual percentage increases, the roll-in of holiday pay, longevity pay and line up pay coupled with the change in the work schedule accommodates the "catch up" proposed by the KFSOA as related to the firefighters. It may not "catch up" with the police superior officers agreement but nevertheless, this package provides reasonable consistencies with the police unit and allows for the pursuit of whatever objectives the KFSOA deem appropriate in

negotiations that transpire for a new agreement that would commence on July 1, 2007.

The terms of this award are justified by an application of the statutory criteria. As I have stated, most significant weight has been given to comparable terms within the Town's fire department. The Award does exceed the Township's proposals but in a manner that does not require the Town to exceed its lawful authority under N.J.S.A. 40A:4-45.1 et. seq. nor cause adverse financial impact on the governing body, its residents or taxpayers.

The record reflects that the Town has managed its finances effectively. The Town has maintained a significant fund balance, which has risen from \$1500,000 in 2001 to \$3,500,000 in 2003. At the same time, the unexpended balance of appropriation reserves has increased from \$145,130 in 2001 to \$631,406 in 2004. The Town is in a sound position with respect to debt service as June 30, 2003. Its actual net debt was \$49,577,509 which was well below its debt limitation of \$71,508,215. The additional expenditures required by the Award above the Town's proposals are supported by the statutory criteria and can be expended within its financial capability. Although the Town has maintained its fiscal health, there are signs of increasing financial challenges. These signs weigh heavily against an awarding of the KFSOA's economic proposals. The municipal portion of the tax levy rose from 18.34 in 2003 to 20.25 in 2004 and was projected to rise in 2005, despite the increase in ratables from

\$1,054,290 in 2003 to \$1,060,034,824 in 2004. According to the Town, its surplus is projected to decrease due to lower tax collections and revenue shortfalls and there are increases envisioned in health benefits and pension costs as well as other costs.

The interests and welfare of the public [N.J.S.A. 34:13A-16g(1)] are entitled to substantial weight in the rendering of this award. Although this factor defies precise definition, it unquestionably includes consideration of maintaining a productive and efficient fire department at a cost level which can be supported by the taxpayers and governing body and the maintenance of relative standards between firefighters and their fire officers. Although the costs exceed those proposed by the Town, the costs do not significantly exceed the costs the Town has anticipated as a result of its proposal that mirrors the voluntary settlement it entered with the FMBA.

The cost of living [N.J.S.A. 34:13A-16g(7)] is not a controlling factor in this wage determination and must be given less weight than financial impact and the comparability data which I have given more weight to.

The award will further the continuity and stability of employment for the Town's fire officers. When firefighters are promoted into this unit they should have a reasonable expectation that terms and conditions of employment are sufficiently attractive to cause them to remain in the department and assume

supervisory roles. For existing unit members, it is necessary that terms be adjusted in a manner that reinforces their role as managers and their responsibility to supervise their subordinates.

Accordingly, I respectfully enter the terms of this interest arbitration award.

AWARD

1. All proposals by the Town and the KFSOA not awarded herein are denied and dismissed. All provisions of the existing agreement shall be carried forward except for those modified by the terms of this Award.

2. **Duration**

The effective date of this agreement shall be July 1, 2000 through June 30, 2007.

3. **Recognition**

Article I, Section 2 shall be modified as follows:

Section 2. The bargaining unit shall consist of all sworn Captains and Deputy Chiefs of the Fire Department of the Town of Kearny, New Jersey (now employed or hereafter employed).

In the event that Fire Officer titles are recreated or added in the future that contain supervisory authorities, such titles would presumptively be included in the bargaining unit.

4. **Work Schedules**

Effective no later than January 1, 2006, the Town shall implement 24-hour workdays followed by 72 hours off duty for Fire Officers.

5. **Vacation**

Article XV Vacation:

Upon implementation of the 24/72 work schedule, Fire Officers shall receive working days vacation with pay annually following this schedule: Fire Officers working the 24 hr. shift shall receive nine (9) vacation days. Members working the 24 hour shift shall receive one (1) additional vacation day for every 10 years of service. One-half days may be taken in increments of 10 or 14 hours subject to prior approval of the Chief or his designee. Up to one-half of an employee's vacation may be taken in individual days. Unless specifically approved by the Fire Chief, no more than one (1) Captain may be in vacation leave at one time.

6. **Personal Days**

Effective upon implementation of the 24/72 hour work schedule, the existing total of two (2) personal days shall be converted to one (1) personal day, to be taken in increments of one (1) 24-hour day or two (2) half days. Personal days shall not be carried beyond the year that they are earned. If any personal days have been banked, they shall be carried forward.

7. **Covers**

Article X, Section 2(a) shall be modified to read:

Effective upon implementation of the 24/72 hour work schedule, bargaining unit members shall be permitted to exchange tours of duty with other bargaining unit members ("covers") a maximum of fifteen (15) times per year. Covers shall require prior approval of the Chief who may not unreasonably deny a request.

8. Terminal Leave

Effective upon implementation of the 24/72 hour work schedule, each member covered by this Agreement shall be entitled to and granted terminal leave of twenty-two and one half (22.5) working days off with pay at the time of his retirement. Such leave may be taken for purposes of early retirement or any employee may work until retirement at which time he shall be entitled to twenty-two and one half (22.5) working days pay in lieu thereof.

9. Emergency Leave

Effective upon implementation of the 24/72 hour work schedule, emergency leave shall be converted to two work days or 48 hours of emergency leave.

10. Line-Up Pay

Line-Up Pay shall be increased by \$10 annually effective July 1, 2000 through July 1, 2004. Effective July 1, 2005, line-up pay shall be added to base pay for all calculation purposes at a rate of \$200 and shall be eliminated from the contract thereafter.

11. Longevity

Effective July 1, 2005, longevity pay shall be rolled into base pay for all calculation purposes at each step of the salary schedule at the rate of the new maximum longevity percentage of 9.25%. The longevity provision shall then be removed from the Agreement. Fire officers who have entered twenty (20) or more years of service as of July 1, 2005 shall be "red-circled" and shall continue to receive the maximum longevity percentage of 10% prior to the change, in their base pay, until their last date of employment. Upon the retirement of all fire officers who, as of July 1, 2005, have entered twenty (20) or more years of service, this provision shall cease to exist and shall be removed from the Agreement. This provision shall not apply to any fire officer who, as of July 1, 2005, has not entered twenty (20) years of service prior to that date. They, as well as newly promoted fire officers, shall receive the maximum of 9.25% that has been rolled into base pay.

12. Holiday Pay

Effective July 1, 2005 holiday pay shall be rolled into base rate salary and thereafter, Article VII, Section 5 shall be removed from the contract. The Town and the KFSOA shall jointly calculate the revisions that need to be made to the salary schedules effective July 1, 2005 to accommodate this implementation.

13. Payment of Wages

Effective as soon as is practicable, payment of wages shall be bi-weekly.

14. Dental Insurance

Effective January 1, 2005, all active members to be included in Dental Plan No. 3090 with \$2,000 annual benefit.

15. Salary and EMT

Effective and retroactive to July 1, 2000, 2001, 2002, 2003, 2005, 2005, 2006, there shall be general wage increases applied to each step of the salary guides for Captain and Deputy Chief of 3.5%. This percentage shall be applied after the addition of an annual salary adjustment of \$350 on July 1, 2000, 2001, 2002, 2003, 2004 and 2005 prior to the application of the 3.5% increases.

Captains

Steps	07/01/00 ¹	07/01/01	07/01/02	07/01/03	07/01/04	07/01/05 ^{2,3,4}	07/01/06
1	59,880	62,338	64,882	67,515	70,240	80,045	82,847
2	63,486	66,070	68,745	71,513	74,378	84,724	87,690
3	65,290	67,937	70,677	73,513	76,448	87,065	90,112
4	69,515	72,310	75,203	78,197	81,297	92,547	95,786
5	71,414	74,276	77,238	80,303	83,476	95,011	98,337
6	77,424	80,496	83,676	86,967	90,373	102,810	106,408

Deputy Chiefs

Steps	07/01/00 ¹	07/01/01	07/01/02	07/01/03	07/01/04	07/01/05 ^{2,3,4}	07/01/06
1	79,736	82,889	86,153	89,530	93,026	105,810	109,513
2	82,911	86,175	89,553	93,050	96,669	109,929	113,777
3	86,213	89,593	93,091	96,712	100,459	114,214	118,212
4	89,647	93,146	96,769	100,518	104,398	118,669	122,822
5	93,219	96,844	100,596	104,479	108,498	123,305	127,621
6	97,757	101,541	105,457	109,510	113,705	129,192	133,714


¹ Each salary schedule has been adjusted by a payment of \$350 annually through 7/1/05 prior to the application of 3.5% increases.

² Includes roll-in of longevity at 9.25%. Does not include the "red-circling" of fire officers at 10% for those who have entered twenty (20) years of service as of July 1, 2005.

³ Includes line up pay of \$200

⁴ Effective July 1, 2005 holiday pay has been rolled into base pay. The roll-in does not appear as an adjustment to the above salary schedules. The Town and the KFSOA shall engage in this calculation and adjust the salary schedules accordingly prior to execution of the Agreement.

Dated: September 20, 2005
Sea Girt, New Jersey


James W. Mastriani

State of New Jersey }
County of Monmouth }ss:

On this 20th day of September, 2005, before me personally came and appeared James W. Mastriani to me known and known to me to be the individual described in and who executed the foregoing instrument and he acknowledged to me that he executed same.



GRETCHEN L. BOONE
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires 8/13/2008